

WATER DISTRICT 34 GUIDELINES FOR OPERATION
(Updated October 29, 2006)

Prepared by Idaho Department of Water Resources

Water Distribution Section

Boise, Idaho

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FIGURES

- Figure 1. Big Lost Diversion and Flow Measurement Locations.
- Figure 2. Water District 34 Ground Water Diversions.
- Figure 3. Location of "A"-Line.

APPENDIX

1.0 PURPOSE

This manual is being compiled and maintained by the Water Distribution Section of IDWR to establish standard procedures for operations in Water District 34 (WD 34). Need for the manual is justified by concern among WD 34 patrons about IDWR's level of oversight in the district. Compiling and maintaining a central document with summary of, and reference to the numerous guidance letters, SRBA court documents, and WD 34 Rules is appropriate to consistently address the complexity of issues encountered in this district. This document is intended to serve as the primary reference for water users and the Watermaster regarding operation of Water District 34.

2.0 SCOPE

- Procedures in this manual are to be used by the Watermaster, Advisory Committee, Water District patrons, and IDWR regional and state office staff.
- Content of this manual is taken from the Idaho Administrative Procedures Act (IDAPA) Water District 34 Rules (IDAPA 37.03.12), Idaho Code, IDWR Watermaster training workshops, IDWR standards, General Provisions 1-6 in the SRBA partial decree, and correspondence with WD 34 personnel/WD 34 patrons/IDWR staff regarding implementation of the aforementioned documents. With the exception of the Idaho Code and IDWR Watermaster training workshop materials, all of these referenced documents are attached in the Appendix.
- This manual is a "living document". It may be updated and revised to include more detailed procedures from the Rules, General Provisions, and guidance letters, as needed. Input from WD 34 personnel, WD 34 patrons, other involved parties, and IDWR staff will be used to initiate revisions. Revisions will include document format and organization, as well as content.

3.0 GENERAL WATER DISTRICT OPERATIONS

These procedures are established in accordance with the provisions of I.C. (Idaho Code) Title 42, particularly Chapter 6. Water Districts formed under I.C. Title 42 shall operate in the manner described below.

3.1 Water District Meeting

- 3.1.1 Hold at least once per year in accordance with I.C. Section 42-605.
- 3.1.2 Set a budget with sufficient funds to provide for accomplishment of all minimum standards described herein. Establish assessments.
- 3.1.3 Establish resolutions necessary for conducting meetings, collecting assessments and delivering water within the Water District.
 - 3.1.3.1 Watermaster shall serve all year.
 - 3.1.3.2 Voting/Assessment procedures including those for purchasing and administering mitigation storage water.
 - 3.1.3.3 Water not to be delivered if assessment not paid.
 - 3.1.3.4 Watermaster shall acquire and hold property for district.
 - 3.1.3.5 Annual meeting dates and locations.
 - 3.1.3.6 Method for choosing an Advisory Board.
 - 3.1.3.7 Advisory Board functions (see Appendix materials for examples of resolutions defining Advisory Board duties).
 - 3.1.3.8 Granting authority to Watermaster for appointing deputies, or other means for hiring.
- 3.1.4 Select Advisory Board members as per resolutions.

- 3.1.5 Elect a Watermaster that can complete the tasks in §3.2
- 3.1.6 Conduct other business as needed - special problems, information updates, scheduling of next year's meeting, etc.

3.2 Watermaster Duties

- 3.2.1 Manage the Water District office, including preparation and maintenance of district budgets, preparation and collection of assessments, and to hire, train and supervise all employees of the Water District.
 - 3.2.1.1 Perform immediate oversight/supervision of Big Lost Irrigation District personnel also deputized by Water District to be certain of proper delivery of natural flow water rights within irrigation district canals.
 - 3.2.1.2 Periodically verify reported diversion rates. The Watermaster will personally visit each point of measurement in the district (both above and below the reservoir) at least once a month and maintain a spreadsheet of his measurements and corresponding measurements submitted by his assistants. He should compare his measurements with those submitted to him by his assistants and verify that the reported diversions are generally consistent with his own observations, recognizing that differences may be observed due to natural fluctuations in flow. Furthermore, the Watermaster should submit this spreadsheet to IDWR with the annual distribution report and as requested by IDWR staff.
- 3.2.2 Operate, or supervise the operation of, all office and field equipment utilized by the Water District.
- 3.2.3 Maintain detailed records of water district operations as specified in §3.4.
- 3.2.4 Analyze water measurement data, and apply the data to make water delivery determinations in accordance with Water District 34 Rules and I.C. Title 42.
- 3.2.5 Coordinate with IDWR in receipt and transmittal of all pertinent water right and water use data or information.
- 3.2.6 Investigate and stop illegal uses of water.
- 3.2.7 Distribute water to rights in accordance with I.C. Title 42, Water District 34 Rules, and using decrees, partial decrees, Director's Reports, permits, licenses and transfers.
- 3.2.8 Properly administer ground water diversions that are subject to mitigation requirements of Rule 50 (IDAPA 37.03.12.50).
 - 3.2.8.1 Curtail ground water diversions that are not covered by a basin wide mitigation plan, stipulated agreement or an individual mitigation plan approved by IDWR.

- 3.2.9 Curtail illegal diversions.
 - 3.2.9.1 Regulate water rights by both point of diversion and place of use.
 - 3.2.9.2 Assist IDWR to issue and follow-up on Notices of Violation as required, and follow other curtailment provisions in accordance with I.C. Title 42 and Water District 34 Rules.
- 3.2.10 Curtail diversions for which assessments have not been paid in accordance with adopted resolutions.
- 3.2.11 Prepare an annual report meeting I.C. Section 42-606 requirements and as described in §3.6.1.
- 3.2.12 Prepare a proposed budget for the upcoming year, including an annual work plan. This proposed budget report must be submitted to IDWR at least 30 days prior to the WD34 Annual Meeting and must be in a format acceptable to IDWR as described in §3.6.2.
- 3.2.13 Work longer hours during the irrigation season.
- 3.2.14 Maintain good working relationships with water users, advisory committee, and government agencies.
- 3.2.15 Provide an annual statement of Water District finances, and provide for independent financial audits of Water District finances in accordance with minimum requirements of I.C. Section 67-450B.

3.3 Acceptable Management

- 3.3.1 Informal agreement or arrangement is acceptable where all water users are satisfied with water delivery situation. Any method the Water District chooses to meet this goal is acceptable if all Water District patrons agree to it, and it follows existing state law (I.C. Titles 42 and 43 and Idaho Administrative Rules IDAPA 37.01 through 37.03).
- 3.3.2 The only water rights eligible for Watermaster delivery are those identified by a decree, license, or permit.
- 3.3.3 The proper list of deliverable rights will be supplied to the Watermaster by IDWR periodically, and upon request by the Watermaster.
- 3.3.4 Ideally, all diversions calling for Watermaster delivery of water during water shortage periods will have standard measuring devices and lockable diversion works - typically a screw-valve metal headgate at the creek and a weir in the ditch near the headgate to allow practical adjustment and measurement by Watermaster.
- 3.3.5 If measuring devices are installed for all diversions, the Watermaster delivers available water on priority basis, delivering the most senior right first, then the next senior right and so on until all available water is delivered. Junior diversions are shut off, unless senior rights are completely filled.

- 3.3.6 In the above scenario, the Watermaster records water deliveries, and then sums the total amount of water per right delivered to each individual user in one irrigation season. The total flows delivered form the basis for determining costs per water user for Water District expenses.
- 3.3.7 Without measuring devices the Watermaster uses recorded water rights as the basis for water-delivery billing purposes. An exception is in the case of ground water wells where power records are used to estimate annual volumes. The Watermaster makes his or her best effort to see that each water user receives a fair share of water based on priority dates. This is acceptable as long as all water users are satisfied.

3.4 Diversion Measurements

3.4.1 *Frequency.* Each surface water diversion from the Big Lost River and tributaries will be measured at least once a week, but preferably twice per week. At times where flows are changing, the Watermaster may elect to measure some diversions more frequently. **Where practical, gage readings should be recorded daily for all established diversions in WD34.** In remote locations, such as Antelope and Alder Creeks, and Big Lost River and tributaries above Mackay reservoir, diversions may remain nearly constant for several days in a row. In these cases, daily visits aren't necessary by the Watermaster to record gage readings. Diversion can be interpolated from readings for the days in between.

3.4.2 *Method.* Most diversions are equipped with a measuring device. The devices should be used if present and in a functioning condition. If the diversion lacks a measuring device, or if the device is not functioning or not properly calibrated, an alternative method should be employed and the records should indicate how the measurement was made.

3.5 Record Keeping

3.5.1 Current water rights lists. The Watermaster will deliver water in accordance with the most current list of water rights provided by IDWR. At the time of this writing, the most current list was provided in June 2006. Updated lists will be made available upon request.

3.5.2 Calls for Water. The Watermaster will maintain a record of calls for water. This record will be in the form of a spreadsheet listing all WD34 water right holders and noting the dates each user called for their water and the dates each user called their water off.

3.5.3 Priority dates. The Watermaster will keep a daily record of the priority date above the reservoir, below the reservoir, and on Antelope Creek if a futile call determination has been made. The daily record will also note whether the river is connected or disconnected, as described in General Provision 6, and any futile call determinations that have been made. The Watermaster will keep records of calculations used to determine priority dates.

3.5.4 Canal Headings. The Watermaster will submit daily diversion rates at each of the canal headings to IDWR via the IDWR Internet application.

3.5.5 Field Records. The Watermaster will keep a complete file of original field documents made by his assistants. These original documents will serve as verification of the records submitted to IDWR. The field records will clearly indicate the priority date in effect each day, the total canal heading, and the amount of flow being diverted for each user on the canal (including recharge).

3.5.6 Additional Records. The Watermaster will maintain any additional records required for administration of water rights. Examples include records of winter stock water deliveries, and records of water deliveries on Alder Creek per: *Guidance for Distribution of Alder Creek Water Rights and Flows, Water District 34 (6/11/1999) Paragraph 1.C.2.E. – “Record Keeping Procedures”*.

3.5.7 Rotation Credit. The Watermaster will maintain daily records of which water rights are being rotated into storage and will document all requests to rotate into storage.

3.5.8 Oversight records. The Watermaster will maintain records of the measurement verifications described in §3.2.1.2

3.5.9 Ground water Records. The Watermaster will maintain records of ground water withdrawal measurements where available, and records of PCC examinations, where applicable.

3.6 Reporting Requirements

3.6.1 Distribution Report (Watermaster’s Report). The annual Watermaster’s report will contain the following information in a format acceptable to IDWR:

- Summary discussion of the irrigation year and notable events. Summary should include delivery statistics, such as total water delivered, total ground water, total surface water, and should note any out of priority or excessive diversions.
- Summary Table listing all water right holders in the district, and listing for each user: total water delivered for the year, total ground water deliveries for the year, total surface water delivered for the year, number of days the user had called for water, the proposed assessment to be levied for the year and any previous years used to calculate voting rights and assessments.
- Summary Table listing each day of the year and noting for each day whether the river was connected or disconnected, and what priority date was in effect above and below the reservoir. Also note on the table the dates of any futile calls, the date the reservoir filled, periods when recharge was occurring, and any other notable events.
- Recharge Summary Report. Summary table listing each point of diversion used for recharge and providing monthly and annual totals by diversion and in total.
- Oversight Summary table listing the Watermaster’s verification measurements of his assistants’ reported diversions. Any significant discrepancies should be noted.
- Supporting data. Printouts of diversion, stream gage and reservoir contents summaries from the IDWR database. Include any additional stream measurements made during the course of the year.

3.6.2 Proposed Budget Report. The proposed budget report must be submitted to IDWR at least 30 days prior to the annual meeting, and must contain the following information in a format acceptable to IDWR:

- Summary Table listing all water right holders in the district, and listing total water delivered for the year, and any previous years used to calculate the average deliveries, the proposed total budget amount, the proposed cost factor, each user’s portion of the proposed budget amount, any debits and credits, and the proposed billing for each user.

3.6.3 Adopted Budget and Annual Meeting Minutes. Following the Annual Meeting, the water district will submit to IDWR a certified Adopted Budget form and a copy of the minutes of the Annual Meeting listing any resolutions that were passed.

3.6.4 Recharge Report. The Plan of Operation for Basin 34 Recharge specifies that an annual report of recharge diversions is to be submitted to the recharge committee and IDWR. In addition, the Watermaster will provide daily records of recharge deliveries to the recharge committee or IDWR upon request.

4.0 WATER DELIVERY PROBLEMS

4.1 Water District Involvement First

Refer all water delivery problems to the Watermaster to see if they can be successfully resolved locally to everyone's satisfaction. Water users and/or the Watermaster can call on the Advisory Committee for help. Rule 40.08b provides this protocol:

- 4.1.1 In the event a water user feels inappropriate delivery of natural flow water is occurring on any lateral or canal, the water user can request the Watermaster to investigate. In the event the Watermaster determines that delivery of natural flow water rights within a lateral or canal is being improperly conducted he shall:
 - Notify the ditch rider and the water delivery entity of the results of his investigation and coordinate efforts to make proper delivery of the natural flow.
 - If the situation has not been sufficiently resolved within twenty-four (24) hours the *Watermaster* will notify the Director who may take all actions authorized by law to remedy the situation [emphasis added].
- 4.1.1.1 Some past IDWR experiences with inappropriate delivery problems in Basin 34 involved the water user contacting IDWR directly, rather than the Watermaster, contrary to the protocol in Rule 40.08 b. In the event a water user contacts IDWR about inappropriate delivery, IDWR will refer them to the Watermaster to initiate contact with IDWR, in compliance with Rule 40.08 b.
- 4.1.1.2 If the Watermaster does not contact IDWR within 24 hours as considered in Rule 40.08 b, and the water user is still needing a problem resolved, the water user should initially confer with the Advisory Committee to obtain the cooperation of the Watermaster.
- 4.1.1.3 If the advisory committee is unable to initiate compliance by the Watermaster to Rule 40.08 b, the aggrieved water user could then submit a written petition to IDWR describing the unresolved situation and requesting the Director's intervention. The written petition should clearly define what title and section of Idaho Code, WD 34 Rules, or General Provision of the SRBA partial decree is not being adhered to, and explicitly describe the situation to which the problem applies.

- Taking the step of submitting a written petition likely will result in a much more formal investigative and mandating process than is described in 4.2 through 4.4.
- The level of response to a written petition resulting from lack of response by the Watermaster and Advisory Board to a water delivery problem will be determined on a case-by-case basis.

4.2 IDWR Involvement Second

Upon notification to IDWR by the Watermaster of an unresolved problem, IDWR will make a site assessment with the Watermaster, Advisory Committee (as needed), and the water users to see what is needed to correct the problem.

4.2.1 IDWR Solutions

- 4.2.1.1 Step 1 - The first time a problem is brought to IDWR's attention, IDWR will try to identify a local solution requiring minimal disruption to normal operations, and help the Watermaster and water users implement this.
- 4.2.1.2 Step 2 - if Step 1 is not useful, in some particular cases IDWR will host a mediation effort provided that all involved parties are willing to attend the mediation and abide by the outcome of the mediation. There is no guarantee that this will work but past experience has shown that it is worth trying this option. IDWR will determine on a case by case basis whether or not this step is used.
- 4.2.1.3 Step 3 - If Steps 1 and/or 2 fail and problems persist; a more formal process will be used. This involves IDWR issuing guidance or direction to the Watermaster as is allowed under I.C. Titles 42 and 43.

5.0 WINTER OPERATIONS

5.1 Stockwater delivery, extended season requests.

- 5.1.1 Administer winter stockwater as per the direction given in General Provision 2, and per addition instructions provided by IDWR (attached letter of November 17, 2003).
- 5.1.2 Stockwater is allowed for winter diversion at the rate listed in the decree. If water is conveyed to the place of use through a private ditch, and the legal point of diversion is at the heading of the private ditch, additional flow, up to the full irrigation right, may be allowed to convey stockwater from point of diversion to the place of use if, as determined by the Director, water is not being wasted in the process. Guidance on this issue was provided in the attached memo by Susan Hamlin, Deputy Attorney General for IDWR, dated October 15, 2003.

- 5.1.3 Accounting for water is to be done with stockwater deliveries in winter (per rule 60: Water diversions shall be accounted for continuously, throughout the year by the Watermaster.).
- 5.1.4 Extended-season requests should be handled as per instructions provided by IDWR (see attached phone conversation record of October 9, 2003).

6.0 SPECIAL INSTRUCTIONS FOR ADMINISTRATING DIVERSIONS

6.1 Above the Reservoir

- 6.1.1 Nielson Ditch and Fish Hatchery Canal with Supplemental Wells
 - Measure Reno/Unger wells along Warm Springs Creek and Upper Fish Hatchery Canal in accordance with IDWR instructions (in attached letter of March 9, 2004).
 - Measure and regulate Warm Springs Creek/Nielsen Ditch in accordance with IDWR instructions (attached letters of May 1, 2003 and February 13, 2003).
- 6.1.2 Back Channel Regulation
 - The Back Channel is described in General Provision 1.d (GP-1.d)
 - Back Channel regulation shall be as described in Rule 20.03, and as described in General Provision 3 (GP-3), with GP-3 prevailing when conflicting with Rule 20.03 (see 2nd to last paragraph of March 23, 2004 memorandum, attached).

6.2 Below the Reservoir

- 6.2.1 Alder Creek
 - Deliver water on Alder Creek in accordance with 6/11/1999 guidance document - *Guidance for Distribution of Alder Creek Water Rights and Flows, Water District 34*.
 - Record water deliveries per: *Guidance for Distribution of Alder Creek Water Rights and Flows, Water District 34 (6/11/1999) Paragraph 1.C.2.E.* – “Record Keeping Procedures”

6.3 Pertinent Enforcement Orders

- 6.3.1 Inspect diversions located in the sub-basin areas identified by the following listing of Administrative Orders for compliance, and keep daily records, if practical, of the measured flows at all diversions covered under these orders.

4/28/2000 Order	In the Matter Requiring Measuring Devices and Controlling Works on Warm Springs Creek and Tributaries
10/11/2001 Order	In the Matter Requiring Measuring Devices and Controlling Works on Ground Water Diversion Discharging to the Timberdome Canal
12/4/2001 Order	In the Matter of Requiring Measuring Devices and Controlling Works on the Big Lost River Above Mackay Reservoir
2004 Order	Installation of controlling works and measuring devices on Antelope Creek.

7.0 SURFACE WATER ADMINISTRATION

7.1 Connected River Determination

Determine state of river connectivity as described in General Provision 6 (GP-6) and Rule 20.01, with elaboration on implementation of GP-6 in June 15, 2001 Letter from D. Tuthill (attached). When Rule 20.01 conflicts with GP-6, GP-6 is used.

- 7.1.1 If diversions are made from the Big Lost River or its tributaries above the Howell Gage, then the amounts diverted will be added to the amount of the flow at the Howell Gage for the purposes of determining the connectivity of the river (paraphrased from Rule 20.01).
- 7.1.2 Surface water rights diverted from Warm Springs Creek, Pole Stackyard Creek, Parsons Creek, and the Big Lost River above Mackay Reservoir will be administered separately from those diverted below Mackay Reservoir from the beginning of the irrigation season until the maximum flow at the Howell gage has exceeded 750 cfs for three consecutive days. This is the “connected river” condition.
 - 7.1.2.1 To determine the maximum flow, the 15-minute gage readings and flow measurements reported via the USGS Internet site are used. When the 15-minute flow, adjusted by adding flows identified in 7.1.1, exceeds 750 cfs one or more times each day, for three days in a row, with a day starting at midnight, then the river is connected.
- 7.1.3 After the river is connected, surface water rights diverted above and below the reservoir will be administered conjunctively until the minimum flow at the Howell gage is less than 450 cfs for three consecutive days. After this, the river is again administered separately as described in 7.1.2.
 - 7.1.3.1 The minimum flow is determined by observing the 15-minute flows reported by the USGS, taking midnight as the start of a day. When the 15-minute flow, adjusted by adding the flow identified in 7.1.1, drops below 450 cfs one or more times for three consecutive 24-hour periods, each period starting at midnight, the river is “broken”, or disconnected.
- 7.1.4 In most irrigation seasons, the river will only connect and disconnect once. Connection will occur during the rising stage of peak runoff of snowmelt, and disconnection occurs during the falling stage of peak snowmelt runoff. Two snowmelt peaks have occurred historically, thus the possibility of two periods of conjunctive administration of the entire Big Lost River system exist (see attached letter of June 15, 2001 from D. Tuthill).

7.2 Surface Water Administered Separately

- 7.2.1 General Provision 5 and Rule 20.02 list tributary streams to the Big Lost River and water right numbers that are administered separately from the Big Lost River. These water rights listed in General Provision 5 and Rule 20.02 are not regulated by the priority date determined for the Big Lost River. When Rule 20.02 conflicts with GP-5, GP-5 is used.

7.3 Big Lost Irrigation District (BLID) Storage Rights

RIGHT NO.	PRIORITY	QUANTITY	PERIOD OF USE	REMARKS
34-00818	06/30/1880	3.2 CFS/556.5AF	05-01 10-15	
34-00811	06/30/1881	1.7 CFS/294 AF	05-01 10-15	
34-00810	06/01/1888	3.2 CFS/556.5AF	05-01 10-15	
34-10935	06/01/1896	6.4 CFS/1113 AF	05-01 10-15	
34-00817B	03/01/1902	0.8 CFS/140 AF	05-01 10-15	
34-00013	07/31/1905	100CFS	05-01 10-15	Antelope Cr Exchange w/ 3 in 1
34-10873	10/02/1905	20646 AF	01-01 12-31	Additional Vol. Allowed
34-00012	02/07/1916	17205 AF	01-01 12-31	Additional Vol. Allowed
34-02507	09/02/1959	6000 AF	01-01 12-31	Additional Vol. Allowed

- 7.3.1 See the attached August 2, 2006 memorandum *Re: Administration of Big Lost River Irrigation District Storage Rights* For additional discussion.
- 7.3.2 Stored water accrues first against the volume limits of the in season water right with the earliest priority date. Reservoir carryover accrues against the annual volume limit. Carryover and any storage that accrues prior to May 1st fills 34-10873 first (20646 af), then fills 34-0012 (17205 af), then 34-2507 (6000 af). Any storage accrued after April 30th accrues against 34-818 first until it fills (556.5 af), then accrues toward 34-811, and so on. Storage that accrues after October 15th fills any remaining volume of 34-10873, 34-12, and 34-2507 that was not filled before or during the irrigation season. If the annual volume limit has been met, additional water may be stored under these rights as long as all other rights that are in season, regardless of priority, are being filled.
- 7.3.3 During the non-irrigation season, storage rights are superior to winter stockwater (Rule 55.06). During the non-irrigation season, from October 16 through April 30, except as modified by Rule 040.04 that extends the season from April 20 to as late as October 31, the storage of water in Mackay Reservoir is superior to all rights from the Big Lost River with points of diversion downstream from Mackay Dam, subject to the minimum release of 50 cfs required by Rule 040.07.
- 7.3.4 If after the start of the irrigation season the reservoir is not full, storage rights are filled in priority. After the irrigation season has started (after April 30, or Rule 40.04 April 20), and the river is not connected (GP-6a or 6b in effect), the continued filling of the reservoir storage is according to priority date of the river segment below the Reservoir.
- 7.3.5 Junior rights above the reservoir are curtailed when the river is not connected per GP 6a or 6b and a call is made by BLID for storage. Also, users below the reservoir cannot make a call on the BLID storage water made available by the

curtailment of users above the reservoir when the river is not connected per GP 6a or 6b (attached letter of May 19, 2003 from J. Berkey).

7.3.6 As per General Provision 6c (GP-6c), when Mackay Reservoir is not full, calls can be made on upstream diversions, in priority, to make water available for storage. Measurements of flow are made at the Pence and Donahue bridges to determine the amount of water made available by curtailment of upstream diversions through a reservoir storage right call. The water made available through such curtailment is only available to the reservoir storage rights, and not downstream users, i.e. it is not considered as inflow to the reservoir or as natural flow (attached memorandum of March 23, 2004 from D. Tuthill, Bullet 2).

7.3.6.1 Current metering equipment is needed to make measurements, and to develop a rating at both Pence and Donahue bridge sites. Staff gages have been installed at both these sites. Presently, the Water District does not own current metering equipment. As a courtesy, IDWR will do current metering if time and resources permit, unless the Watermaster purchases current metering equipment and does the measuring, or contracts with others.

7.4 Accrual of Natural Flow Rights as Storage in Mackay Reservoir (Rotation Credit)

7.4.1 Rotation credit is allowed as per GP-3. GP-3 supercedes Rule 40.02 when in conflict.

7.4.2 Rotation credit storage is allowed until the reservoir fills (Rule 40.02.f). If 1905 and junior rights are on after the reservoir fills, all rotation storage credit becomes property of BLID. If rights junior to 1905 are off, then rotation credit storage remains property of the individual users.

7.4.2.1 Clarifications and interpretations for implementation:

- Rotation is not allowed when the River is connected and rights junior to 10/1/1936 above the reservoir are being curtailed. Rotation is allowed when the river is disconnected (see attached letter of June 4, 2001 from D. Tuthill, and the attached June 30, 2006 memorandum from Dave Tuthill).
- Rotation into storage is allowed before river connection (GP-6a) and after river connection (GP-6b), and delivery of this rotated storage can occur any time during the irrigation season (attached letter of May 16, 2002 from D. Tuthill).
- Delivery calls on the rotation credit storage of 3500 AF river charge water (37.03.12.040.02.d.iii) are not allowed (attached memorandum of March 23, 2004 from D. Tuthill, Bullet 3).
- Losses are assigned proportionally according to the amount of BLID storage and the portion up to the total 3500 AF amount stored (attached letter of April 30, 2004 to Bob Duke from J. Berkey, Item 2.).

7.5 River Reaches and Gage Sites

7.5.1 The Big Lost River is divided into reaches for determining losses (shrink), river gains, and calculating and accounting for natural flow. These reaches are specified in Rule 25.01 to be:

1. Above Howell Gage.
2. Howell Gage to Chilly Bridge
3. Chilly Bridge to the 2-B Gage.
4. 2-B Gage to Leslie Gage
5. Leslie Gage to Moore diversion
6. Moore diversion to Arco diversion
7. Below Arco diversion to the Arco Gage.

7.5.1.1 Currently reach 2 (Howell Gage to Chilly Bridge) is not used, thus Reach 2 is Howell Gage to the 2-B gage. The Water District should work towards establishing the Chilly Bridge Gage site.

7.5.2 Gage station and flow measuring facilities are described in Rule 25.03. A gage station or other flow measuring facility as approved by the Director, shall be located at the Howell Gage, Chilly Bridge, 2-B Gage, Leslie Gage, Moore diversion, Arco diversion, and Arco Gage (see Figure 1).

7.5.2.1 The Howell, 2-B and Arco Gages are maintained as part of a USGS and state of Idaho cooperative program.

7.5.2.2 All other gages shall be operated when water diversions, other than just storage in Mackay Reservoir, are being made from the river. The cost of installation, operation and maintenance of these other measuring facilities is WD34's responsibility.

- IDWR has maintained the Leslie Gage rating as a courtesy, and will do so in the future, unless the Water District or others take over this task.

7.6 Futile Calls (Rule 20.04)

When curtailment of junior upstream surface water rights will not make water available for delivery and use to senior downstream surface water rights, without unreasonable waste as determined by the Director, the Watermaster will not curtail the junior water rights in a futile effort to deliver water to the senior rights. The Director may consult the Water District 34 Advisory Board, the Big Lost River Irrigation District and other impacted water users when determining whether attempting to deliver senior downstream surface water rights would be futile.

7.6.1 For the Big Lost River below the Beck Diversion, follow procedures as per attached IDWR letters of 5/17/2004 and 7/28/2004- Futile Call Requests.

7.6.2 For all other regulated streams, the Watermaster shall provide data satisfactory to the Director (or designee) that proves the futile call is legitimate. Approval from the Directory or designee is necessary to initiate and implement a futile call. Streams that may anticipate implementation of the futile call doctrine include: Antelope Creek/Cherry Creek, Alder Creek, and the Big Lost River above the

reservoir when curtailment of junior rights to fill reservoir storage rights or natural flow water rights below Chilly Bridge is futile. GP-6c covers some of the requirements for measurements when determining futile calls above the reservoir.

7.6.3 Water must be delivered to the senior priority if called for. If insufficient water for beneficial use is reaching senior priorities, they may voluntarily withdraw calls and make water available to the junior priority users upstream. No futile call determination and order from the Director is necessary.

7.6.3.1 If senior downstream priorities continue to call for water, it must be delivered and upstream junior priorities must be shut off. Continued attempts to deliver senior priorities must be made until a futile call order is issued by the Director.

7.6.3.2 In requesting a futile call, data to be provided to the Director should include:

- Priority date in effect on stream. Antelope and Alder Creek priorities should correspond to the Big Lost River priority in effect downstream of Mackay Reservoir. Upstream of Mackay reservoir, priority will be the same as the Big Lost River, either in it's disconnected (GP-6a and 6b in effect) or connected administrative state
- Recent daily diversion measurements on the affected stream reach, with indication of the water right number(s) and priority date(s) being served by each diverted amount. Diversions on tributary streams, such as Cherry Creek on the Antelope Creek drainage, or Warm Springs/Pole Stackyard Creek on the Big Lost River above Mackay Reservoir also need to be included.
- Any stream flow measurements, conveyance loss estimates, maps showing the reaches in question, and other information that may be useful.
- A representative from IDWR may assist in making flow measurements and collecting other pertinent data if requested by the Watermaster.

7.6.3.3 The Watermaster should make a written (fax is ok) request for a futile call determination to the Director. IDWR will then coordinate with the Watermaster to obtain the above listed information efficiently, and issue the futile call order quickly if the Director (or designee) so approves.

7.7 Water Deliveries and Priority Date Calculation

- 7.7.1 Measuring Devices And Control Works (Rule 35). Rule 35.01 provides for the Director to refuse delivery of water per Chapter 7, Title 42, Idaho Code where an acceptable measuring device and control works is not in place or properly maintained. Costs for installing and maintaining measuring devices and control works is born by the water user.
- 7.7.2 Where practical, gage readings should be recorded daily for all established diversions in WD34. In remote locations, such as Antelope and Alder Creeks, and Big Lost River and tributaries above Mackay reservoir, diversions may remain nearly constant for several days in a row. In these cases, daily visits aren't necessary by the Watermaster to record gage readings. Diversion can be interpolated from readings for the days in between.
- 7.7.2.1 Diversion data should be entered electronically at least once a week, but preferably twice a week, through the Water District data entry program accessed through the IDWR Internet site. The data entry program has options for interpolating between non-daily readings to get estimated daily readings.
- 7.7.2.2 Use the IDWR data entry program to enter data consisting of daily reservoir stage/contents, exchange wells, flow stations, and diversion readings from WD34 deputy(ies) and BLID ditch riders deputized by WD34.
- 7.7.3 Rule 40.01b requires that all water deliveries must be called for by the water user at least 48-hours in advance of the actual water delivery, but water which can be delivered by the Watermaster in less than forty-eight hours may be used by the water user. The Watermaster will not deliver water to a user until that user has called for delivery of the water right. It is the responsibility of the water user to contact the Watermaster or his assistants to call for a water right to be delivered or to be shut off. However, if the Watermaster observes that a water right is not being beneficially used, he will contact the user and cease delivery of that water right until the user calls again for delivery. The Watermaster must document when a user calls for water and when a call is made to cease delivery.
- 7.7.4 Rule 40.01 describes the administration of surface water rights. Administration of surface water rights is based upon the list of water rights approved for interim administration by the court or as subsequently decreed by the court in the SRBA. Water not diverted or rotated for credit is available for the next in time water right. **Natural flow rights are delivered to the point of diversion from the natural waterway with no conveyance loss assessment. A natural flow water right delivered through a lateral or canal of a water conveyance entity shall be assessed the conveyance loss for the canal through which the water right is delivered.**
- Rule 40.01a - All natural flow will be allocated based upon a four (4) day moving average of the natural flow computed by the Watermaster.

- 7.7.4.1 Implementation of Rule 40.01 to calculate natural flow (Q_{NAT}) by the Watermaster is done according to these formulae:

$$\begin{aligned}\Delta STOR &= (S_{DAY-4} - S_{TODAY})/4 \\ INFLOW &= \Delta STOR + 2B + SHARP \\ TOTAL\ WATER &= \Sigma EXCH + 2B + SHARP \\ HEADING\ TOTAL &= \Sigma DIVERSIONS \\ SHRINK &= HEADING\ TOTAL / TOTAL\ WATER \\ Q_{NAT} &= SHRINK * INFLOW\end{aligned}$$

Where:

S_{DAY-4} = storage from 4 days ago

S_{TODAY} = storage today

$\Sigma EXCH$ = sum of exchange well flows for current day

2B = flow rate for current day at 2B Gage

SHARP = flow rate for current day at Sharp diversion

$\Delta STOR$ = 4 day average of change in storage

INFLOW = total inflow to the river reach below Mackay Dam

TOTAL WATER = total water in the river from all sources

HEADING TOTAL = sum of all diversions below Mackay Dam for current day

The Watermaster uses the calculated Q_{NAT} to select a priority date from a list of decreed right diversion rates summed in order of increasing priority.

- 7.7.4.2 Natural flow is computed for the reach of the Big Lost below Mackay Reservoir using the method in §7.7.4.1. This method does not meet the requirements of Rule 40.03, which requires conveyance losses to natural flow be calculated on a river reach basis (Rule 25.01, and §7.5.1 above). Also, the Watermaster does not calculate Q_{NAT} and priority for the river reach above Mackay Reservoir. For meeting the requirements of Rule 25.01 and Rule 40.01, IDWR has developed and maintained a computer program, Big Lost Water Right Accounting (BLWRA) to do iterative calculations that enable river conveyance losses to be determined on a reach-by-reach basis, both above and below Mackay Reservoir. BLWRA also determines Q_{NAT} used in each river reach, evaporation losses incurred by reservoir storage, and determines priority for the river in either the connected or broken condition.

- 7.7.4.3 The BLWRA program is adapted from the same water rights accounting (WRA) program used by Water Districts 01 for the Upper Snake River¹. Basins 11, 63, and 65 (Bear, Payette, and Boise Rivers, respectively) also use adaptations of this program to calculate the amount of water available and allocate the water by priority date. BLWRA is encoded to reflect operations in accordance with the SRBA decree General Provisions for WD 34.

¹ Sutter, R.J., R.D. Carlson, and D. Lute, 1983. Data Automation for Water Supply Management. *Journal of Water Resources Planning and Management*, Vol. 109, No. 3, July. Am. Soc. of Civil Eng., NY, NY.
10/29/2006

- IDWR's policy is to operate and/or update the WRA programs in WD's 01, 11, 34, 63 and 65 because of the similarity in the complexity of operations in these districts. IDWR provides this function as a matter of policy to aid in the efficient administration of water in the state.

7.7.4.4 The Watermaster provides daily diversion, exchange pump, and flow data two times a week. Data are transmitted through the Internet data entry application to IDWR for running the BLWRA program (also, see §7.7.2). These data are to be submitted throughout the irrigation season (May 1 through October 15), including after futile call orders are issued for below the Beck Diversion on the Big Lost River. Data are also entered for stockwater diversions occurring during the winter (October 16 through April 30).

- The surface diversions, flows, and exchange wells to be reported are as listed in the Water District data entry program on IDWR's website for WD 34. This list is to be updated in coordination with the Watermaster from time to time to reflect on the ground changes, additional measurement stations, etc.

7.7.4.5 The computations and results from the BLWRA program are intended to assist the Watermaster in determining priority cut dates for river rights, river shrink incurred on natural flow by reach, and reservoir inflows. IDWR posts the BLWRA results on the IDWR web site for public access throughout the irrigation season.

- Priority date from the BLWRA for the river reach below Mackay Reservoir will be similar to what the Watermaster calculates using the method in §7.7.3.1. Determining what priority to use from the results of the two methods is at the discretion of the Watermaster.
- Implementation of BLWRA to the river above Mackay Reservoir is still incomplete because of insufficient flow measurement stations (see §7.5.1.1 and Rule 20.03.d). Revisions to the program will proceed as better flow monitoring abilities are developed for the reach above Mackay Reservoir.
- Rule 60 requires accounting by the Watermaster for all deliveries in WD 34 all year. This rule is met during the irrigation season by the daily records kept by the Watermaster and the BLWRA program. Accounting of winter stockwater delivery is currently not done by IDWR in the BLWRA, but must be done by the Watermaster. This task includes weekly submittal of data to IDWR showing winter stockwater deliveries.

7.7.5 Rule 40.06 describes the process for allowing diversion of additional flows above the decreed amount for irrigation. The Director may allow the diversion of surface water in addition to the quantity of surface water described in a water right for irrigation use to be diverted for irrigation of the described place of use where:

- The waters so diverted are applied to a beneficial use, as determined by the Director.
- All surface water rights, regardless of priority, unless subordinated to the water right or class of water rights being called for, existing at the time of diversion that are within their period of use can be satisfied.
- The diversion and use of the water does not conflict with the public interest as determined by the Director.
- Additional flows diverted pursuant to Rule 040.06 are natural flows and will not be assessed as impounded water.

7.7.5.1 This rule is intended to allow the practice of diverting of rights above the legal maximum diversion rate for purposes of “building up the sub”, or increasing soil moisture by spreading of water when high runoff is occurring. This practice would be used to the greatest benefit in areas not able to receive storage water, such as above Mackay Reservoir, and on tributaries such as Antelope Creek. The rule allows this practice only with permission (i.e. under an order) from IDWR’s Director (or designee) when all users are receiving their full right, and other qualifying conditions listed in §7.7.4 are met.

7.8 Use of Eastside Canal or Other Facilities for Alternative River Channel (Rule 30)

7.8.1 To reduce conveyance losses in the Big Lost River, use of the Eastside Canal (Rule 30.01) or other facilities (Rule 30.02) is permitted for carrying natural flow, per instructions contained in these rules.

8.0 GROUND WATER ADMINISTRATION

8.1 Measurement of Ground water Diversions

8.1.1 All ground water diversions within WD 34 (Figure 2), excluding small domestic and stock water diversions, shall be measured by Water District staff using one of the methods below. Each pumping plant and system should be evaluated for its suitability for the measurement method chosen with the use of guidelines provided in *State of Idaho Department of Water Resources (IDWR) Minimum Acceptable Standards for Measurement and Reporting of Surface and Ground Water Diversions* (attached). Additional specifications for system configuration requirements and measurement accuracy are in Rule 35.03. Rule 35.03 requires flow certification by a licensed engineer for diversions that cannot be measured using the methods below.

8.1.1.1 Power Consumption Coefficient (PCC) method. Instantaneous flow rate is measured by the Water District utilizing a polysonic flow meter and the annual volume determined by electrical power records. PCC exams

shall be performed by WD 34 staff when the system configuration changes, or periodically if the system configuration remains static.

8.1.1.2 In-line flow meter with totalizing capabilities. Meters will be periodically checked for accuracy by the Water District staff. Annual volumes will be recorded at the end of the irrigation season by WD 34 staff from the odometer on the meter.

8.1.1.3 An in-line orifice or manometer. Accuracy should be checked initially using a polysonic flow meter by WD 34 staff. Daily readings by WD 34 staff are necessary to accumulate annual volume data.

8.1.1.4 An open channel measuring device of a type and installed in a location acceptable to the Director. Device is to be read and recorded daily by Water District staff

8.1.2 Water district staff enters the PCC information for wells measured by this method, and submit electronically to IDWR. Using the local electric utility power records, IDWR calculates annual volumes for the PCC wells. Volumes for the PCC wells are then submitted back to WD 34 prior to the annual meeting. Improvements in an on-line database, have been implemented by IDWR in 2006, and will enhance the Water District's capabilities for better monitoring of PCC wells.

8.1.3 Water district staff will calculate annual volume for the other methods of measurement, with assistance from IDWR if requested.

8.2 Administration of Ground water Rights

8.2.1 Senior ground water users can call for curtailment of junior ground water users. Curtailment of junior ground water rights for protecting senior ground water right(s), will use administrative procedures based upon reasonable pumping levels and the prior appropriation doctrine as required by law.

8.3 Conjunctive Management of Surface and Ground Water Rights

8.3.1 Hydrologic studies conducted prior to the adoption of Rule 50 verified that ground water pumping depletes surface water in the Big Lost River. An annual depletion rate to the river of 13% of the annual pumping volume was established in Rule 50. This 13% depletion was calculated to be 6110 Acre-feet in 1994, based on an annual pumping volume of 47,000 acre-feet per year. According to Rule 50, IDWR should revise the 13% depletion rate each year. IDWR has not revised the depletion rate since flow augmentation has only been called for once in 2004. Rule 50 establishes that all ground water rights within the Big Lost Basin are subject to conjunctive administration, except as follows:

8.3.1.1 The ground water user can show to the satisfaction of the Director, that due to well construction or location, the diversion of ground water from a particular point of diversion does not reduce the flow of the Big Lost River above the last (most downstream) diversion from the Big Lost River.

- 8.3.1.2 Ground water rights in the list of water rights containing a remark noting that the right will be administered as separate from the Big Lost River and its tributaries.
- 8.3.1.3 Ground water rights located south of the "A"-line (See Figure 3).
- 8.3.1.4 Small domestic and stockwater wells.
- 8.3.2 Surface water users with priority dates of 1905 and earlier may request mitigation water when they make their initial call for water.
- 8.3.3 Flows will be augmented from the time period starting when 1905 water rights are being called for and cannot be filled through October 15.
- 8.3.4 Mitigation water consists of storage in Mackay Reservoir purchased by the Water District.
 - 8.3.4.1 The Big Lost Irrigation District (BLID) must approve storage arrangements in Mackay Reservoir. Procedures for negotiating with BLID for obtaining storage are not defined in the WD Rules. WD 34 Resolutions may be an appropriate method to establish the procedures, such as giving the Watermaster authority to negotiate with the BLID board of directors.
 - 8.3.4.2 Augmentation will occur at a rate of $1/3 \times (6110)$ for the first semester of the period and at $2/3 \times (6110)$ during the second semester. The augmentation rate for the second semester should follow the pattern of crop consumptive use for the period (attached letter of March 18, 2005 from Gary Spackman)
- 8.3.5 If use of storage in Mackay Reservoir is not possible for augmenting river flows, other means of augmentation are allowed for in Rule 50.04.c.iii which states: Augmentation of natural flow for purposes of mitigation may be accomplished by making additional water available for diversion from the Big Lost River, including increased river flows resulting from recharge efforts approved by the Director, or by adding water to canals or laterals.
 - 8.3.5.1 Additional consultation is needed with IDWR to use this scenario. Also, see guidance in attached IDWR letter of March 18, 2005.
- 8.3.6 The Watermaster can add additional assessments to the district water users for administering mitigation water. A special resolution may be adopted at the annual meeting, or at a special meeting to add this assessment at a later time when actual costs are known.

- 8.3.7 Single or small groups of users can submit individual mitigation plans that are administered separately from the Water District. The mitigation volume requirement will be set at 13% of average annual pumping for past years, unless revised by IDWR in accordance with Rule 50. Individual plans should be submitted to IDWR pursuant to Rule 43 of the "Rules for Conjunctive Management of Surface and Ground Water Resources," IDAPA 37.03.11 (attached).
- 8.3.8 If any ground water users continue to pump while mitigation is called for, and they are not operating under an approved mitigation plan, the water master shall curtail use under the Director's guidance as per IDAPA 37.03.11.40 (attached).
- 8.3.9 Any revised estimates of annual depletions (see §8.3.1) will be presented at the WD34 annual meeting, prior adoption of the values by Order of the Director (Rule 50.04.c).

FIGURES

FIGURE 1

BIG LOST DIVERSION AND FLOW MEASUREMENT LOCATIONS

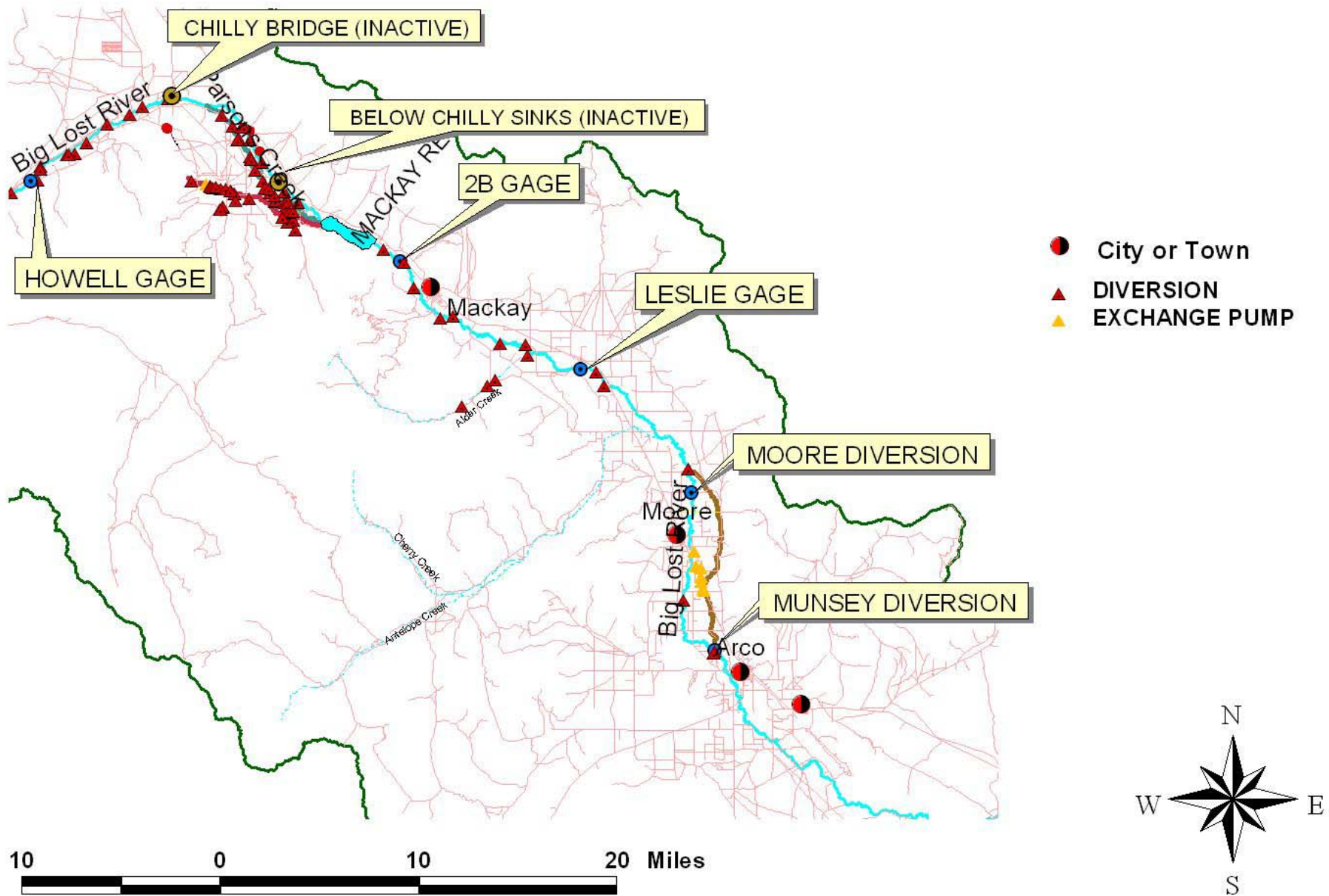


FIGURE 2

WATER DISTRICT 34 GROUND WATER DIVERSIONS

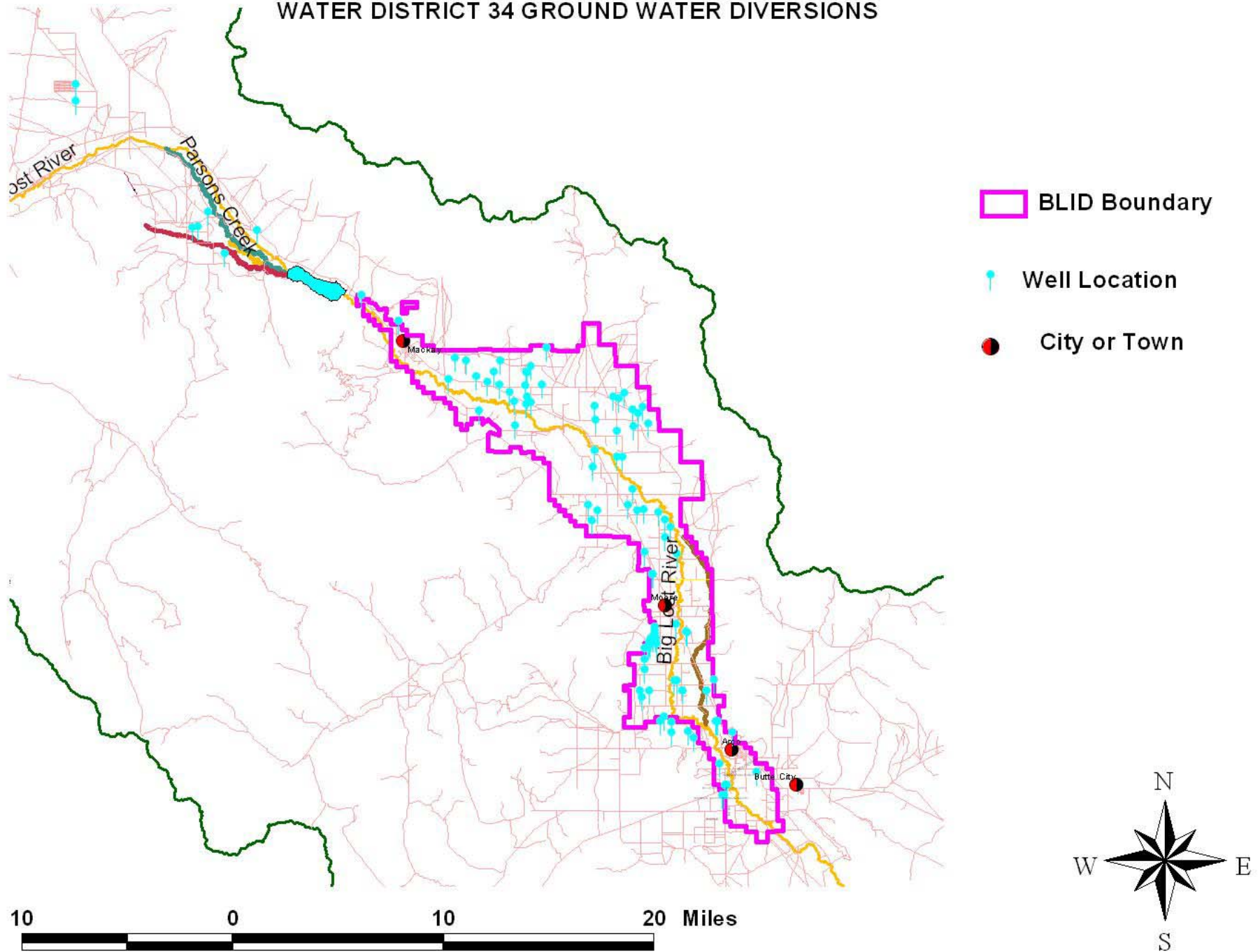
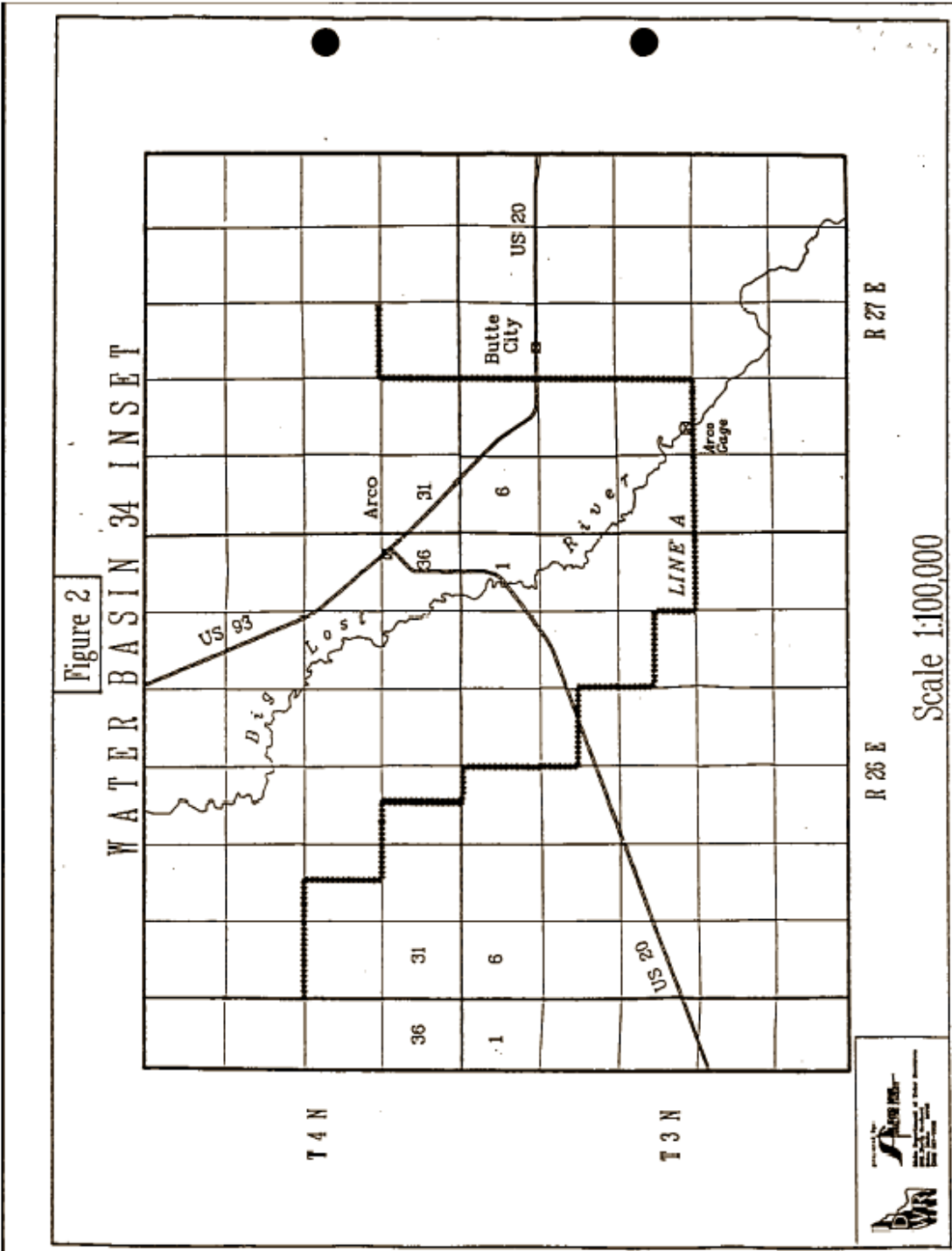


Figure 3. LOCATION OF "A"-LINE



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State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov.

JAMES E. RISCH
Governor

KARL J. DREHER
Director

October 17, 2006

BOB DUKE
WATERMASTER
WATER DISTRICT NO. 34
PO BOX 53
MACKAY, ID 83251-0053

RE: Voting Policy Guidance

Dear Mr. Duke:

At a meeting of the WD34 Advisory Committee on September 20, 2006, IDWR was asked to provide additional clarification on voting at water district annual meetings as described by Idaho Code § 42-605. The attached memoranda provide clarification on the questions raised at that meeting.

Please feel free contact IDWR if you have any questions.

Sincerely,

Nick Miller
Water Distribution Section

Enclosures:

September 25, 2006 Memorandum from Nick Miller to Phil Rassier, Deputy A G , IDWR
RE: Guidance on Voting in Water District Elections
October 16, 2006 Memorandum from John Homan, Deputy A.G., IDWR to Nick Miller
RE: Guidance on Voting in Water District Elections Under I.C. §42-605

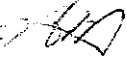
c:

IDWR Eastern Region, Idaho Falls
Loy Pehrson – Rt 1 Box 48, Darlington, ID 83255
Lin Hintze – PO Box 125, Mackay, ID, 83251
Logan Williams – HC 86 Box 4160, Mackay, ID 83251
Alvin Crawford – 3943 W Antelope Rd, Moore, ID 83255
Preston Bell – RI 1 Box 58, Darlington, ID 83231

Keith Hill – 3165 W 3300 N, Mackay, ID 83251
Jay Jensen – 3165 W 3300 N, Moore, ID 83255
Bob Waddoups – 3474 W 2850 N, Moore, ID 83255
Eric Aikele – 3477 W 2700 N, Moore, ID 83255
Young Harvey Walker – Rt 1 Box 200, Arco, ID 83213

B:\Correspondence\2006\101706_DukeAC.doc

Memorandum

To: Phil Rassier, Deputy A.G., IDWR
From: Nick Miller 
Date: September 25, 2006
Re: Guidance on voting in water district elections

Concerns have arisen among some water users in Water District 34 (Big Lost River) that the voting practices at annual water district meetings are inconsistent and, in some cases, may not be legal. IDWR has recommended that the WD34 Advisory Committee prepare, or oversee the preparation of, a written policy concerning voting at the annual meeting. IDWR has agreed to review that policy to ensure it is consistent with previous guidance and applicable laws. However, the WD34 Advisory Committee has asked that IDWR provide additional clarification on certain questions upfront to aid in their drafting of the policy and help reduce the need for revisions. As we discussed on the phone, please prepare a memorandum or letter addressing the following questions.

#1. In previous guidance (see the attached 11/20/1992 letter to Kent Foster, and the 01/15/2001 memorandum to Allen Merritt), you addressed the issue of voting by proxy or voting by a representative. You state that only a person that owns or has the use of a water right is allowed to vote for that water right, and that the Department has advised that a proxy vote should not be allowed in the absence of the water right owner. Additionally, you wrote that a power of attorney would only allow another person to vote if that power of attorney granted that person full use of the water right for the ensuing season. Some users have asked whether they could grant a very limited power of attorney to a ranch hand, or another person, that only grants that person the authority to vote at the annual meeting in place of the owner. Can you comment on whether this is possible?

#2. If a water right is held in the name of an individual, can a family member (Husband, Wife, or child) vote for that individual, or does a family member have the same standing as any other person whose name is not on the water right?

#3. If a water right is held in the name of a business entity, who is allowed to vote in the name of the business? What types of documents should the business submit to the credentials committee to designate the authorized voter?

MEMORANDUM

TO: Nick Miller
FROM: John Homan 
RE: Voting in Water District Elections under I.C. § 42-605
DATE: October 16, 2006

This Memorandum responds to the questions raised in your correspondence dated September 25, 2006. Phillip J. Rassier, Deputy Attorney General has already answered to a large degree the questions raised herein in a memorandum dated January 15, 2001 and a letter dated November 20, 1992. Attached hereto are copies of both documents. I have reviewed the relevant statutory provisions as well as both documents and concur completely with the interpretation of I.C. § 42-605.

In your first question you ask whether a water right owner could designate another person to vote in a water district election pursuant to a specific power of attorney, which only authorizes the task of voting the water right at the annual meeting. I.C. § 42-605 requires the water users to be present at the meeting and does not allow votes by proxy. The analysis is the same for the second question. There is no special provision that allows a family member to vote a relative's water right at the water district election. However, the language in I.C. § 42-605 (4) does allow a person other than the owner "*having the use for the ensuing season of any water right*" to cast a vote in a water district election. If requested, a lessee or renter could provide a copy of a lease or rental agreement for the ensuing season to the credential committee. A management type employee, family member or any other person may also vote in a water district election provided they have obtained full authority over the use of a water right for the ensuing season. If requested, an employee or family member will need to produce to the credential committee a notarized and recorded power of attorney authorizing full control over the water right for the ensuing season.

Finally, your third question asks who is the appropriate party to cast a vote for a water right owned by a business entity at the water district election. I.C. § 42-605 (7) establishes that a corporation or other type of water delivery organization shall be considered a person for voting purposes and authorizes that entity to designate someone to vote on its behalf at the annual meeting. A corporate resolution or other type of document should be presented to the credential committee indicating an authorized officer or person representing business entity has designated the person to the cast vote at the annual meeting. The guidance provided herein is based solely on IDWR's interpretation of the statutory provisions and is not an opinion of the Office of the Attorney General.

MEMORANDUM

TO: Allen Merritt, Southern Regional Manager, IDWR
FROM: Phillip J. Rassier, Deputy A.G., IDWR PJZ
RE: Water District Elections under I.C. § 42-605
DATE: January 15, 2001

You have requested guidance on the issue of whether a person, through a power of attorney, may be allowed to vote at a water district election on behalf of another person. Section 42-605, Idaho Code, provides in relevant part:

(4) Voting shall be by majority vote of the water users present at the meeting unless one (1) or more water users requests voting using the procedure which follows in this subsection. In such case the meeting chairman shall appoint a credentials committee to determine the number of votes each water user present is authorized to cast. If requested, each person present, owning or having the use for the ensuing season of any water right in the stream or water supply comprising such water district shall be entitled to a number of votes equal to the average annual dollar amount and any fraction thereof assessed for that person's qualifying water right.

In previous correspondence, I have related IDWR's position to be that "a proxy vote should not be allowed in water district elections in the absence of the owner of a water right, except that in the absence of the owner a right may be voted by another person present who has the use of the right for the ensuing irrigation season such as a contract purchaser, tenant, renter or lessor." See Letter to Kent W. Foster, dated November 20, 1992.

Your question in essence asks whether the requirement of the statute that a water user be present at the meeting in order to vote may be avoided if the document authorizing a person to vote for another not present at the meeting is characterized as a "power of attorney" as opposed to a "proxy." The answer is that, for purposes of authorizing a person to vote at a water district election, a power of attorney should be treated, in most cases, the same as a proxy. A "power of attorney" is defined as "a legal instrument authorizing one to act as the attorney or agent of the grantor." The term "proxy" is similarly defined as "authority or power to act for another; a power of attorney authorizing a specified person to vote corporate stock." See Webster's New Collegiate Dictionary (1977 ed.). Therefore, a power of attorney authorizing another person to cast a vote in one's place is really just another term for a proxy.

There is a circumstance in which a power of attorney would entitle a person to vote for another. That is where the power of attorney extends to the person seeking to vote full authority over the use of the water right for the ensuing irrigation season. Such a power of attorney should be acknowledged before a notary public and filed for record with the county recorder before being accepted as authorization to vote at a water district election.

The guidance provided in this memorandum is based solely upon IDWR's interpretation of the statutory provision and is not an opinion of the Office of the Attorney General.

SCANNED

MAY 19 2006



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

November 20, 1992

Kent W. Foster, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO
West One Bank
P.O. Box 50130
Idaho Falls, ID 83405

Dear Kent:

This letter responds to your request of October 27, 1992 asking for my thoughts and comments or reference to prior decision or opinion on several questions relating to voting in water districts under I.C. § 42-605 and § 42-605A. My response to your questions is based solely upon IDWR's interpretation of these statutory provisions and should not be construed to represent an expression of the views of the Office of the Attorney General unless reference is made to a prior Attorney General opinion.

Question 1: How, pending the ultimate court decree in the Snake River Basin Adjudication Proceeding, is it determined, for voting purposes under § 42-605 (and § 42-605A), whether a particular claimed right is sufficiently valid? What criteria is a credentials committee to use?

Response: The list of water rights entitled to be voted under I.C. § 42-605 and § 42-605A is comprised of and limited to those water rights which have previously been "adjudicated or decreed by the court" or are "represented by valid permit or license issued by the department of water resources." I.C. § 42-605.

Question 2: Idaho Code § 42-605(4) speaks of voting by "water users present," "each person present," and "a person present." Section 42-605A(6) has similar language, "each person present," and "a person present." We wonder if this means present either in person or by proxy? In other words, can someone such as a contract purchaser or a tenant, vote, if duly authorized by a written proxy or power of attorney from the owner? Since the language discusses "owning or having the use for the ensuing season" it seems like a contract purchaser or tenant might have been anticipated in the statutory language. It appears clear that a corporation can designate someone on its behalf to cast a vote (§ 42-605(7)).

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Response: The Department in the past has advised that a proxy vote should not be allowed in water district elections in the absence of the owner of a water right, except that in the absence of the owner a right may be voted by another person present who has the use of the right for the ensuing irrigation season such as a contract purchaser, tenant, renter or lessor. The Department concurs with your reading of I.C. § 42-605(7) which authorizes a water delivery organization to designate someone to cast a vote on its behalf.

The Department's interpretation rejecting the use of proxies under § 42-605(4) as described above is supported by a comparison of the language in the statute with the language in I.C. § 42-2401(3) which specifically provides for the use of proxies in irrigation or canal company elections for the election of directors and to transact any other business of the corporation. I.C. § 42-2401(3) authorizes those "stockholders who are represented in person or by proxy" to vote at the regular annual meetings of the corporation.

Question 3: If not by written proxy or power of attorney, how does one satisfactorily demonstrate he has "the use for the ensuing season" of a particular right? Is a copy of the sale contract or lease agreement adequate?

Response: A contract, lease agreement or similar written document is considered adequate to demonstrate that a person is entitled to the use of a water right for the ensuing season.

Question 4: What specific documents does a credentials committee consult to determine the list of the rights entitled to vote? For instance, assuming the district officials desire to have a list of valid rights prepared before the annual meeting so that when the people come it is possible to check any claims of "having the use for the ensuing season" against the list of valid rights, how would the Department suggest they go about such preparations?

Response: Idaho Code § 42-606 requires watermasters to make an annual report to the Department prior to the expiration of the watermasters's appointment for the current year. This report is to show the total amount of water delivered by the watermaster during the year, the amount delivered to each water user, the total expense of delivery and the apportionment of expenses among users and all debits and credits to be carried over to the following year. The watermaster report together with a list of the water rights in the district should provide the credentials committee with the information necessary to determine the list of

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rights entitled to vote. The Department will made available an updated list of the water rights in the district prior to the annual water district meeting if requested.

Question 5: And, under either § 42-605 or § 42-605A, if the right has not previously been assessed, how does the district go about determining the "dollar amount and any fraction thereof which the right would have been assessed had it existed and been reasonably used when water was available under the priority of the right during the previous season"?

Response: The method of determining the vote to which a right not previously assessed is entitled requires a good faith estimate of the amount of water which would have been delivered under the right had it been used during the previous season. The process for making this estimate requires a review of the water delivery records of the district to determine the number of days that the right would have been allowed to divert water during the previous season given the available water supply and the priority date of the right in question.

Once an estimate of the amount of water that would have been delivered is made it is necessary to multiply this number times the dollar amount per unit of water delivered used to determine water user assessments in the district. The total dollar amount that would have been assessed had the right been delivered in the previous season equals the number of votes that the owner of the right is entitled to cast for that right.

I hope that these responses to your questions are adequate for your needs. Please let me know if I may provide further assistance.

Sincerely,



PHILLIP J. RASSIER
Deputy Attorney General
Department of Water Resources

cc: Skip Jones - Eastern Region

SCANNED
MAY 19 2006

Memorandum

To: Append to *Water District 34 Guidelines for Operation* Document

From: Nick Miller

Date: August 3, 2006

Re: Administration of Big Lost River Irrigation District Storage Rights

This memo clarifies how the Watermaster of WD34 is to administer storage rights held by the Big Lost River Irrigation District (BLRID). Written instruction is necessary to ensure all parties (IDWR, BLRID, water users, and WD34 staff) share a common understanding of the administration of these storage rights. This memorandum discusses the administration of the BLRID storage water rights by the Watermaster of WD34 and does not address how the stored water is to be allocated to the BLRID patrons.

BLRID holds the following 9 water rights listed in order of priority:

RIGHT NO.	PRIORITY	RATE/VOLUME LIMITS	SEASON OF USE (STORAGE)*	REMARKS
34-00818	06/30/1880	3.2 CFS/556.5AF	05-01 to 10-15	
34-00811	06/30/1881	1.7 CFS/294 AF	05-01 to 10-15	
34-00810	06/01/1888	3.2 CFS/556.5AF	05-01 to 10-15	
34-10935	06/01/1896	6.4 CFS/1113 AF	05-01 to 10-15	
34-00817B	03/01/1902	0.8 CFS/140 AF	05-01 to 10-15	
34-00013	07/31/1905	100CFS	05-01 to 10-15	Antelope Cr Exchange w/ 3 in 1
34-10873	10/02/1905	20646 AF	01-01 to 12-31	Additional Vol. Allowed
34-00012	02/07/1916	17205 AF	01-01 to 12-31	Additional Vol. Allowed
34-02507	09/02/1959	6000 AF	01-01 to 12-31	Additional Vol. Allowed

* Season of use for irrigation deliveries is 5/1 to 10/15. Season of use for storage and irrigation from storage may be extended to as early as 4/20 and as late as 10/31 at the discretion of the Director of IDWR.

It is important to note that these rights are limited by season of use, storage volume, and, in some cases, flow rate. Storage volume limits are limitations on the total volume of water stored under a right each calendar year (Jan. 1 to Dec 31). Note that only three of the rights allow storage to accrue during the non-irrigation season. The BLRID storage rights fill as follows:

January 1st – Any carryover, including unused rotation credit storage from the previous irrigation season accrues against the volume limit of the earliest, in season storage right (34-10873).

Fill between January 1st and May 1st (before the irrigation season)– Only three of the BLRID water rights have a season of use that includes this period. Any water that is stored accrues against the volume limits of the earliest of these right first. 34-10873 fills first, then 34-12, then 34-2507. All water stored during this period must be stored in priority with other rights above the reservoir that are within their season of use, but is superior to all other rights below Mackay Reservoir, subject to a minimum flow at the 2B gage of 50 cfs. If the inflow to Mackay Reservoir is less than 50 cfs, no storage may occur, but BLRID is not required to release water to maintain 50 cfs at the 2B gage.

If the reservoir fills prior to May 1st, the three year-round rights have been satisfied. Storage is cumulative; anything that is stored, even if released for flood control, counts toward the annual volume limit. See the following example:

Date	Res. Contents	Change in Storage	Cum. stored	Rights filled		
	acre-feet	acre-feet	acre-feet	34-10873	34-12	34-2507
1/1	20,000	0	20,000	20,000 of 20,646	0 of 17,205	0 of 6,000
3/1	25,000	5,000	25,000	Right Full - 20,646	4,354 of 17,205	0 of 6,000
3/10	22,000	-3,000	25,000	Right Full - 20,646	4,354 of 17,205	0 of 6,000
3/20	25,000	3,000	28,000	Right Full - 20,646	7,354 of 17,205	0 of 6,000
4/15	38,000	13,000	41,000	Right Full - 20,646	Right Full - 17,205	3,149 of 6,000
4/28	40,851	2,851	43,851	Right Full - 20,646	Right Full - 17,205	Right Full - 6,000
5/1	44,500	3,649	47,500	Additional Volume allowed by WR Condition		

In the above example, water is released for flood control on 3/10, but that water still had accrued toward volume limits. This, (along with the fact that the annual volume limit for these three rights is less than the 44,500 acre-feet of capacity in Mackay Reservoir) would prevent the reservoir from ever filling prior to the irrigation season were it not for a condition on these rights that reads:

A VOLUME OF WATER IN ADDITION TO THE VOLUME DESCRIBED ABOVE FOR STORAGE PURPOSES MAY BE STORED IN A SINGLE YEAR IF: A) THE ADDITIONAL VOLUME IS STORED USING THE STORAGE CAPACITY OF MACKAY RESERVOIR, AND B) ALL WATER RIGHTS EXISTING AT THE TIME OF STORAGE (INCLUDING WATER RIGHTS WITH JUNIOR PRIORITY AND OTHER RIGHTS FOR STORAGE PURPOSES) THAT ARE WITHIN THEIR PERIOD OF USE ARE SATISFIED.

In other words, as in the example above, even though the volume limits for the rights are met (on 4/28 in the example), an additional volume could be (and was in the example) stored because all other rights were satisfied. It is likely that recharge may be occurring during this period, but the WD34 recharge plan of operations indicates that recharge will not occur upstream of Mackay Reservoir without consulting BLRID.

If the reservoir does not completely fill, or if the volume limits for the three rights are otherwise not filled by May 1st, storage proceeds as described below.

Fill between May 1st and October 15th (irrigation season)– During this period, all of the BLRID storage rights are within their seasons of use and any storage accrues in priority with all other rights. These rights are subject to their volume and rate limitations as well. In years where the reservoir does not fill prior to the start of the irrigation season, the remaining fill occurs in priority and accrues against the volume limits of the oldest right first.

In the example below, storage deliveries began after May 10th. The reservoir contents for 5/30 and 6/5 do not directly equate with the increase in cumulative stored water because storage water is being stored and delivered, so storage may accrue against the volume limitations without a corresponding net change in reservoir contents. The important volume from an administrative point of view is the cumulative stored volume because that determines which rights have filled. As an example, if the contents of Mackay reservoir contents are increasing at a rate of 1 cfs, and 4 cfs of storage water are being delivered, then 5 cfs must be accrued against a storage right. In that example, the net change in reservoir contents does not reflect how much water is actually being stored during that period.

In the example below, the reservoir never filled to capacity but the rights reached their volume limits. Additional volume was not stored on the three rights that allow an additional volume because priority cuts were being made to 1975, so some rights being called for were not filled in this example. However, an additional volume of water may be stored in Mackay Reservoir under water right 34-13 as described later in this memorandum.

			1-May	3-May	10-May	30-May	5-Jun
Reservoir Contents (AF)			25,000	26,000	20,000	25,000	34,000
Net Change in Contents (AF)*			0	1,000	-6,000	5,000	9,000
Cumulative Stored (AF)			25,000	26,000	26,000	36,000	46,511
Priority date on BLR			All on	All on	All on	1975	1965
34-00818	6/30/1880	3.2 CFS/556.5AF	0 of 556.5	Full	Full	Full	Full
34-00811	6/30/1881	1.7 CFS/294 AF	0 of 294	Full	Full	Full	Full
34-00810	6/01/1888	3.2 CFS/556.5AF	0 of 556.5	149.5 of 556.5	149.5 of 556.5	Full	Full
34-10935	6/01/1896	6.4 CFS/1113 AF	0 of 1,113	0 of 1,113	0 of 1,113	Full	Full
34-00817B	3/1/1902	0.8 CFS/140 AF	0 of 140	0 of 140	0 of 140	Full	Full
34-10873	10/2/1905	20646 AF	Full	Full	Full	Full	Full
34-00012	2/7/1916	17205 AF	4,354 of 17,205	4,354 of 17,205	4,354 of 17,205	12,694 of 17,205	Full
34-02507	9/2/1959	6000 AF	0 of 6,000	0 of 6,000	0 of 6,000	0 of 6,000	Full

* Net change in contents does not accurately reflect storage accrual when storage deliveries are being made.

If the reservoir fills after natural flow rotation has begun, the rotated volume becomes BLRID storage water and that volume is accrued against the BLRID storage right limitations and that water accrues to the most senior right first.

If the reservoir filled prior to the start of the irrigation season, the volume limitation on the three non-irrigation season rights has been met, but an additional volume of water may be stored under the following rights: 34-00013, 34-00810, 34-00811, 34-00818, 34-10935, and 34-00817B. These rights must be in priority and are limited to the volume limits and diversion rate limits of the individual rights (although rights may be stored concurrently if they are in priority). Note that these rights may accrue into storage while the reservoir is full, provided that storage deliveries are being made concurrently. If the reservoir is full, not being drawn down, and storage is being delivered, then storage must accrue against an in priority storage right. Such storage accrual is subject to priority date, flow rate, and volume limitations. WR 34-13 is subject to additional limitations, as described below.

WR # 34-13 is an exchange water right held by BLRID. This right entitles BLRID to store water in Mackay Reservoir in exchange for diverting an equal amount from Antelope Creek to the 3 in 1 ditch at the south fork of Antelope Creek. This right is to be administered as follows:

When water right 34-13 is in priority, and BLRID is calling for delivery of this right, the Watermaster must determine which rights that take Big Lost River water from the 3 in 1 below Antelope Creek are currently called for and deliverable. The sum of these rights may be called the “exchange flow rate”. The Watermaster must adjust the diversion at the head of the 3 in 1, reducing it by the exchange flow rate, and he must divert Antelope Creek into the 3 in 1 at the South Fork of Antelope Creek at the exchange flow rate. Under 34-13, BLRID may only store at a rate equal to the exchange flow rate and may only do so while Antelope Creek is being diverted to those users on the 3 in 1 and when those users are in priority and are calling for their water.

The basis of this right is that the BLRID cannot physically store water from Antelope Creek, so instead they provide Antelope Creek water to users on the 3 in 1 and store an equal amount in Mackay Reservoir. The stored water may then be delivered as storage water to BLRID patrons. The users on the 3 in 1 receive their natural flow water rights as they normally would and nothing out of the ordinary happens from their perspective. It is important to note that these users receive their natural flow in this exchange. BLRID is not delivering any storage water in this exchange. This simply allows them to store under their Antelope Creek right. It is also important to stress that, although the right bears a diversion rate of 100 cfs, 34-13 is limited to the rate of flow that users on the 3 in 1 are calling for and that is deliverable.

Fill between October 16th and December 31st (after the irrigation season)– Following the end of the irrigation season; any rotated water that has not been delivered becomes BLRID storage water. During this period, water may be stored under rights 34-10873, 34-12, and 34-2507. At this point the volume limits will likely have been met earlier in the year for these rights. Additionally, the general provisions allow all inflow to Mackay Reservoir to be stored during this period subject to a 50 cfs minimum release. Therefore, any rights above Mackay Reservoir that are within their season of use and are called for must be satisfied, but BLRID may store all inflow to the reservoir beyond that required to satisfy the 50 cfs minimum flow at the 2B gage.

Watermaster's Role in Administration of BLRID Rights– Given the above description of BLRID water rights, the Watermaster must perform a number of checks throughout the season to ensure BLRID is storing within their water rights:

- On May 1st, or as early as April 20th if the irrigation season has been extended:
 - If the reservoir is full, the three year-round rights are satisfied.
 - If the reservoir is not full, the Watermaster must ensure that the storage rights are filled in priority.
- When BLRID is making storage deliveries:
 - It is possible that BLRID may store water at the same rate they are delivering it. In this case, the reservoir contents will not change, but volume still accrues toward the volume limits of the in priority storage rights. The Watermaster should verify that the in priority storage rights are not exceeding their flow rate or volume limitations. During this period, the following should be true:

$$[\text{reservoir outflow}] = [\text{rotation storage outflow}] + [\text{storage release out flow}] + [\text{natural inflow}] - [\text{Storage inflow}] - [\text{inflow of rotation credits}]$$

Storage inflow is determined by the Watermaster based on which BLRID storage rights are in priority and have not met their annual volume limitation. 34-13 is limited to the flow rate of in priority Big Lost River water rights on the 3 in 1 below Antelope Creek and is further limited to that volume of water that can be supplied to those users from Antelope Creek under WR#34-13.

- Following the irrigation season:
 - Ensure that all other rights are satisfied above the reservoir unless volume limitations remain on the three year round rights, in which case they can be filled in priority with above the reservoir rights.
 - Ensure that the flow at the 2B gage is either 50 cfs or is equal to the inflow to the reservoir, if the inflow is less than 50 cfs.

Memorandum

To: Append to *Water District 34 Guidelines for Operation* Document

From: Nick Miller and Dave Tuthill

Date: June 30, 2006

Re: Interpretation of Basin 34 General Provision 3G – Rotation into Storage

This memo clarifies how the Watermaster of WD34 is to implement General Provision 3G in basin 34. Written instruction is necessary to resolve disagreement of how and when water rights can be rotated into storage.

The General Provisions for Basin 34 were decreed with the following provision (provision 3G):

“When the river is connected as specified in General Provision No. 6 while a right is rotated into storage, it is subordinate to all rights diverted above Mackay Reservoir with a priority date earlier than October 1, 1936.”

The Watermaster has interpreted this to mean that he delivers all rights senior to 10/1/1936 above the reservoir whenever a water user desires to rotate while the river is connected. Furthermore, he assumes that users want to rotate unless a user specifically calls for his water and calls for the curtailment of rights above the reservoir, at which time, no users are allowed to rotate and the rights above the reservoir are curtailed to the priority date in effect on the river.

IDWR provided some guidance about rotation in a letter dated June 4, 2001, which stated:

“... rotation into storage can continue when the river is disconnected ... and while the river is connected when curtailments are not being made to water rights upstream from Mackay Reservoir for priority dates senior to October 1, 1936.”

In other words, when the river is connected, and rights above the reservoir senior to 10/1/1936 are not being curtailed, rotation can occur. The issue is: (1) Whether the desire to rotate effectively changes the priority date above the reservoir to 10/1/1936 and does not change the priority date below the reservoir; or (2) whether rights senior to 10/1/1936 must already be in priority above the reservoir before rotation into storage can occur. The answer is: **When the Big Lost River is connected, water rights can only be rotated into storage when the priority date on the entire river is junior to 10/1/1936, unless all rights that have been called for have been satisfied.** The following section describes how the Watermaster is to implement General Provision 3G during the connected period and discusses why this interpretation is consistent with the General Provision, the 2001 guidance, and the prior appropriation doctrine:

Two situations can occur while the river is connected:

1. The priority date on the river is 10/1/1936 or later. Users downstream of Mackay Reservoir can rotate their in-priority water rights to storage subject to the remaining conditions of General Provision 3 and rule 40.02 of the WD34 Distribution rules (IDAPA 37.03.12.40.02). During this period, when a user makes a request of the Watermaster to

rotate that user's natural flow right into storage, the watermaster should verify that the conditions of General Provision 3 and Rule 40.02 are met, then instruct his assistants to stop delivering the water that the user wants to rotate and inform the Big Lost Irrigation District (BLRID) of the rotation. The BLRID will then place the rotated water into storage and begin crediting the user's rotation storage account. **Rotation can only be initiated by a request to the Watermaster from a water right holder seeking rotation. The Watermaster must document all such requests.** While the right is in rotation, it is subordinate to 10/1/1936 relative to rights above the reservoir, but the right retains its usual priority relative to rights below the reservoir. During this period, the rights senior to 10/1/1936 are not being curtailed and rotation is consistent with General Provision 3G and the June 2001 guidance. Rotation during this period is not generally in dispute.

As the flow recedes and the natural flow is not sufficient to satisfy the called-for rights above the reservoir with priority dates earlier than 10/1/1936, the Watermaster should notify the BLRID that all rotation must cease. The holders of the rotated rights must contact the Watermaster and request delivery of their rights when they can put water to beneficial use. The water that is no longer being rotated into storage, and has not been called back on by the holders of the previously rotated rights, is available as natural flow to the next in time right holder. This additional available natural flow may be sufficient to satisfy rights senior to 10/1/1936, which implies that rotation can be started again. Such a situation will likely be short-lived and flows will likely continue to diminish. However, if the Watermaster receives a request to rotate, and all other conditions are met, rotation can occur.

2. When the priority date on the river is earlier than 10/1/1936. During this period, rights with a priority date earlier than 10/1/1936 above the reservoir are being curtailed because the river is connected and the priority date for curtailment is earlier than 10/1/1936. Also, during this period, we can assume users have called for delivery of rights above and below the reservoir that bear priority dates later than the priority date for curtailment on the river, but earlier than 10/1/1936. If a user were to rotate a natural flow water right into storage, General Provision 3G states that the rotated right is then subordinate to all rights above the reservoir senior to 10/1/1936. However, the rights above the reservoir with a priority date earlier than 10/1/1936 must be filled in priority with the other rights that have been called for, including those rights with priority dates earlier than 10/1/1936 below the reservoir. **This means that the quantity of water the user desires to rotate cannot be stored until all rights with a priority date earlier than 10/1/1936 that have been called for and would be deliverable are satisfied.** Otherwise, the diversion of junior rights above the reservoir would be out of priority relative to users below who have called for their water but do not wish to rotate it into storage.

When a user calls for his water, he is also calling for the curtailment of junior upstream rights to deliver his right. This is the basis of the prior appropriation doctrine. Therefore, any user who desires to rotate during the connected period when the priority date on the river is earlier than 10/1/1936 cannot do so because the rotated right immediately becomes curtailed in order (ultimately) to deliver another user's right that is junior to the right being rotated. If all the rights that have been called for that are senior to 10/1/1936 above the reservoir have been satisfied, regardless of the curtailment date on the river, the user may, in priority, rotate his right into storage. In such a case, the Watermaster would proceed as outlined in #1 above. Again, rotation can only be initiated by a request to the Watermaster from a water right holder seeking rotation. The Watermaster must document all such requests.

This interpretation is consistent with the general provision because rotated rights are being subordinated to rights senior to 10/1/1936 above the reservoir, and the implementation is consistent with the prior appropriation doctrine because out of priority diversions are delivered in this scenario.

When the river is disconnected:

When the river is disconnected, as described in General Provision 6, rotation into storage can occur for currently deliverable rights that are in priority. Users can rotate into storage and get storage credit for 100% of their water right regardless of the priority and availability of water to users above the reservoir.

General Information Related to Rotation

The Watermaster must be made aware of the request to rotate water into storage, and documentation must be submitted clarifying when rights have been called for.

Users that rotate rights into storage accrue a volume of storage water in Mackay Reservoir. BLRID keeps a rotation storage account for users that rotate their water rights. BLRID charges conveyance losses for delivery of the rotated storage water. This means that a user may store a 2 cfs right for 10 days, accruing 20cfs-days of water, but the amount of rotated storage water that is ultimately delivered to the canal heading is less than 20 cfs-days due to conveyance losses.

The rate at which the water is accrued in the reservoir is limited by the water rights being rotated and any combined limits at the time the right is stored. The user is not limited, however, in the rate at which he can withdraw the water stored in this manner.

March 18, 2005

LOY PEHRSON
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DARLINGTON ID 83255

MITCHELL SORENSEN
3871 W 2500 N
MOORE ID 83255

Dear Sirs:

The Idaho Department of Water Resources (IDWR) received two draft mitigation plans from water users holding water rights in the Big Lost River Basin. Both plans were titled "Consolidated Plan." The Basin 34 Water Users submitted one plan. Another plan was submitted by many of the water users diverting water from the Big Lost River below the Darlington Sinks. Copies of both plans are attached to this letter.

The plans are almost identical in the following areas:

- A total of 6,110 acre feet of water will be made available for mitigation;
- The water will be provided in the following order of preference: managed recharge, storage or stored water, natural flow water rights, and groundwater;
- The watermaster of Water District no. 34 will administer the mitigation plans;
- Ground water users may contribute mitigation water to satisfy their individual mitigation burden or request mitigation water that may be available through the watermaster; and
- All water users in Water District no. 34 may participate in the approved mitigation plan.

By this letter, IDWR approves the provisions of the two plans related to these issues. As conditions of approval, this letter establishes some deadlines for plan implementation and participation. This letter also interprets the Water District 34 – Water Distribution Rules and applies them to the mitigation plans.

Some of the minor components of the draft plans differ. This letter attempts to reconcile the differences.

Finally, specific issues related to implementation may need to be interpreted through further discussions with the water users, perhaps through the Water District no. 34 Advisory Committee.

Applicability of the Basin Wide Plan

A full 6,110 acre feet must be provided to augment the flows of the Big Lost River, and all ground water users in the Big Lost River Basin must be able to participate in the plan. **If 6,110 acre feet of water is not dedicated for mitigation under the consolidated plans by May 15, 2005, and**

mitigation has been requested, each ground water user will be responsible for providing mitigation water equal to 13% of the average annual volume of ground water he pumped during 2003 and 2004.

Approval of Water for Mitigation

Before any water is recognized as mitigation water, a water right must authorize the use of the water for mitigation. In most cases, the underlying water right must either be transferred to change the nature of use and other associated components of the water right, or the water right must be leased to the Water Supply Bank and subsequently rented from the Water Supply Bank for mitigation purposes.

If a drought emergency is declared for Butte County and for Custer County, an application for temporary transfer can be filed with IDWR. Approval is limited to one year.

Lease-rental from the Water Supply Bank requires a 10% brokerage fee charged by IDWR.

Release of Water

Rule 50.04.c.i. of the Basin 34 Rules state:

Natural flow will be assumed to be augmented by one-third (1/3) of the depletion during the first one-half (1/2) of the period of time that any 1905 or earlier water right being called for can not be filled by the natural flow through October 15 of each year. Natural flow will be assumed to be augmented by two-thirds (2/3) of the depletion during the second one half (1/2) of this period each year.

The period of time within which mitigation must be provided shall be referred to hereafter as the "mitigation period." The mitigation period will begin on the first day the watermaster cannot deliver water rights bearing a 1905 or earlier priority date. Non-delivery is the only standard for determining the beginning date of the mitigation period. A qualified water user must request mitigation before it is required, but the date of request is not used to determine the mitigation period. Non-delivery of a 1905 or earlier priority date starts the mitigation period. The number of days in the mitigation period will be counted from the beginning date until October 15. The midpoint date of the mitigation period will be determined by dividing the number of days in the mitigation period by two.

During the first semester of the mitigation period, up to the first 1/3 of mitigation water will be used to "charge the Big Lost River." This means that the mitigation water will be placed in the Big Lost River below Mackay Reservoir to "wet the channel" through the Darlington Reach and below to deliver surface water to as many water users as possible. Any remaining volume during the first semester will be released to the Big Lost River as a constant flow rate.

The Basin 34 Water Users' plan calls for conversion of the second half volume to a flow rate to be released continuously over the second half. The plan submitted by the users below Darlington calls for the entire release before the futile call at the Moore Diversion.

The purpose of mitigation is to augment the river to compensate for depletions caused by ground water pumping. These depletions can occur both above and below the Darlington Sinks. Some of the gross assumptions in the Basin 34 Rules of Distribution are: Every well causes a 13% depletion to the Big Lost River of the volume pumped from the well; the Big Lost River is depleted equally by ground water pumping along its entire length below the reservoir; and depletions to the Big Lost River from pumping are immediate.

If we assume that ground water pumping instantaneously causes a 13% depletion to surface water flows in the Big Lost River, the river should theoretically be compensated in real time based on the quantity of ground water pumped. Ground water right holders pump more ground water during the heat of the summer because of peak consumptive use (CU) than during late August, September, and October. Higher ground water pumping will cause greater depletions. Releases of water to the Big Lost River should mimic the consumptive use of the crops grown in the Big Lost River Valley. The consumptive use in the Big Lost River Valley can be depicted by a composite of graphical curves each representing water consumption from each of the crops grown weighted by the proportion of the individual crop acreage to the total crop acreage.

The second semester volume should be released on a weekly or biweekly sliding scale based on the following proportion: Volume under the composite CU curve for the period of average release (weekly or biweekly) / (divided by) total volume under the composite CU curve during the second semester. For instance, greater mitigation flows will be released the first week following midpoint than the second week, and greater mitigation flows would be released the second week than the third week. The sliding scale release would continue until the end of the irrigation season.

Character of the Water

As per the Basin 34 Water Distribution Rules, mitigation water is placed in the Big Lost River to augment the natural flow of the river below Mackay Dam. As a result, mitigation water placed in the Big Lost River below Mackay Dam will be considered natural flow in the river or, alternatively, storage water delivered to the natural flow water right holders. The mitigation water will not be credited solely to losses in the Big Lost River. Whether viewed as natural flow or as storage released for mitigation, mitigation water will incur its proportionate share of natural flow losses during the water right delivery accounting.

Rights Rotated Into the Mackay Reservoir

The general provisions decreed for Basin 34 limit use of water rotated for credit into the Mackay Reservoir to the lands identified as a place of use by the water right rotated for credit. Water rotated for credit will be recognized for mitigation if used to connect the river (flush the river) below the Darlington Sinks. Water rotated for credit will also be recognized for mitigation if release of the water rotated for credit will mitigate for ground water irrigating the land to which the surface water right rotated for credit is appurtenant. Other proposals to release water rotated for credit for mitigation will not be recognized without prior express approval by IDWR.

Watermaster Oversight

Both plans call for an additional charge for administration of the mitigation water by the watermaster. Title 42, Chapter 6 of the Idaho Code governs water district activities. The statutes do not expressly grant authority to charge ground water users an "administrative fee." The costs of administration by the watermaster probably must be paid by the general assessments of the water district by all the water users within that district. Alternatively, the water users might attempt to pass a resolution at the April 18, 2005 special meeting requiring payment of the administration costs of mitigation by the ground water users.

Deadline for Mitigation Plan Participation

The mitigation plan proposed by the Basin 34 Water Users requires that ground water users must commit to participate in the basin wide mitigation plan on or before April 1, 2005 or incur a participation penalty. The mitigation plan proposed by the users below the Darlington Sinks called for adoption of the mitigation plan at the water district annual meeting and participation by all ground water users unless the

water users “opt out.” Because mandatory participation in the plans was not discussed at the annual meeting, the “opt out” proposal may not be available. Also, because of the timing of this approval, a deadline of April 1, 2005 may be too soon to attract sufficient water users to the plan.

A special water district meeting is scheduled for April 18, 2005. Participants in the basin wide plan should inform the proponents of the two proposed plans of their desire to participate on or before April 18, 2005. The water users within Water District no. 34 may formally adopt the plan at the special meeting on April 18, 2005, and may require participation unless water users choose to mitigate individually. If a ground water user chooses to participate in the basin wide mitigation plan after April 18, 2005, the ground water user must pay money for his mitigation water and pay a late fee of \$200 or 15% of his individual mitigation burden, whichever is greater, unless there is insufficient water to provide the full 6,110 acre feet of augmentation to the natural flow of the Big Lost River. Funds collected through the payment of late fees will be placed in the accounts of Water District no. 34 and must be used to fund mitigation in future years.

Enforcement

Any ground water user not mitigating for depletions to the Big Lost River caused by his pumping when mitigation is required should not be allowed to divert ground water. Nonetheless, IDWR must follow the Rules of Conjunctive Management for purposes of enforcement. A water user who has requested mitigation will also have to petition for delivery call before IDWR can curtail use of ground water by a ground water user.

After the 6,110 acre feet of mitigation water is acquired under the consolidated plans, IDWR will issue an order recognizing the details of the plans and making the plan subject to review under the Administrative Procedures Act and IDWR’s Rules of Procedure.

The consolidated mitigation plans must be implemented within the context of a larger commitment by all who use and oversee delivery of water to carefully regulate the water rights of the Big Lost River and its tributaries. In this way, the ground water users are assured that their contribution to flows of the Big Lost River are enhanced by proper administration of the water rights decreed in the Snake River Basin Adjudication.

Sincerely,

Gary Spackman

Enclosures

Cc: Harvey Walker
Jim Gregory
Bob Duke, Watermaster
Ray Rigby



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

July 28, 2004

Bob Duke
Water District 34
P.O. Box 53
Mackay, ID 83251

RE: **Futile Call Request**

Dear Mr. Duke:

The Idaho Department of Water Resources (Department) received your letter requesting a futile call via facsimile on July 28, 2004. As we discussed this morning and earlier this season, the Department needs to review the documentation and data described in the letter dated May 17, 2004, "Re: Requesting a Futile Call Determination." At this time, we have not received some of these data. We are awaiting receipt of the following data from Water District 34.

1. Water right numbers and diversion rates for each water right that is being called for, but is not being satisfied.
2. Flow at the Leslie Bridge gaging station (in cfs) on July 28, 2004. Please submit these data through the internet data entry application.
3. Diversion rate at each diversion from the Big Lost River downstream of Mackay Reservoir (in cubic feet per second (cfs)) for July 26 through July 28, 2004. Please submit these data through the internet data entry application.
4. Amount of natural flow delivered to each diversion (daily cfs) for July 15 through July 28, 2004.
5. Amount of storage water delivered to each diversion (daily cfs) for July 15 through July 28, 2004.
6. Conveyance losses assessed to storage deliveries between Mackay Dam and each point of diversion from the Big Lost River (in percent). This information appears to have been submitted on a BLRID worksheet for the dates of July 1, July 12, and July 19, 2004. Please clarify if these conveyance losses apply to the dates in between (ie. does the conveyance loss value for July 19, 2004 apply to July 20 through July 28?).
7. Map showing location of end of flow in canal(s) and location(s) of place(s) of use, if a futile call is requested because deliveries are not sufficient for beneficial use (use base map attached to May 17, 2004 letter).

Please submit these data as soon as possible so that the Department can review your request. You may contact me at 208-327-7871 if you have any questions regarding submittal of the data.

Respectfully,

Jennifer Berkey
Water Distribution Section

Enclosures

IDWR Eastern Region

N:/Lost River WD34/Corrspndc/2004/07-28Watermaster.doc



State of Idaho

DEPARTMENT OF WATER RESOURCES

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DIRK KEMPThorNE
GOVERNOR

KARL J. DREHER
DIRECTOR

May 17, 2004

Bob Duke
Water District 34
P.O. Box 53
Mackay, ID 83251

RE: Requesting a Futile Call Determination

Dear Mr. Duke:

The purpose of this letter is to provide additional guidance, as you requested, regarding the process the Water District should follow to request a futile call determination from the Director of the Idaho Department of Water Resources (Department). This letter specifically addresses requests for a futile call determination on the Big Lost River downstream of the Beck diversion. Diversions downstream of Mackay Dam and upstream of, and including, the Beck diversion are hereafter referred to as upstream diversions. Diversions downstream of the Beck diversion are hereafter referred to as downstream diversions.

Until a futile call determination has been issued by the Director, all water deliveries must continue to be made based on prior appropriation. In other words, the priority date of natural flow water right deliveries to the upstream diversions must be based on the amount of natural flow that is actually delivered to the downstream diversions. Junior priority rights at the upstream diversions must be curtailed as soon as possible after determining the priority that is deliverable to the downstream diversions. The priority date and diversion headings may need to be adjusted on at least a daily basis during this period. Because there are water rights for a total of 15.839 cfs on downstream diversions that are senior to any water rights on the upstream diversions, the upstream diversions may need to be curtailed completely.

As the amount of storage water released from Mackay Reservoir declines, the total amount of water delivered to the upstream diversions must not exceed the sum of the amount of storage water released and the natural flow rights in priority, if any. Based on review of data from the 2003 irrigation season, it appears that water was delivered out-of-priority to the upstream diversions between August 3 and August 7.

If water is being delivered according to prior appropriation and is reaching a downstream diversion heading, but is not sufficient for beneficial use, water users on downstream diversions may voluntarily choose to withdraw their delivery calls. If all senior downstream water users voluntarily withdraw their delivery calls, the Watermaster may deliver water to next-in-time users on the upstream diversions without a futile call determination from the Director. If any of the downstream senior water users choose to continue to call for water, the Watermaster must not deliver junior water rights to upstream diversions until a futile call determination has been issued by the Director.

The Department will consider a futile call request when the following conditions occur:

1. Storage water allocated to users on downstream diversions has been depleted.
2. Diversion data submitted by the Water District show that natural flow deliveries to the upstream and downstream diversions have been, and continue to be, based on prior appropriation.
3. Water is no longer reaching the downstream diversion headings, or water reaching the downstream diversion headings is not sufficient to be beneficially used without unreasonable waste.

The following documentation and data must be submitted to the Department if a futile call determination is requested.

8. Letter signed by the Watermaster requesting a futile call determination from the Director, describing the basis for the futile call request and steps taken to deliver water to downstream diversions
9. The following daily data for 14 days preceding and including the date of request:
 - a. Priority date used to deliver natural flow downstream of Mackay Reservoir
 - b. Water right numbers and diversion rates for each water right that is being called for, but is not being satisfied
 - c. Contents of Mackay Reservoir (in acre-feet)
 - d. Flow at the Leslie Bridge gaging station (in cfs)
 - e. Diversion rate at each diversion from the Big Lost River downstream of Mackay Reservoir (in cubic feet per second (cfs))
 - f. Amount of natural flow delivered to each diversion (in cfs)
 - g. Amount of storage water delivered to each diversion (in cfs)
 - h. Conveyance losses assessed to storage deliveries between Mackay Dam and each point of diversion from the Big Lost River (in percent)
 - i. Map showing location of the downstream end of flow in the Big Lost River channel, for each day that water has not reached the Moore diversion (use attached base map)
 - j. Map showing location of end of flow in canal(s) and location(s) of place(s) of use, if a futile call is requested because deliveries are not sufficient for beneficial use (use attached base map)
10. Other supporting documentation that the Water District believes is pertinent to the determination

You may need to plan or prepare in advance of a potential futile call request so that you can quickly obtain this information and documentation. The Department will review the data

submitted and may request additional data if needed. The Department may conduct a site visit if possible to selected diversions and/or gaging stations prior to the issuance of a determination by the Director. The Department may also consult with the water district advisory board, the Big Lost River Irrigation District, and/or other impacted water users prior to making a determination.

Please contact me or Jennifer Berkey directly with any questions at 208-327-7900.

Respectfully,

Tim Luke
Water Distribution Section

Enclosures

cc w/o enclosures: IDWR Eastern Region

N:/Lost River WD34/Corrspndc/2004/03-30Watermaster.doc



State of Idaho

DEPARTMENT OF WATER RESOURCES

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DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

April 30, 2004

Bob Duke
Watermaster, Water District 34
P.O. Box 53
Mackay, ID 83251

Keith Waddoups
Board of Directors, Big Lost River Irrigation District
2078 North 3520 West
Moore, ID 83255

Seth Beal
Advisory Board Chairman, Water District 34

DRAFT VIA FACSIMILE

Re: Accounting Procedures for Water District 34

Gentlemen:

The Idaho Department of Water Resources (IDWR) has received requests from members of the Water District 34 and Big Lost River Irrigation District advisory boards, and water users served by your organizations to provide written clarification of accounting procedures that should be used related to the following issues.

1. Requests of mitigation pursuant to IDAPA 37.03.12.050.
2. Requests to rotate non-deliverable natural flow rights at the beginning of the irrigation season under IDAPA 37.03.12.040.02.d.iii.
3. Assessing conveyance losses to storage deliveries under IDAPA 37.03.12.040.03.b.

Fulfilling and Accounting for Mitigation Requests

This issue is currently being reviewed by the Director and will be addressed in a separate letter.

Accounting Procedure for Requests to Rotate under IDAPA 37.03.12.040.02.d.iii

On April 30, 2004, Water District 34 received a request from several water right holders with points of diversion downstream of the Darlington Sinks. These water users requested that their water rights be rotated for credit as described in Rule 40.02.d.iii. Under this rule, water will be accrued in Mackay Reservoir, up to a maximum total of 3,500 AF, in a separate account that is controlled by the watermaster. Water in this account is to be used by the watermaster to make natural flow rights deliverable to points of diversion downstream of the Darlington Sinks at the beginning of the season.

The accounting procedure used by IDWR will track two storage accounts in Mackay Reservoir during the period that this rule is in effect. One account is impounded water owned by BLRID, the other is

impounded water controlled by the watermaster for the purpose of “charging the system”. Reservoir losses, including evaporation and seepage losses, will be assessed proportionally to each of these two accounts. Assessment of losses or gains to individual allocations within the BLRID account is the responsibility of the BLRID.

The following is an example of daily calculations for use when this rule is in effect and water is not intentionally being released from Mackay Reservoir.

- Assumptions:
1. Irrigation season has begun.
 2. General Provision 6a is in effect.
 3. Mackay Reservoir has not filled.
 4. The Big Lost River is dry downstream of the Darlington Sinks
 5. Water users downstream of the Darlington Sinks have requested that their water rights be filled by rotation for credit under IDAPA 37.03.12.040.03.b.
 6. Water is not intentionally being released from Mackay Reservoir.
 7. Water in the Big Lost River channel between Mackay Dam and the 2B gage is due to seepage losses from Mackay Reservoir.
 8. This example assumes all water rights have been called for and that all water right holders downstream of the Darlington Sinks have requested their rights be rotated for credit under Rule 40.02.d.iii.
 9. Actual numbers will vary depending on daily gage data, actual calls for water rights and the actual number of water rights requested to be rotated for credit.

Daily data:	2B gage reading	83.0 cfs
	Reservoir contents	32000 AF
	Prior day's reservoir contents	31940.1 AF
	Change in reservoir contents	59.9 AF (30.2 cfs-day)
	Sharp diversion reading	10.0 cfs
	Daily reservoir evaporation	9.92 AF (5.0 cfs-day)

Calculation of reservoir inflow:

$$2B + \text{CHANGE IN CONTENTS} + \text{SHARP} + \text{EVAPORATION} = \text{INFLOW}$$

$$83.0 \text{ cfs} + 30.2 \text{ cfs} + 10.0 \text{ cfs} + 5.0 \text{ cfs} = 128.2 \text{ cfs}$$

Determination of priority date at Mackay Reservoir:

Assuming all water rights are called for, 128.2 cfs corresponds to a last right filled
date of 40.4% of the 10/12/1884 water rights downstream of Mackay Reservoir.

Water delivered to storage accounts in Mackay Reservoir:

4.9 cfs (9.7 AF) diverted to BLRID storage account under WR 34-818 and 34-

811

69.7 cfs (138.2 AF) diverted to storage under IDAPA 37-03.12+040.02.iii
53.6 cfs to be passed through reservoir as natural flow for downstream users

Daily reservoir losses:

$$\begin{aligned} &\text{Evaporation loss} && 5.0 \text{ cfs-day} \\ &\text{Seepage loss (2B + SHARP – REQUIRED DOWNSTREAM FLOW)} \\ &\quad 83.0 + 10.0 - 53.6 = 39.4 \text{ cfs-day} \\ &\text{Total reservoir loss (EVAPORATION + SEEPAGE LOSS)} \\ &\quad 5.0 + 39.4 = 44.4 \text{ cfs-day} = 88.1 \text{ AF} \end{aligned}$$

Accounting of impounded water:

BLRID account

Prior day's account balance	31,940.1 AF
Diverted to storage	<u>+ 9.7 AF</u>
Account balance w/o evaporation or seepage loss	31,949.8 AF
Reservoir losses (0.2746%)	<u>- 87.7 AF</u>
	31,862.1 AF

Watermaster's account

Prior day's account balance	0.0 AF
Diverted to storage	<u>+ 138.2 AF</u>
Account balance w/o evaporation or seepage loss	138.2 AF
Reservoir losses (0.2746%)	<u>- 0.4 AF</u>
	137.8 AF

Reservoir losses are $88.1 / (31,949.8 + 138.2) \times 100 = 0.2746\%$ of total

Determination of natural flow downstream of Mackay Dam:

Seepage losses from Mackay Reservoir are considered to be a gain to the natural flow in the reach downstream of the dam. This is a source of natural flow that is not available to water rights diverted into storage at the reservoir, thus the last right filled date for the reaches between Mackay Dam and the Darlington Sinks may be later than the last right filled date deliverable for diversion to storage in the reservoir.

Natural Flow at 2B Gage = 2B Gage + Sharp Diversion

Natural Flow at Leslie Gage = Leslie Gage + all diversions between dam and Leslie gage

Assessing Conveyance Losses to Storage Deliveries

According to IDAPA 37.03.12.040.03.b, the conveyance loss assessed to storage deliveries in each reach of the river should be determined by the watermaster on a daily basis, using daily streamflow gage readings and diversion data.

“...Conveyance losses in the natural channel shall be proportioned by the watermaster between natural flow and impounded water. The proportioning shall be done on a river reach basis. Impounded water flowing through a reach that does not have a conveyance loss will not be assessed a loss for that reach. Impounded water flowing through any river reach that does have a conveyance loss will be assessed the proportionate share of the loss for each losing reach through which the impounded water flows. To avoid an iterative accounting procedure, impounded water conveyance loss from the previous day shall be assessed on the current day. ...”

IDAPA 37.03.12.040.03.b.i adds that

“... An exception is made for impounded water delivered through the Beck and Evan diversion... Conveyance losses for this impounded water will be assessed the conveyance loss of the Leslie reach, if any, and the additional conveyance loss to the Beck and Evan diversion but not the conveyance loss of the entire Moore reach. ...”

The following is an example of daily accounting procedures for the assessment of conveyance losses in accordance with this rule. The river reaches are defined in IDAPA 37.03.12.025.01.

Daily data:	Change in Mackay Reservoir contents	353 cfs
	Reservoir evaporation rate	10 cfs
	Sharp diversion rate	8 cfs
	2B gage reading	580 cfs
	Diversions from 2B to Leslie	96 cfs
	Leslie gage reading	472 cfs
	Beck diversion	16 cfs
	Other diversions from Leslie to Moore	223 cfs
	Big Lost River below Moore diversion	0 cfs
	Exchange well injections in Eastside Canal	28 cfs
	Eastside return flow	73 cfs
	Diversions from below Moore to Munsey	61 cfs
	Big Lost River below Munsey diversion	0 cfs
	Diversions below Munsey	0 cfs
	Arco gage reading	0 cfs

Reach gain/loss calculations:

Reach gain for Mackay Reservoir to 2B gage
 2B + SHARP + CHANGE IN CONTENTS + EVAPORATION
 $580 \text{ cfs} + 8 \text{ cfs} + 353 \text{ cfs} + 10 \text{ cfs} = 951 \text{ cfs (gain)}$

Reach gain between 2B gage and Leslie gage
 OUTFLOW – INFLOW + DIVERSIONS
 $472 \text{ cfs} - 580 \text{ cfs} + 96 \text{ cfs} = -12 \text{ cfs (loss)}$

Reach gain between Leslie gage and BLR below Moore diversion
 OUTFLOW – INFLOW + DIVERSIONS – EXCHANGE + ES RETURN
 $0 \text{ cfs} - 472 \text{ cfs} + 238 \text{ cfs} - 28 \text{ cfs} + 73 \text{ cfs} = -189 \text{ cfs (loss)}$

Reach gain between Moore and Munsey diversions
 BLW MUNSEY – BLW MOORE – ES RETURN + DIVERSIONS
 $0 \text{ cfs} - 0 \text{ cfs} - 73 \text{ cfs} + 61 \text{ cfs} = -12 \text{ cfs (loss)}$

Calculation of percent loss by reach

Mackay Reservoir to 2B gage
 No conveyance loss in this reach on this day

2B gage to Leslie gage
 $\text{LOSS/TOTAL INFLOW} = 12/580 \times 100 = 2.07\%$

Leslie gage to below Moore diversion
 $\text{LOSS/TOTAL INFLOW} = 189/472 \times 100 = 40.0\%$

Below Moore diversion to below Munsey
 $\text{LOSS/TOTAL INFLOW} = 12/73 \times 100 = 16.4\%$

Assessment of conveyance loss to storage water deliveries

Storage water delivered above 2B gage
 No conveyance loss on this day

Storage water delivered between 2B gage and Leslie gage
 Conveyance loss = 2.07%

Storage water delivered to Beck diversion
 Conveyance loss = 2.07% (without an additional stream gaging station potential losses between the Leslie gage and the Beck diversion cannot be determined)

Storage water delivered to other diversions in the Moore reach
 Conveyance loss = $(1 - (1 - 0.0207) \times (1 - 0.400)) \times 100 = 41.2\%$

Storage water delivered below Moore diversion

$$\text{Conveyance loss} = (1 - (1 - 0.412) \times (1 - 0.164)) \times 100 = 50.8\%$$

If you have any questions regarding this letter please contact me at 208-327-7871 or Tim Luke at 208-327-7864.

Respectfully,

Jennifer Berkey
Water Distribution Section

cc: Bob Shaffer, Big Lost River Irrigation District

N:/Lost River WD34/Corrspndc/2004/04-30AcctProc.doc

MEMORANDUM

TO: Jennifer Berkey

FROM: Dave Tuthill

DATE: March 23, 2004

RE: Discussion of Basin 34 Water Delivery Issues

The purpose of this memorandum is to document the results of discussions of Basin 34 water delivery issues conducted in our offices on March 15 and March 22, 2004. In the discussions three questions were posed, and responses to these questions are addressed in turn below:

1. Can the storage water rights at Mackay Reservoir make a priority call on upstream water rights?

Basin 34 General Provision No. 6 states in part “The following surface water rights from the Big Lost River and its tributaries upstream of Mackay Reservoir shall be administered separately from all other **non-storage**, surface water rights from the Big Lost River downstream of Mackay reservoir during two periods of time as follows...” (emphasis added). The inclusion of the term “non-storage” clarifies that the remaining language in General Provision No. 6, which identifies times of separated administration, does not pertain to the storage water rights in Mackay Reservoir. In addition, the listing of water rights upstream from Mackay Reservoir, Attachment B to the General Provisions, does not include the storage water rights in Mackay Reservoir. Accordingly, the answer to question No. 1 is yes.

2. Is the inflow to Mackay Reservoir subject to delivery calls downstream during periods of separate administration?

Yes, in general the inflow to Mackay Reservoir is subject to delivery calls downstream during periods of separate administration. However, downstream rights cannot call water made available by the Mackay Reservoir storage water rights’ priority calls. Further explanation of this concept follows.

General Provision No. 6 establishes periods during which natural flow diversions downstream from Mackay Reservoir cannot call on the water upstream from the reservoir. During these periods, inflow to Mackay Reservoir can only be delivered as natural flow to water rights downstream from Mackay Reservoir. However, if Mackay Reservoir’s storage water rights have not been filled, Mackay Reservoir can make a call on upstream users to fulfill these rights resulting in curtailment, on a priority basis, of diversions upstream from the reservoir as in question No. 1 above. To the extent that such a curtailment results in an increase in the inflow to Mackay Reservoir, that inflow increase is not subject to a call from downstream users.

As an example, assume the inflow to Mackay Reservoir is 90 cfs. Assume that 10 cfs of this inflow results from curtailment of upstream diversions to provide water for the filling of the Mackay Reservoir storage water rights. Then 80 cfs would be allocated to water rights downstream from Mackay Reservoir, and 10 cfs would be allocated to fill the storage water right. The watermaster, in consultation with IDWR, determines the flows available to fill natural flow rights and storage rights.

3. What is the effect of IDAPA Rule No. 37.03.12.040.02(d)(iii), which states as follows:

If natural flow can not be delivered to a point of diversion at the beginning of the irrigation season and the watermaster determines rotation credit is needed to make possible the delivery of water rights being called for, and there is room in Mackay Reservoir for rotation credit, the watermaster may rotate natural flow rights, which

would not otherwise be deliverable to their point of diversion, for credit up to a combined total of three thousand five hundred (3,500) AF to be released from the reservoir under the control of the watermaster to make natural flow rights deliverable to their point of diversion. The watermaster may use storage water to assist the delivery of natural flow water rights at the beginning of the irrigation season when requested to do so by the storage holder.

The Administrative Rules governing Basin 34 are still in effect, to the extent they do not conflict with the General Provisions. This particular rule does not conflict with the General provisions and thus is still in effect.

Basin 34 General Provision No. 3 provides that rotation into storage can occur only during certain times. Rotations into storage under the provisions of this rule are voluntary, at the discretion of the holders of water rights in priority. At the beginning of the irrigation season, when General Provision 6a is in effect, up to 3500 AF may be allowed to be rotated into storage at the request of the water right holders, and released for the purpose of charging the system, prior to any futile call determination downstream from Mackay Reservoir.

March 9, 2004

Scott Campbell
Moffatt Thomas Barrett Rock & Fields, Chtd.
P.O. Box 829
Boise, ID 83701-0829

Re: Measuring Requirement for Dr. Lynn Reno's Groundwater Diversion and Conference Call of
November 4, 2003

Dear Mr. Campbell:

On November 4, 2003, a conference call was conducted between the Idaho Department of Water Resources ("IDWR"), you and your client, Dr. Lynn Reno regarding IDWR's request to Dr. Reno to install a measuring device on his ground water diversion that is used pursuant to water right no.s 34-7245B and 34-13555. IDWR had requested that Dr. Reno install a measuring device on his ground water diversion via correspondence dated May 14, 2003 and September 17, 2003. Gary Spackman and I represented IDWR during the November 4th phone conference. The conference call was held in response to your petition of October 3, 2003 requesting a hearing before IDWR to contest the measuring device requirement. We discussed the objective of the measuring device requirement and some measurement alternatives that would alleviate the need to install and maintain a permanent device. This letter outlines the alternative measurement and regulatory action that we discussed. This alternative approach may be summarized as follows:

- 1) IDWR and/or Water District 34 staff together will measure any or all mainlines from the Reno-Unger well that are used to distribute water to those lands authorized as the irrigated place of use under Dr. Reno's ground water rights, 34-7245B and 34-13555. The Reno mainline or mainlines will be measured using a portable ultrasonic flow meter owned by either IDWR and/or Water District 34. IDWR and/or Water District 34 will measure flows in the Reno mainline(s) under all the possible operating scenarios or conditions from the Reno-Unger well, including operating conditions with flows in the Unger mainlines. The cooperation of both Dr. Reno and Mr. Unger or representatives of Mr. Unger will be necessary to conduct these flow measurements. Dr. Reno shall be responsible for getting the cooperation of Mr. Unger and coordinating a date with IDWR and the water district in which a flow examination of the well can be made. The flow examination should be made no later than May 28, 2004. IDWR and/or water district staff shall measure and record the maximum discharge to the Reno mainline(s) (averaged over at least a ten-minute period). This maximum flow will be assumed as a constant flow rate from the well to Reno for the entire irrigation season. This flow combined with the flow delivered to Dr. Reno's water right at the Upper Fish Hatchery Canal shall not exceed 1.96 cfs, which is the combined amount authorized by Reno's ground water rights (34-7245B and 34-13555) and Reno's right diverted from Warm Springs Creek at the Upper Fish Hatchery Canal (34-470A). When Reno is diverting water from both the Reno-Unger well and the Upper Fish Hatchery Canal, the watermaster must limit the delivery of water at the Upper Fish Hatchery Canal to the amount as follows:

$$\text{Amount at Canal} = (1.96 \text{ cfs}) - (\text{Maximum measured flow to Reno mainline}) *$$

* Based on discharge measurements made on Reno mainline from Reno-Unger well at start of the irrigation season. This flow should be re-measured or re-determined at least every two-years.

- 2) At any time Dr. Reno or his lessee or operator calls for full delivery of water right no. 34-470A at the Upper Fish Hatchery Canal, the watermaster shall take steps necessary to assure that the Reno mainline from the Reno-Unger well is shut off. Specifically, the watermaster shall close and lock the Reno mainline from the Reno-Unger well whenever the full amount of water right 34-470A is called for and delivered. A lockable valve must be installed and maintained on the Reno mainline so that the watermaster can control the flow to the mainline pursuant to this condition.
- 3) IDWR, in coordination with the watermaster, may evaluate this alternative measurement and regulatory method at any time during the irrigation season to assure that the Reno water rights are properly delivered and that the method is not causing injury to other water rights.

IDWR is willing to consider implementing the above outlined measurement and regulatory method beginning in 2004 in lieu of requiring installation of a measuring device on the Reno-Unger well. It is my understanding based on recent correspondence from you that Dr. Reno accepts this alternative proposal and conditions as outlined above. Please forward any further comments you or your client may have regarding this issue to me on or before March 25, 2004. You may contact me directly at 208-327-7864 if you have questions concerning this matter.

Respectfully,

Tim Luke
Water Distribution Section

cc: Dr. Lynn D. Reno
Robert Duke, Water District 34 Watermaster
Scott Johnson
David Stoecklein

November 17, 2003

Robert Duke, Watermaster
Water District 34
P.O. Box 53
Mackay, ID 83251

Dear Mr. Duke:

As you have requested, this letter is intended to provide written documentation of our telephone discussion on October 9, 2003 regarding the delivery of winter stockwater in Water District 34. As we discussed, a memorandum providing additional detail on the basis for these directions, is attached for your reference.

As you noted, a number of water rights within Water District 34 were decreed with the comment, "The appropriator is entitled to the quantity of water described for stockwater purposes at a point of measurement where the delivery ditch enters the place of use described." For water rights decreed with this comment, the flow rate delivered at the diversion heading may exceed the stockwater flow rate if necessary to supply the stockwater flow rate where the delivery ditch enters the place of use described by the water right. However, water delivered in excess of the stockwater flow rate must not result in unreasonable waste of water, must be necessary to compensate for conveyance loss in the ditch, and may not be stored, used to increase soil moisture, or used for any type of beneficial use. Further, the flow rate delivered at the heading may not exceed the total flow rate of the water right.

For water rights that provide for winter stockwater, but do not include the comment referenced in the paragraph above, the flow rate at the diversion heading must be restricted to the winter stockwater flow rate, regardless of conveyance losses. Stockwater may not be delivered at points of diversion or places of use that are not authorized by a water right that specifies winter stockwater as a use. Incidental stockwater use is only allowed during the irrigation season of use.

As with irrigation water, stockwater may only be delivered when the water right is in priority. For stockwater rights below Mackay Reservoir, the general provisions define the minimum winter release from Mackay Reservoir. Stockwater rights below the reservoir may be called for and delivered if it does not interfere with storage in Mackay Reservoir by requiring a release of water in excess of the minimum release required at the 2b gauge, or the actual release of water, whichever is greater. A water right holder calling for delivery of winter stockwater must have access to a point of diversion and delivery system to convey the right to the place of use. If the headgate and delivery system are controlled by an entity other than the water user, the watermaster will only deliver the water with the concurrence of the owner of the head gate and delivery system and then only when such delivery does not constitute unreasonable waste as determined by the Director.

For stockwater rights above Mackay Reservoir, stockwater may only be delivered to water rights that are senior to the unfilled reservoir storage rights. For example, until water right 34-10873 has been filled, stockwater rights senior to October 2, 1905 may be delivered, but stockwater rights junior to this date may not be delivered. After water right 34-10873 has been filled, stockwater rights senior to February 7, 1916 may be delivered, but water rights junior to this date may not be delivered until after water right 34-00012 has been filled.

Please contact me if you have any questions regarding this letter or the attached memorandum.

Sincerely,

Jennifer Berkey
Water Distribution Section

Attachment

cc: IDWR Eastern Region
Bob Schaffer, Big Lost River Irrigation District
Harvey Walker, Rt 1 Box 200, Arco ID 83213

To: Water District 34 File

From: Jennifer Berkey

Re: Conversation with Watermaster regarding irrigation season extensions and winter stockwater

Date: October 9, 2003

I called Bob Duke (Watermaster) on October 9, 2003 to respond to questions he had asked me on October 6 and 7 regarding the procedure for requesting an extension to the irrigation season and how to deliver winter stockwater rights that state the user is entitled to the quantity described for stockwater at a point of measurement where the ditch enters the POU.

I told the Watermaster that if water users wish to request an extension of the irrigation season, he needs to submit, either by fax or e-mail, a list of the water users who wish to extend, along with the water rights and diversions they wish to use. I told him he would also need to state how the water will be beneficially used for irrigation, in order to demonstrate how the request(s) meet part a of item 04 in the Water District 34 distribution rules. Also he would need to provide information regarding the status of the reservoir and any repairs being made on the dam, in particular whether or not water could physically be stored in the reservoir. The Watermaster said he has still not received any requests to extend, and does not expect to.

I told him that after discussing the winter stockwater rights with Adjudication staff and legal counsel, I had found that the rights were decreed with the comment regarding the point of measurement to allow for the diversion of water at the headgate, up to the amount of the decreed irrigation right, if necessary to get the stockwater to the place of use without unreasonable waste. I instructed Bob that he may deliver water at the headgate in excess of 0.02 cfs, but no greater than the decreed irrigation flow rate, if necessary to get stockwater to the point of measurement. I stressed that the water users are not allowed to use the water for irrigation, water spreading to increase soil moisture, or any other use besides stockwater.

I told the Watermaster that we have requested a written memorandum of legal opinion from our legal counsel and will provide him with a copy. He informed me that the BLRID board postponed voting on the issue of closing their canals until their next meeting at the end of October, so there will probably be stockwater delivered through BLRID canals for at least two weeks. The Watermaster expects to receive complaints about this issue.

I also asked the Watermaster if he was aware that the Swauger diversion was allowed to be used during the winter to convey water to the Swauger slough/Kid Creek. He said that he was aware of this practice.

May 19, 2003

David Wanstrom
Big Lost River Irrigation District
P.O. Box 205
Mackay, ID 83251

Dear Mr. Wanstrom:

We have reviewed your letter dated May 6, 2003 with the Department's Adjudication Bureau and concur that the Big Lost River Irrigation District's rights to divert water to storage in Mackay Reservoir are not administered separately from surface water rights diverted upstream of Mackay Reservoir, even when provision 6a or 6b is in effect.

Junior surface water rights upstream of Mackay Reservoir will be curtailed to deliver water according to the Irrigation District's rights. Water allocated to the Irrigation District's storage rights while provision 6a or 6b is in effect is not available to downstream natural flow rights, regardless of their priority dates, because they are administered separately from the rights diverted upstream of the reservoir.

The Irrigation District's water rights are included in the Department's Big Lost Water Right Accounting program and the Watermaster will be instructed to deliver them according to their priority dates and annual volume limits.

Sincerely,

Jennifer Berkey
Water Distribution

cc: Robert Duke, Watermaster, Water District 34
Young Harvey Walker

May 1, 2003

Dear Water User:

According to our records, you are the owner of a water right that is diverted from the Big Lost River into the Neilsen Ditch, then injected into and rediverted from Warm Springs Creek. Water users in Water District 34 have expressed concerns to the Idaho Department of Water Resources (IDWR) regarding accountability for diversions, including adequate accounting for the water from Neilsen Ditch that is commingled with and rediverted from Warm Springs Creek.

IDWR staff visited the Neilsen Ditch diversion with the Watermaster on April 2, 2003 and observed that the existing weir will not provide adequate measurements of the flow injected into Warm Springs Creek. IDWR requires that a properly functioning measuring device be in place for the Watermaster to allow rediversion of these rights from Warm Springs Creek.

Because there is not (to our knowledge) a water user's association for the Neilsen Ditch, it is the responsibility of the water right owners that use the Neilsen Ditch injection to reinstall and maintain a weir at this location. The following table lists the total flow rate of water rights that are diverted at the Neilsen Ditch and commingled with and rediverted from Warm Springs Creek.

Water Right Owner	Total Flow Rate (cfs)
Churn Dasher Ranch	7.732
Idaho Cowboy, Inc./Wild Horse Partners, LLC	6.498
6 X Ranch, LLC	3.560
Broken River Ranch, LP	3.200
Melvin Freeman	0.900
Richard and Patricia Smith	6.000
Bette Jean, Marcia Lee, and Pernecy Kent	0.400
Gordon and Ina Mae Harris	0.016

In order to redivert water associated with these rights, an acceptable measuring device must be installed at the point of injection into Warm Springs Creek. The Watermaster will be instructed to deliver water to the points of rediversion only when an equivalent amount of water is being injected into Warm Springs Creek. The Department requests that an acceptable measuring device be installed at the injection point on or before May 15, 2003. If a measuring device is not installed at this location, it will be assumed that no water is being injected and water will not be available for rediversion.

Water users with groundwater permits that are dependent on the availability of mitigation water delivered to Warm Springs Creek under these rights may be required to reduce their pumping rate based on the amount of water measured at the Neilsen point of injection. If this occurs, the Watermaster or IDWR will contact these water users individually.

If you have any questions regarding this letter, please contact Tim Luke at 208-327-7864 or Jennifer Berkey at 208-327-7871.

Sincerely,

Jennifer Berkey
Water Distribution

cc: Bob Duke, Watermaster, Water District 34
Charles Wilkins
Keith Hill
Morgan Haroldsen

N:/Lost River WD34/Corrspndc/2003/04_30NeilsenInj.doc

April 23, 2003

David Stoecklein
PO Box 856
Ketchum, ID 83340

Re: Your Correspondence of March 25 and April 16, 2003
Your Diversions from Warm Springs Creek

Dear Mr. Stoecklein,

Again, I believe my past correspondence concerning delivery of the Reno water rights was very clear. My responses to your additional questions are as follows:

- 1) "If Reno gives Johnson 80 inches then Reno can only put 16 inches through his mainline?"

Answer: Yes.

- 2) "Is there a percentage of time Johnson can use Reno's water and vice versa?"

Answer: No.

- 3) "What is the time each can use the water? Is it a percentage of how much each person has for water, 17 inches for Johnson and 46 inches for Reno?"

Answer: See answer to question number 2 above. Under rotation agreements, the users in the rotation set the amount of time water is rotated between users. Hence, there is no set percentage that each user can use the water. However, it has been my experience that rotation times are generally proportioned among users based on the amount of water or land each user owns.

- 4) "By your letter I understand that Reno can only use 43 inches from the Unger well and he can never call for more than 46 inches from the head of the hatchery. If this is so then how much water is going to be put in the Hatchery Canal this season?"

Answer: Your understanding is not entirely correct. The amount of water put into the Hatchery Canal for the Reno water right from Warm Springs Creek will depend on the following items:

- a) Whether the Reno right at the Hatchery Canal is deliverable by priority,
- b) How much water Reno calls for under his right at the canal and,
- c) How much water Reno is diverting to his mainline from the Reno-Unger well.

Again, the total combined diversion of Reno's water rights from the well and the Hatchery Canal cannot exceed 1.96 cfs (or 98 miners inches). If Reno opts not to use or exercise his ground water right, then the entire 80 inches under water 34-0470A can be delivered to the head of the Hatchery Canal. If Reno diverts 80 inches to his mainline from the Reno-Unger well then no water can be delivered to the head of Hatchery Canal under water right 34-470A.

I visited a number of diversions on Warm Springs Creek earlier this month, including your two diversions from the creek located just downstream from the Idaho Fish and Game Hatchery and the Hatchery Canal. The headgates at these diversions lack adequate locking controls. In addition, the upper diversion has no measuring device. We also found no measuring devices and lack of lockable controlling headgates on the ditches located at your points of diversion located in the SWNWNE, Section 35, T8N, R22E. IDWR requires that you install measuring devices and adequate lockable headgates on all of your diversions from Warm Springs Creek prior to diversion of any water for this year. Some additional concerns regarding your other water rights is as follows:

1) Ground Water Permit 35-7595: Please advise me and the watermaster of Water District 34 if you intend to use the ground water well authorized under this permit this year. If you begin using the permit this year, then you must cease or reduce diversion of water under other surface water rights in accordance with your mitigation plan for right 34-7595. Please note also that a condition of approval of permit 34-7595 requires that you install a measuring device and totalizing meter on the well. Please advise both the watermaster and me if a device has been installed and/or when the device is to be installed.

2) Amended Transfer No. 69578: This transfer application seeks to correct the legal location of a recreational storage pond that is located in the NWNE of Section 35, T8N, R22E. I believe it is your intent to divert water to this pond using the ditch and diversion structure in the same location. Your amended transfer lists the diversion point in the NWNE of Section 35 as the diversion location for rights 34-703C and 34-704C but does not list this location as the point of re-diversion for the recreational storage use under rights 34-699C, 34-700C, 34-701C, and 34-702C. Unless my understanding of the transfer is wrong, you may wish to review this transfer application and consider further amendments.

3) Permit No.s 34-7581 & 34-7597: Follow all conditions of approval under these permits including installation of measuring devices to and from the pond, installation of a headgate at the diversion, determination of pond storage volume that is to be reported to both the Department and the Big Lost River Irrigation District, and follow all other conditions under the permits.

Sincerely,

Tim Luke
Water Distribution Section

CC: Bob Duke, Watermaster
Eastern Region
Dr. Lynn Reno
Scott Johnson

February 13, 2003

David R. Stoecklein
P.O. Box 856
Ketchum, ID 83340

Dear Mr. Stoecklein:

I am writing in response to your letter dated January 14, 2003, which expressed concerns about the control and measurement of diversions from Warm Springs Creek, measurement of injection and re-diversions of Neilsen Ditch water, potential illegal expansions of irrigated farm ground, and control and measurement of the Upper Fish Hatchery Canal.

The Department, working in conjunction with the watermaster, intends to enforce the order requiring the installation of appropriate control works and measuring devices on diversions from Warm Springs Creek prior to the 2003 irrigation season. The Department plans to inspect diversions with the Watermaster prior to the beginning of the irrigation season to evaluate compliance with the order.

The Department is currently in the process of adding diversions from Warm Springs Creek, Pole Stackyard Creek, Parsons Creek, and the Big Lost River above Mackay Reservoir to the Big Lost River water right accounting program and Watermaster data entry program. We anticipate that this will facilitate record keeping and accountability for the measurement of diversions above the reservoir.

The Department plans to issue a notice to appropriate parties requiring the installation of a device to measure water flowing into Warm Springs Creek from the Neilsen Ditch. We also intend to enforce measurement of re-diversions from Warm Springs Creek. We plan to evaluate the current practice used by the Watermaster to determine diversion data for pumps on Warm Springs Creek. Installation of time clocks or additional measuring devices may be required if necessary to obtain adequate data.

We have reviewed satellite imagery from the 2002 irrigation season with respect to legal places of use. Irrigated farm ground located outside of a legal place of use was not observed in the vicinity of Warm Springs Creek. The Department intends to obtain additional satellite imagery for future irrigation seasons to inspect for potential illegal expansions in place of use.

As part of a 1999 settlement agreement between water users associated with the Upper Fish Hatchery Canal, water right owners who transferred their point of diversion from the canal to another location agreed to leave 21 percent of the water associated with the water rights being transferred in the canal. Because of this agreement, the amount of

water turned into the canal includes up to 100 percent of the flow rate of the water rights that remained on the canal, plus 21 percent of the flow rate of the rights that were transferred. The water right owners that transferred from the canal to another point of diversion are only allowed to divert 79 percent of their water right.

Mr. Johnson and Dr. Reno have a valid lateral water rotation agreement on file with the Water District and the Department. This agreement allows Mr. Johnson and Dr. Reno to rotate the use of their water rights diverted at the Upper Fish Hatchery Canal, as long as the rights are applied to beneficial use.

According to Department records, Dr. Reno has a valid water right to divert from Warm Springs Creek through both the Upper Fish Hatchery Canal and a valid water right to divert ground water from the Reno/Unger well (formerly Reno/Aslett well). These rights have a combined diversion rate limit of 1.96 cfs (98 miner's inches). Dr. Reno may also divert an additional 0.333 cfs (16.65 miner's inches) through the canal when he is using Mr. Johnson's water rights under the lateral rotation agreement. Unger also has a right to divert up to 1.74 cfs (87 miner's inches) from the Reno/Unger well. The Unger right from this well, 34-7245A, is not combined with rights from the canal or other sources. The Watermaster is responsible for determining the flow at the well under the Reno right and adjusting the diversion rate at the Upper Fish Hatchery Canal, if appropriate, in accordance with applicable water rights.

The Watermaster is responsible for delivering the appropriate amount of water at the head of the Upper Fish Hatchery Canal. Management of re-diversions from the canal is normally the responsibility of the water users located on the canal. If there are disputes between the water users on the canal, they have the option of forming a lateral association and hiring a lateral manager to control the re-diversions. The agreement referenced in your letter among the users of the Upper Fish Hatchery Canal is an agreement among private parties. Most of the approved water right transfers that transfer water from the canal do not include reference to the agreement mentioned in your letter. The Department therefore does not intend to order the installation of measuring devices for re-diversions from the Upper Fish Hatchery Canal.

Sincerely,

Tim Luke
Water Distribution

cc: Doug Rosenkrance, Watermaster
Harold Jones, IDWR Eastern Region
Scott Campbell, Attorney representing Unger Ranch
Bob Shaffer, BLRID

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES (IDWR)**

**MINIMUM ACCEPTABLE STANDARDS FOR
MEASUREMENT AND REPORTING OF
SURFACE AND GROUND WATER DIVERSIONS**

The source and means of diversion of water, whether surface or ground water, generally determines the measurement and reporting process. Surface water sources such as streams, springs and waste channels are normally diverted into open channels (ditches or canals), but closed conduits (pipes or culverts) are also used. Ground water is usually diverted into pipes (which may also discharge into open channels).

Measuring devices are required at or near the point of diversion from the public water source.

SURFACE WATER DIVERSIONS

I. Flow Measurement

The following discussion is applicable only to diversions from surface water sources.

Measurement of a ground water diversion with an open channel measuring device must be pre-approved by the Department.

A. Standard Open Channel Measuring Devices

All open channel flow diversions should be measured using one of the following standard open channel flow measuring devices commonly used in Idaho:

- contracted rectangular weir
- suppressed rectangular weir
- Cipolletti weir
- 90 degree V-notch weir
- ramped broad crested weir (or ramped flume)
- Parshall flume
- trapezoidal flume
- submerged rectangular orifice
- constant head orifice

Construction and installation of these devices should follow published guidelines. References are available upon request.

B. Non-standard open channel devices: Rated Structures or Rated Sections

IDWR may authorize the use of non-standard devices and rated sections provided the device or section is rated or calibrated against a set of flow measurements using an acceptable open channel current meter or a standard portable measuring device. Further restrictions and requirements are available from the Department upon request.

C. Closed conduit measuring devices

Refer to the Ground Water measuring section for installation, accuracy, and calibration standards of closed conduit measuring devices.

II. Reporting

All surface water measuring devices, rated structures and rated sections should be read and readings recorded at least once per week, and more frequently if necessary. IDWR will accept the assumption of constant flow rates between readings if flow rates are continuous and reasonable constant. Forms will be provided for recording dates, stage (or water levels) and flow rates.

Users with diversions located within water districts may report their diversions individually to IDWR or provide for the water district watermaster to report their diversions in acceptable annual water distribution reports. Ground water diversions are not normally included in a water district, and must be reported individually.

GROUND WATER DIVERSIONS

Ground water diverters have the option of installing a flowmeter, or using power records to estimate water withdrawals. Information regarding the use of power records will follow this discussion of flowmeters.

I. Flow Measurement

There are many flowmeters on the market, with costs ranging from several hundred dollars to several thousand dollars. In general, the higher priced meters are more accurate and require less maintenance. Most meters on the market have an acceptable accuracy rating for IDWR's guidelines. However, some types and designs are much more prone to maintenance problems. Moving parts tend to wear when sand or silt is present, and moss often plugs small orifices and slows moving parts. No single flowmeter is best for every situation. We recommend that you visit with qualified dealers and discuss your needs with them.

A. Minimum Standards

The following are minimum standards for closed conduit flowmeters:

- Minimum manufacturers' design accuracy of +/- 2 percent of reading
- Installed accuracy of at least +/- 10 percent of reading
- Meter must be calibrated with an independent, secondary measuring device when installed, and at least once every four years thereafter
- Must read instantaneous flow or be capable of flow rate calculation
- Must record total volume
- Non-volatile memory (power outage does not zero volume reading)
- Sufficient digits to assure "roll-over" to zero does not occur within 2 years
- Volume reading cannot be "reset" to zero
- Installed to manufacturers' specifications

Meter manufacturers typically specify that a meter must be located in a section of straight pipe at least 10 pipe diameters downstream and 5 pipe diameters upstream of any valves, bends, contractions, or other interferences which will distort the flow pattern. However, some types of meters will produce acceptable results when installed in shorter sections of straight pipe. For example, at least one electro-magnetic flowmeter provides excellent measurement accuracy with only 5 lengths of straight pipe upstream from the meter.

Each manufacturer should provide the installation specifications for its meters. These **specifications must be adhered to** in order to achieve the accuracy required for the water measurement program. Again, we stress the importance of visiting with a qualified dealer and discussing your specific needs with them.

B. Types of Measuring Devices

Types	Pipe Sizes	Maintenance Required	Relative Purchase Price
Differential Head ● Orifice ● Venturi ● Annubar	small to large	Low to high. Sand wears on sharp edges, and particles can plug small orifices and tubes.	low to medium
Force Velocity ● Turbine ● Propeller ● Impeller	small to large	Typically moderate to high. Often problematic when exposed to sand or moss. Some cannot measure low velocities	low to medium
Ultrasonic	small to large	Low. Typically non-invasive with no moving parts to wear	high
Vortex	small to medium (about 12 to 14 inch maximum pipe diameter)	Low. Few or no moving parts to wear.	high
Electro-Magnetic	small to medium (about 12 to 14 inch maximum pipe diameter)	Low. No moving parts. Can provide good results with shorter lengths of straight pipe.	high

II. Power Records

An alternative to installing flowmeters is the use of power records and other information to estimate the annual diversion from a pump. This method, which we call the Power Consumption Coefficient (PCC) method, utilizes information obtained from the pumping plant while running at or near full capacity. Two parameters are measured while the pump is operating: flow rate and input power.

With this information, one can calculate the number of kilowatt-hours required to pump one acre foot of water. This number is unique to each well and pumping plant due to the physical attributes of the system.

To determine the rate of flow, a portable measuring device, such as an ultrasonic non-invasive meter or a differential head device, can be used. Simultaneous with the flow measurement, power is measured using the utility's kilowatt-hour meter. A qualified individual with the necessary equipment will be required to perform these measurements. If your system is operating when the Department examines it after proof of beneficial use is filed, the Department will derive this relationship. Otherwise, you may have to hire a private consultant to make the measurements in subsequent years.

With the power consumption coefficient, an annual volume of water pumped can be calculated from the total annual kilowatt-hours of energy consumed by the pumping plant. The total power usage for each pumping plant will be supplied to the Department by electric utilities.

Some complex systems cannot use this method due to the potential for large errors. See the discussion on page 5 to see if this method can be used.

Because systems wear and water levels change, it is necessary to occasionally verify the flow to power ratio. Therefore, the power consumption coefficient must be re-calibrated at least once every four years.

III. Water Level Measurements

All ground water pumpers will be required to make certain water level measurements. These measurements will be used by the Department and other groups to study and define aquifer characteristics. They include:

- measure and record the depth to water in the well (pump off) prior to the first diversion of the irrigation season
- measure and record the depth to water in the well with the pump operating and the system stabilized. This measurement should be made early in the season, preferably within days of turning on for the first time.

IV. Reporting

For irrigation, all ground water measuring devices should be read and readings recorded prior to the first diversion of the season (around April 1), at least once per month during the irrigation season, and at the end of the irrigation season. Non-irrigation users should begin measuring within 56 days of receiving measurement information.

When power records are used to estimate the diversion, it may be necessary to keep a daily record of pump operation. This will usually only be necessary when the pump's flow rate changes significantly due to operational or other changes. For example, operation of multiple pivots, using fewer lines, booster pumps, throttling, etc. will usually cause dramatic changes in the flow.

All records of measurements and readings shall be submitted to the Department after the last diversion of the irrigation season, and no later than January 15th of the following year.

Can power records be used to estimate my diversion?

Only irrigation water users may use power records to estimate their diversion because the utilities will only provide consumption information for irrigation uses. If you are not an irrigation user, but want to use power records, you must propose a method of reporting your power consumption data.

Owners of **surface water diversions** must have a flow measuring device in most cases. The alternate method of estimating water withdrawals with power records cannot be used unless you pump from a public water source and can show the Department that it will yield reliable results (case by case determination).

Owners of **ground water diversions** can either install a totalizing flowmeter or ask the Department to use power records to estimate withdrawals. If the pump discharges to an open channel, an open channel measuring device can be employed to measure the water diverted if the device and a method of tracking hours of operation are pre-approved by the Department. Flow meters which register only instantaneous flow rate are not acceptable unless the water user can demonstrate a reliable method of tracking the number of hours the pump operates through the season (the flow measuring device must then be read and flow rate recorded at least once per week).

Estimating total water diversion from power records requires the derivation of a relationship between power demand and flow. Flow rate and power demand must be measured simultaneously to determine the number of kilowatt hours needed to pump an acre foot of water. This relationship, called a power consumption coefficient, is applied to the year end power records to determine the total acre feet diverted.

The total water diverted can be accurately estimated if the system configuration or operation is not complex. Unfortunately, power records will not always yield acceptable results, and it will be necessary to install a flowmeter. **Flowmeters must be installed** if any of the following conditions exist:

- The well flows (artesian) so that water can be diverted when the pump is off.
- The energy consumption meter that records power used by the pump also records power used by other devices not integral to the irrigation system. For example, if the meter also records power used by a home, shop, cellar, etc., a flowmeter must be installed because power used by the pump cannot be isolated from the other devices. However, if the meter also records power used by center pivots, booster pumps, or other devices which operate when the main pump operates, the alternate method may be acceptable.
- The energy consumption meter records the power used by more than one well pump. If a deep well pump which discharges to an open pond or ditch and a relift pump are both connected to the same electrical meter, the discharge from the well pump can be measured, and a time clock can be installed to record the total number of hours of pump operation which can be multiplied by the flow rate to determine the total volume of water diverted.
- The energy supplied to the pump cannot be accurately and reliably measured. For example, most diesel and propane driven pumps do not have provisions to measure the fuel used by the engine. These will be reviewed one case-by-case basis.
- The flow rate from the pump varies significantly due to changes in demand or operation. For example, pumps that discharge into a pressurized system some times and then open discharge at other times, or pumps that supply multiple pivots, would likely have flow rates that changed drastically. These changes would alter the flow to power ratio, causing inaccurate estimates of diversions. The alternate method of estimating water withdrawals with power records may only be used if the water user can propose an acceptable method of tracking these changes in operation.
- Changing water levels cause the flow to vary more than 25% (or pressures to vary more than 15%) over the irrigation season.

Should I use a flowmeter or power records?

If, after determining that you may use the alternate method of estimating your annual diversion with power records, but you are not sure which method would be best for you, the following may help you decide: If you choose to **INSTALL or use an existing FLOWMETER**, you will need to:

- Install a flow meter prior to the first diversion of the irrigation season. Estimated cost for a new meter is from \$800 to \$5,000 or more, depending on the size and type of meter, the complexity of the piping system, and the availability of straight, exposed pipe.
- All flowmeters must be calibrated before use, and at least once every four years thereafter. This may be a service provided by private consultants, utilities, irrigation districts, or other entities which can verify the accuracy of your flowmeter.
- Record the total flow reading indicated on the flowmeter several times throughout the season. Estimated time involved is about 1 to 3 hours per diversion per year.

If you choose to **USE POWER RECORDS** to estimate your diversion, you will need to:

- Submit maps and a schematic drawing of the wellhead and associated piping to the Department, which will be evaluated to determine whether power records can be used. If acceptable, you must sign an agreement with the Department.
- Have an approved consultant establish the relationship between flow and power for each diversion at least once every four years. The Department will do this work at the time your use is examined for proof of beneficial use if your system is running.
- Record the utility meter identification number (the identification number on the face of the utility's meter which records the quantity of energy supplied to the pump) prior to and after diverting for the season (around April 1 and November 1). This is necessary because utilities regularly change meters, and this change may affect the power to flow ratio.
- Keep a daily record of pump operation. This will usually only be necessary when the pump's flow rate changes significantly due to operational or other changes. The amount of time necessary to keep these records will be proportional to the number of changes made to the system.
- Measure and record the pressure in the piping system, near the pump's discharge once a month during the irrigation season

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**IDAPA 37
TITLE 03
CHAPTER 11**

**37.03.11 - RULES FOR CONJUNCTIVE MANAGEMENT OF SURFACE
AND GROUND WATER RESOURCES**

000. LEGAL AUTHORITY (RULE 0).

These rules are promulgated pursuant to Chapter 52, Title 67, Idaho Code, the Idaho Administrative Procedure Act, and Section 42-603, Idaho Code, which provides that the Director of the Department of Water Resources is authorized to adopt rules and regulations for the distribution of water from the streams, rivers, lakes, ground water and other natural water sources as shall be necessary to carry out the laws in accordance with the priorities of the rights of the users thereof. These rules are also issued pursuant to Section 42-1805(8), Idaho Code, which provides the Director with authority to promulgate rules implementing or effectuating the powers and duties of the department. (10-7-94)

001. TITLE AND SCOPE (RULE 1).

These rules may be cited as “Rules for Conjunctive Management of Surface and Ground Water Resources”. The rules prescribe procedures for responding to a delivery call made by the holder of a senior-priority surface or ground water right against the holder of a junior-priority ground water right in an area having a common ground water supply. It is intended that these rules be incorporated into general rules governing water distribution in Idaho when such rules are adopted subsequently. (10-7-94)

002. WRITTEN INTERPRETATIONS (RULE 2).

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, the Department of Water Resources does not have written statements that pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. (10-7-94)

003. ADMINISTRATIVE APPEALS (RULE 3).

Appeals may be taken pursuant to Section 42-1701A, Idaho Code, and the department’s Rules of Procedure, IDAPA 37.01.01. (10-7-94)

004. SEVERABILITY (RULE 4).

The rules governing this chapter are severable. If any rule, or part thereof, or the application of such rule to any person or circumstance is declared invalid, that invalidity does not affect the validity of any remaining portion of this chapter. (10-7-94)

005. OTHER AUTHORITIES REMAIN APPLICABLE (RULE 5).

Nothing in these rules shall limit the Director’s authority to take alternative or additional actions relating to the management of water resources as provided by Idaho law. (10-7-94)

006. -- 009. (RESERVED).

010. DEFINITIONS (RULE 10).

For the purposes of these rules, the following terms will be used as defined below. (10-7-94)

01. Area Having A Common Ground Water Supply. A ground water source within which the diversion and use of ground water or changes in ground water recharge affect the flow of water in a surface water source or within which the diversion and use of water by a holder of a ground water right affects the ground water supply available to the holders of other ground water rights. (Section 42-237a.g., Idaho Code) (10-7-94)

02. Artificial Ground Water Recharge. A deliberate and purposeful activity or project that is performed in accordance with Section 42-234(2), Idaho Code, and that diverts, distributes, injects, stores or spreads water to areas from which such water will enter into and recharge a ground water source in an area having a common ground water supply. (10-7-94)

03. Conjunctive Management. Legal and hydrologic integration of administration of the diversion and use of water under water rights from surface and ground water sources, including areas having a common ground

water supply. (10-7-94)

04. Delivery Call. A request from the holder of a water right for administration of water rights under the prior appropriation doctrine. (10-7-94)

05. Department. The Department of Water Resources created by Section 42-1701, Idaho Code. (10-7-94)

06. Director. The Director of the Department of Water Resources appointed as provided by Section 42-1801, Idaho Code, or an employee, hearing officer or other appointee of the Department who has been delegated to act for the Director as provided by Section 42-1701, Idaho Code. (10-7-94)

07. Full Economic Development Of Underground Water Resources. The diversion and use of water from a ground water source for beneficial uses in the public interest at a rate that does not exceed the reasonably anticipated average rate of future natural recharge, in a manner that does not result in material injury to senior-priority surface or ground water rights, and that furthers the principle of reasonable use of surface and ground water as set forth in Rule 42. (10-7-94)

08. Futile Call. A delivery call made by the holder of a senior-priority surface or ground water right that, for physical and hydrologic reasons, cannot be satisfied within a reasonable time of the call by immediately curtailing diversions under junior-priority ground water rights or that would result in waste of the water resource. (10-7-94)

09. Ground Water Management Area. Any ground water basin or designated part thereof as designated by the Director pursuant to Section 42-233(b), Idaho Code. (10-7-94)

10. Ground Water. Water under the surface of the ground whatever may be the geological structure in which it is standing or moving as provided in Section 42-230(a), Idaho Code. (10-7-94)

11. Holder Of A Water Right. The legal or beneficial owner or user pursuant to lease or contract of a right to divert or to protect in place surface or ground water of the state for a beneficial use or purpose. (10-7-94)

12. Idaho Law. The constitution, statutes, administrative rules and case law of Idaho. (10-7-94)

13. Junior-Priority. A water right priority date later in time than the priority date of other water rights being considered. (10-7-94)

14. Material Injury. Hindrance to or impact upon the exercise of a water right caused by the use of water by another person as determined in accordance with Idaho Law, as set forth in Rule 42. (10-7-94)

15. Mitigation Plan. A document submitted by the holder(s) of a junior-priority ground water right and approved by the Director as provided in Rule 043 that identifies actions and measures to prevent, or compensate holders of senior-priority water rights for, material injury caused by the diversion and use of water by the holders of junior-priority ground water rights within an area having a common ground water supply. (10-7-94)

16. Person. Any individual, partnership, corporation, association, governmental subdivision or agency, or public or private organization or entity of any character. (10-7-94)

17. Petitioner. Person who asks the Department to initiate a contested case or to otherwise take action that will result in the issuance of an order or rule. (10-7-94)

18. Reasonable Ground Water Pumping Level. A level established by the Director pursuant to Sections 42-226, and 42-237a.g., Idaho Code, either generally for an area or aquifer or for individual water rights on a case-by-case basis, for the purpose of protecting the holders of senior-priority ground water rights against unreasonable lowering of ground water levels caused by diversion and use of surface or ground water by the holders of junior-priority surface or ground water rights under Idaho law. (10-7-94)

19. Reasonably Anticipated Average Rate Of Future Natural Recharge. The estimated average annual volume of water recharged to an area having a common ground water supply from precipitation, underflow from tributary sources, and stream losses and also water incidentally recharged to an area having a common ground water supply as a result of the diversion and use of water for irrigation and other purposes. The estimate will be based on available data regarding conditions of diversion and use of water existing at the time the estimate is made and may vary as these conditions and available information change. (10-7-94)

20. Respondent. Persons against whom complaints or petitions are filed or about whom investigations are initiated. (10-7-94)

21. Senior-Priority. A water right priority date earlier in time than the priority dates of other water rights being considered. (10-7-94)

22. Surface Water. Rivers, streams, lakes and springs when flowing in their natural channels as provided in Sections 42-101 and 42-103, Idaho Code. (10-7-94)

23. Water District. An instrumentality of the state of Idaho created by the Director as provided in Section 42-604, Idaho Code, for the purpose of performing the essential governmental function of distribution of water among appropriators under Idaho law. (10-7-94)

24. Watermaster. A person elected and appointed as provided in Section 42-605, and Section 42-801, Idaho Code, to distribute water within a water district. (10-7-94)

25. Water Right. The legal right to divert and use or to protect in place the public waters of the state of Idaho where such right is evidenced by a decree, a permit or license issued by the Department, a beneficial or constitutional use right or a right based on federal law. (10-7-94)

011. -- 019. (RESERVED).

020. GENERAL STATEMENTS OF PURPOSE AND POLICIES FOR CONJUNCTIVE MANAGEMENT OF SURFACE AND GROUND WATER RESOURCES (RULE 20).

01. Distribution Of Water Among The Holders Of Senior And Junior-Priority Rights. These rules apply to all situations in the state where the diversion and use of water under junior-priority ground water rights either individually or collectively causes material injury to uses of water under senior-priority water rights. The rules govern the distribution of water from ground water sources and areas having a common ground water supply. (10-7-94)

02. Prior Appropriation Doctrine. These rules acknowledge all elements of the prior appropriation doctrine as established by Idaho law. (10-7-94)

03. Reasonable Use Of Surface And Ground Water. These rules integrate the administration and use of surface and ground water in a manner consistent with the traditional policy of reasonable use of both surface and ground water. The policy of reasonable use includes the concepts of priority in time and superiority in right being subject to conditions of reasonable use as the legislature may by law prescribe as provided in Article XV, Section 5, Idaho Constitution, optimum development of water resources in the public interest prescribed in Article XV, Section 7, Idaho Constitution, and full economic development as defined by Idaho law. An appropriator is not entitled to command the entirety of large volumes of water in a surface or ground water source to support his appropriation contrary to the public policy of reasonable use of water as described in this rule. (10-7-94)

04. Delivery Calls. These rules provide the basis and procedure for responding to delivery calls made by the holder of a senior-priority surface or ground water right against the holder of a junior-priority ground water right. The principle of the futile call applies to the distribution of water under these rules. Although a call may be denied under the futile call doctrine, these rules may require mitigation or staged or phased curtailment of a junior-priority use if diversion and use of water by the holder of the junior-priority water right causes material injury, even though not immediately measurable, to the holder of a senior-priority surface or ground water right in instances where the hydrologic connection may be remote, the resource is large and no direct immediate relief would be achieved if the junior-priority water use was discontinued. (10-7-94)

05. Exercise Of Water Rights. These rules provide the basis for determining the reasonableness of the diversion and use of water by both the holder of a senior-priority water right who requests priority delivery and the holder of a junior-priority water right against whom the call is made. (10-7-94)

06. Areas Having A Common Ground Water Supply. These rules provide the basis for the designation of areas of the state that have a common ground water supply and the procedures that will be followed in incorporating the water rights within such areas into existing water districts or creating new districts as provided in Section 42-237a.g., and Section 42-604, Idaho Code, or designating such areas as ground water management areas as provided in Section 42-233(b), Idaho Code. (10-7-94)

07. Sequence Of Actions For Responding To Delivery Calls. Rule 30 provides procedures for responding to delivery calls within areas having a common ground water supply that have not been incorporated into an existing or new water district or designated a ground water management area. Rule 40 provides procedures for responding to delivery calls within water districts where areas having a common ground water supply have been incorporated into the district or a new district has been created. Rule 41 provides procedures for responding to delivery calls within areas that have been designated as ground water management areas. Rule 50 designates specific known areas having a common ground water supply within the state. (10-7-94)

08. Reasonably Anticipated Average Rate Of Future Natural Recharge. These rules provide for administration of the use of ground water resources to achieve the goal that withdrawals of ground water not exceed the reasonably anticipated average rate of future natural recharge. (Section 42-237a.g., Idaho Code) (10-7-94)

09. Saving Of Defenses. Nothing in these rules shall affect or in any way limit any person's entitlement to assert any defense or claim based upon fact or law in any contested case or other proceeding. (10-7-94)

10. Wells As Alternate Or Changed Points Of Diversion For Water Rights From A Surface Water Source. Nothing in these rules shall prohibit any holder of a water right from a surface water source from seeking, pursuant to Idaho law, to change the point of diversion of the water to an inter-connected area having a common ground water supply. (10-7-94)

11. Domestic And Stock Watering Ground Water Rights Exempt. A delivery call shall not be effective against any ground water right used for domestic purposes regardless of priority date where such domestic use is within the limits of the definition set forth in Section 42-111, Idaho Code, nor against any ground water right used for stock watering where such stock watering use is within the limits of the definition set forth in Section 42-1401A(12), Idaho Code; provided, however, this exemption shall not prohibit the holder of a water right for domestic or stock watering uses from making a delivery call, including a delivery call against the holders of other domestic or stockwatering rights, where the holder of such right is suffering material injury. (10-7-94)

021. -- 029. (RESERVED).

030. RESPONSES TO CALLS FOR WATER DELIVERY MADE BY THE HOLDERS OF SENIOR-PRIORITY SURFACE OR GROUND WATER RIGHTS AGAINST THE HOLDERS OF JUNIOR-PRIORITY GROUND WATER RIGHTS WITHIN AREAS OF THE STATE NOT IN ORGANIZED WATER DISTRICTS OR WITHIN WATER DISTRICTS WHERE GROUND WATER REGULATION HAS NOT BEEN INCLUDED IN THE FUNCTIONS OF SUCH DISTRICTS OR WITHIN AREAS THAT HAVE NOT BEEN DESIGNATED GROUND WATER MANAGEMENT AREAS (RULE 30).

01. Delivery Call (Petition). When a delivery call is made by the holder of a surface or ground water right (petitioner) alleging that by reason of diversion of water by the holders of one (1) or more junior-priority ground water rights (respondents) the petitioner is suffering material injury, the petitioner shall file with the Director a petition in writing containing, at least, the following in addition to the information required by IDAPA 37.01.01, "Rules of Procedure of the Department of Water Resources," Rule 230: (10-7-94)

a. A description of the water rights of the petitioner including a listing of the decree, license, permit, claim or other documentation of such right, the water diversion and delivery system being used by petitioner and the beneficial use being made of the water. (10-7-94)

b. The names, addresses and description of the water rights of the ground water users (respondents) who are alleged to be causing material injury to the rights of the petitioner in so far as such information is known by the petitioner or can be reasonably determined by a search of public records. (10-7-94)

c. All information, measurements, data or study results available to the petitioner to support the claim of material injury. (10-7-94)

d. A description of the area having a common ground water supply within which petitioner desires junior-priority ground water diversion and use to be regulated. (10-7-94)

02. Contested Case. The Department will consider the matter as a petition for contested case under the Department's Rules of Procedure, IDAPA 37.01.01. The petitioner shall serve the petition upon all known respondents as required by IDAPA 37.01.01, "Rules of Procedure of the Department of Water Resources," Rule 203. In addition to such direct service by petitioner, the Department will give such general notice by publication or news release as will advise ground water users within the petitioned area of the matter. (10-7-94)

03. Informal Resolution. The Department may initially consider the contested case for informal resolution under the provisions of Section 67-5241, Idaho Code, if doing so will expedite the case without prejudicing the interests of any party. (10-7-94)

04. Petition For Modification Of An Existing Water District. In the event the petition proposes regulation of ground water rights conjunctively with surface water rights in an organized water district, and the water rights have been adjudicated, the Department may consider such to be a petition for modification of the organized water district and notice of proposed modification of the water district shall be provided by the Director pursuant to Section 42-604, Idaho Code. The Department will proceed to consider the matter addressed by the petition under the Department's Rules of Procedure. (10-7-94)

05. Petition For Creation Of A New Water District. In the event the petition proposes regulation of ground water rights from a ground water source or conjunctively with surface water rights within an area having a common ground water supply which is not in an existing water district, and the water rights have been adjudicated, the Department may consider such to be a petition for creation of a new water district and notice of proposed creation of a water district shall be provided by the Director pursuant to Section 42-604, Idaho Code. The Department will proceed to consider the matter under the Department's Rules of Procedure. (10-7-94)

06. Petition For Designation Of A Ground Water Management Area. In the event the petition proposes regulation of ground water rights from an area having a common ground water supply within which the water rights have not been adjudicated, the Department may consider such to be a petition for designation of a ground water management area pursuant to Section 42-233(b), Idaho Code. The Department will proceed to consider the matter under the Department's Rules of Procedure. (10-7-94)

07. Order. Following consideration of the contested case under the Department's Rules of Procedure, the Director may, by order, take any or all of the following actions: (10-7-94)

a. Deny the petition in whole or in part; (10-7-94)

b. Grant the petition in whole or in part or upon conditions; (10-7-94)

c. Determine an area having a common ground water supply which affects the flow of water in a surface water source in an organized water district; (10-7-94)

d. Incorporate an area having a common ground water supply into an organized water district following the procedures of Section 42-604, Idaho Code, provided that the ground water rights that would be incorporated into the water district have been adjudicated relative to the rights already encompassed within the district; (10-7-94)

e. Create a new water district following the procedures of Section 42-604, Idaho Code, provided that

the water rights to be included in the new water district have been adjudicated; (10-7-94)

f. Determine the need for an adjudication of the priorities and permissible rates and volumes of diversion and consumptive use under the surface and ground water rights of the petitioner and respondents and initiate such adjudication pursuant to Section 42-1406, Idaho Code; (10-7-94)

g. By summary order as provided in Section 42-237 a.g., Idaho Code, prohibit or limit the withdrawal of water from any well during any period it is determined that water to fill any water right is not there available without causing ground water levels to be drawn below the reasonable ground water pumping level, or would affect the present or future use of any prior surface or ground water right or result in the withdrawing of the ground water supply at a rate beyond the reasonably anticipated average rate of future natural recharge. The Director will take into consideration the existence of any approved mitigation plan before issuing any order prohibiting or limiting withdrawal of water from any well; or (10-7-94)

h. Designate a ground water management area under the provisions of Section 42-233(b), Idaho Code, if it appears that administration of the diversion and use of water from an area having a common ground water supply is required because the ground water supply is insufficient to meet the demands of water rights or the diversion and use of water is at a rate beyond the reasonably anticipated average rate of future natural recharge and modification of an existing water district or creation of a new water district cannot be readily accomplished due to the need to first obtain an adjudication of the water rights. (10-7-94)

08. Orders For Interim Administration. For the purposes of Rule Subsections 030.07.d. and 030.07.e., an outstanding order for interim administration of water rights issued by the court pursuant to Section 42-1417, Idaho Code, in a general adjudication proceeding shall be considered as an adjudication of the water rights involved. (10-7-94)

09. Administration Pursuant To Rule 40. Upon a finding of an area of common ground water supply and upon the incorporation of such area into an organized water district, or the creation of a new water district, the use of water shall be administered in accordance with the priorities of the various water rights as provided in Rule 40. (10-7-94)

10. Administration Pursuant To Rule 41. Upon the designation of a ground water management area, the diversion and use of water within such area shall be administered in accordance with the priorities of the various water rights as provided in Rule 41. (10-7-94)

031. DETERMINING AREAS HAVING A COMMON GROUND WATER SUPPLY (RULE 31).

01. Director To Consider Information. The Director will consider all available data and information that describes the relationship between ground water and surface water in making a finding of an area of common ground water supply. (10-7-94)

02. Kinds Of Information. The information considered may include, but is not limited to, any or all of the following: (10-7-94)

a. Water level measurements, studies, reports, computer simulations, pumping tests, hydrographs of stream flow and ground water levels and other such data; and (10-7-94)

b. The testimony and opinion of expert witnesses at a hearing on a petition for expansion of a water district or organization of a new water district or designation of a ground water management area. (10-7-94)

03. Criteria For Findings. A ground water source will be determined to be an area having a common ground water supply if: (10-7-94)

a. The ground water source supplies water to or receives water from a surface water source; or (10-7-94)

b. Diversion and use of water from the ground water source will cause water to move from the surface

water source to the ground water source. (10-7-94)

c. Diversion and use of water from the ground water source has an impact upon the ground water supply available to other persons who divert and use water from the same ground water source. (10-7-94)

04. Reasonably Anticipated Average Rate Of Future Natural Recharge. The Director will estimate the reasonably anticipated average rate of future natural recharge for an area having a common ground water supply. Such estimates will be made and updated periodically as new data and information are available and conditions of diversion and use change. (10-7-94)

05. Findings. The findings of the Director shall be included in the Order issued pursuant to Rule Subsection 030.07. (10-7-94)

032. -- 039. (RESERVED).

040. RESPONSES TO CALLS FOR WATER DELIVERY MADE BY THE HOLDERS OF SENIOR-PRIORITY SURFACE OR GROUND WATER RIGHTS AGAINST THE HOLDERS OF JUNIOR-PRIORITY GROUND WATER RIGHTS FROM AREAS HAVING A COMMON GROUND WATER SUPPLY IN AN ORGANIZED WATER DISTRICT (RULE 40).

01. Responding To A Delivery Call. When a delivery call is made by the holder of a senior-priority water right (petitioner) alleging that by reason of diversion of water by the holders of one (1) or more junior-priority ground water rights (respondents) from an area having a common ground water supply in an organized water district the petitioner is suffering material injury, and upon a finding by the Director as provided in Rule 42 that material injury is occurring, the Director, through the watermaster, shall: (10-7-94)

a. Regulate the diversion and use of water in accordance with the priorities of rights of the various surface or ground water users whose rights are included within the district, provided, that regulation of junior-priority ground water diversion and use where the material injury is delayed or long range may, by order of the Director, be phased-in over not more than a five-year (5) period to lessen the economic impact of immediate and complete curtailment; or (10-7-94)

b. Allow out-of-priority diversion of water by junior-priority ground water users pursuant to a mitigation plan that has been approved by the Director. (10-7-94)

02. Regulation Of Uses Of Water By Watermaster. The Director, through the watermaster, shall regulate use of water within the water district pursuant to Idaho law and the priorities of water rights as provided in Section 42-604, Idaho Code, and under the following procedures: (10-7-94)

a. The watermaster shall determine the quantity of surface water of any stream included within the water district which is available for diversion and shall shut the headgates of the holders of junior-priority surface water rights as necessary to assure that water is being diverted and used in accordance with the priorities of the respective water rights from the surface water source. (10-7-94)

b. The watermaster shall regulate the diversion and use of ground water in accordance with the rights thereto, approved mitigation plans and orders issued by the Director. (10-7-94)

c. Where a call is made by the holder of a senior-priority water right against the holder of a junior-priority ground water right in the water district the watermaster shall first determine whether a mitigation plan has been approved by the Director whereby diversion of ground water may be allowed to continue out of priority order. If the holder of a junior-priority ground water right is a participant in such approved mitigation plan, and is operating in conformance therewith, the watermaster shall allow the ground water use to continue out of priority. (10-7-94)

d. The watermaster shall maintain records of the diversions of water by surface and ground water users within the water district and records of water provided and other compensation supplied under the approved mitigation plan which shall be compiled into the annual report which is required by Section 42-606, Idaho Code. (10-7-94)

e. Under the direction of the Department, watermasters of separate water districts shall cooperate and reciprocate in assisting each other in assuring that diversion and use of water under water rights is administered in a manner to assure protection of senior-priority water rights provided the relative priorities of the water rights within the separate water districts have been adjudicated. (10-7-94)

03. Reasonable Exercise Of Rights. In determining whether diversion and use of water under rights will be regulated under Rule Subsection 040.01.a. or 040.01.b., the Director shall consider whether the petitioner making the delivery call is suffering material injury to a senior-priority water right and is diverting and using water efficiently and without waste, and in a manner consistent with the goal of reasonable use of surface and ground waters as described in Rule 42. The Director will also consider whether the respondent junior-priority water right holder is using water efficiently and without waste. (10-7-94)

04. Actions Of The Watermaster Under A Mitigation Plan. Where a mitigation plan has been approved as provided in Rule 42, the watermaster may permit the diversion and use of ground water to continue out of priority order within the water district provided the holder of the junior-priority ground water right operates in accordance with such approved mitigation plan. (10-7-94)

05. Curtailment Of Use Where Diversions Not In Accord With Mitigation Plan Or Mitigation Plan Is Not Effective. Where a mitigation plan has been approved and the junior-priority ground water user fails to operate in accordance with such approved plan or the plan fails to mitigate the material injury resulting from diversion and use of water by holders of junior-priority water rights, the watermaster will notify the Director who will immediately issue cease and desist orders and direct the watermaster to terminate the out-of-priority use of ground water rights otherwise benefiting from such plan or take such other actions as provided in the mitigation plan to ensure protection of senior-priority water rights. (10-7-94)

06. Collection Of Assessments Within Water District. Where a mitigation plan has been approved, the watermaster of the water district shall include the costs of administration of the plan within the proposed annual operation budget of the district; and, upon approval by the water users at the annual water district meeting, the water district shall provide for the collection of assessment of ground water users as provided by the plan, collect the assessments and expend funds for the operation of the plan; and the watermaster shall maintain records of the volumes of water or other compensation made available by the plan and the disposition of such water or other compensation. (10-7-94)

041. ADMINISTRATION OF DIVERSION AND USE OF WATER WITHIN A GROUND WATER MANAGEMENT AREA (RULE 41).

01. Responding To A Delivery Call. When a delivery call is made by the holder of a senior-priority ground water right against holders of junior-priority ground water rights in a designated ground water management area alleging that the ground water supply is insufficient to meet the demands of water rights within all or portions of the ground water management area and requesting the Director to order water right holders, on a time priority basis, to cease or reduce withdrawal of water, the Director shall proceed as follows: (10-7-94)

a. The petitioner shall be required to submit all information available to petitioner on which the claim is based that the water supply is insufficient. (10-7-94)

b. The Director shall conduct a fact-finding hearing on the petition at which the petitioner and respondents may present evidence on the water supply, and the diversion and use of water from the ground water management area. (10-7-94)

02. Order. Following the hearing, the Director may take any or all of the following actions: (10-7-94)

a. Deny the petition in whole or in part; (10-7-94)

b. Grant the petition in whole or in part or upon conditions; (10-7-94)

c. Find that the water supply of the ground water management area is insufficient to meet the

demands of water rights within all or portions of the ground water management area and order water right holders on a time priority basis to cease or reduce withdrawal of water, provided that the Director shall consider the expected benefits of an approved mitigation plan in making such finding. (10-7-94)

d. Require the installation of measuring devices and the reporting of water diversions pursuant to Section 42-701, Idaho Code. (10-7-94)

03. Date And Effect Of Order. Any order to cease or reduce withdrawal of water will be issued prior to September 1 and shall be effective for the growing season during the year following the date the order is given and until such order is revoked or modified by further order of the Director. (10-7-94)

04. Preparation Of Water Right Priority Schedule. For the purposes of the Order provided in Rule Subsections 041.02 and 041.03, the Director will utilize all available water right records, claims, permits, licenses and decrees to prepare a water right priority schedule. (10-7-94)

042. DETERMINING MATERIAL INJURY AND REASONABLENESS OF WATER DIVERSIONS (RULE 42)

01. Factors. Factors the Director may consider in determining whether the holders of water rights are suffering material injury and using water efficiently and without waste include, but are not limited to, the following: (10-7-94)

a. The amount of water available in the source from which the water right is diverted. (10-7-94)

b. The effort or expense of the holder of the water right to divert water from the source. (10-7-94)

c. Whether the exercise of junior-priority ground water rights individually or collectively affects the quantity and timing of when water is available to, and the cost of exercising, a senior-priority surface or ground water right. This may include the seasonal as well as the multi-year and cumulative impacts of all ground water withdrawals from the area having a common ground water supply. (10-7-94)

d. If for irrigation, the rate of diversion compared to the acreage of land served, the annual volume of water diverted, the system diversion and conveyance efficiency, and the method of irrigation water application. (10-7-94)

e. The amount of water being diverted and used compared to the water rights. (10-7-94)

f. The existence of water measuring and recording devices. (10-7-94)

g. The extent to which the requirements of the holder of a senior-priority water right could be met with the user's existing facilities and water supplies by employing reasonable diversion and conveyance efficiency and conservation practices; provided, however, the holder of a surface water storage right shall be entitled to maintain a reasonable amount of carry-over storage to assure water supplies for future dry years. In determining a reasonable amount of carry-over storage water, the Director shall consider the average annual rate of fill of storage reservoirs and the average annual carry-over for prior comparable water conditions and the projected water supply for the system. (10-7-94)

h. The extent to which the requirements of the senior-priority surface water right could be met using alternate reasonable means of diversion or alternate points of diversion, including the construction of wells or the use of existing wells to divert and use water from the area having a common ground water supply under the petitioner's surface water right priority. (10-7-94)

02. Delivery Call For Curtailment Of Pumping. The holder of a senior-priority surface or ground water right will be prevented from making a delivery call for curtailment of pumping of any well used by the holder of a junior-priority ground water right where use of water under the junior-priority right is covered by an approved and effectively operating mitigation plan.

(10-7-94)

043. MITIGATION PLANS (RULE 43).

01. Submission Of Mitigation Plans. A proposed mitigation plan shall be submitted to the Director in writing and shall contain the following information: (10-7-94)

a. The name and mailing address of the person or persons submitting the plan. (10-7-94)

b. Identification of the water rights for which benefit the mitigation plan is proposed. (10-7-94)

c. A description of the plan setting forth the water supplies proposed to be used for mitigation and any circumstances or limitations on the availability of such supplies. (10-7-94)

d. Such information as shall allow the Director to evaluate the factors set forth in Rule Subsection 043.03. (10-7-94)

02. Notice And Hearing. Upon receipt of a proposed mitigation plan the Director will provide notice, hold a hearing as determined necessary, and consider the plan under the procedural provisions of Section 42-222, Idaho Code, in the same manner as applications to transfer water rights. (10-7-94)

03. Factors To Be Considered. Factors that may be considered by the Director in determining whether a proposed mitigation plan will prevent injury to senior rights include, but are not limited to, the following: (10-7-94)

a. Whether delivery, storage and use of water pursuant to the mitigation plan is in compliance with Idaho law. (10-7-94)

b. Whether the mitigation plan will provide replacement water, at the time and place required by the senior-priority water right, sufficient to offset the depletive effect of ground water withdrawal on the water available in the surface or ground water source at such time and place as necessary to satisfy the rights of diversion from the surface or ground water source. Consideration will be given to the history and seasonal availability of water for diversion so as not to require replacement water at times when the surface right historically has not received a full supply, such as during annual low-flow periods and extended drought periods. (10-7-94)

c. Whether the mitigation plan provides replacement water supplies or other appropriate compensation to the senior-priority water right when needed during a time of shortage even if the effect of pumping is spread over many years and will continue for years after pumping is curtailed. A mitigation plan may allow for multi-season accounting of ground water withdrawals and provide for replacement water to take advantage of variability in seasonal water supply. The mitigation plan must include contingency provisions to assure protection of the senior-priority right in the event the mitigation water source becomes unavailable. (10-7-94)

d. Whether the mitigation plan proposes artificial recharge of an area of common ground water supply as a means of protecting ground water pumping levels, compensating senior-priority water rights, or providing aquifer storage for exchange or other purposes related to the mitigation plan. (10-7-94)

e. Where a mitigation plan is based upon computer simulations and calculations, whether such plan uses generally accepted and appropriate engineering and hydrogeologic formulae for calculating the depletive effect of the ground water withdrawal. (10-7-94)

f. Whether the mitigation plan uses generally accepted and appropriate values for aquifer characteristics such as transmissivity, specific yield, and other relevant factors. (10-7-94)

g. Whether the mitigation plan reasonably calculates the consumptive use component of ground water diversion and use. (10-7-94)

h. The reliability of the source of replacement water over the term in which it is proposed to be used under the mitigation plan. (10-7-94)

i. Whether the mitigation plan proposes enlargement of the rate of diversion, seasonal quantity or time of diversion under any water right being proposed for use in the mitigation plan. (10-7-94)

j. Whether the mitigation plan is consistent with the conservation of water resources, the public interest or injures other water rights, or would result in the diversion and use of ground water at a rate beyond the reasonably anticipated average rate of future natural recharge. (10-7-94)

k. Whether the mitigation plan provides for monitoring and adjustment as necessary to protect senior-priority water rights from material injury. (10-7-94)

l. Whether the plan provides for mitigation of the effects of pumping of existing wells and the effects of pumping of any new wells which may be proposed to take water from the areas of common ground water supply. (10-7-94)

m. Whether the mitigation plan provides for future participation on an equitable basis by ground water pumpers who divert water under junior-priority rights but who do not initially participate in such mitigation plan. (10-7-94)

n. A mitigation plan may propose division of the area of common ground water supply into zones or segments for the purpose of consideration of local impacts, timing of depletions, and replacement supplies. (10-7-94)

o. Whether the petitioners and respondents have entered into an agreement on an acceptable mitigation plan even though such plan may not otherwise be fully in compliance with these provisions. (10-7-94)

044. -- 049. (RESERVED).

050. AREAS DETERMINED TO HAVE A COMMON GROUND WATER SUPPLY (RULE 50).

01. Eastern Snake Plain Aquifer. The area of coverage of this rule is the aquifer underlying the Eastern Snake River Plain as the aquifer is defined in the report, Hydrology and Digital Simulation of the Regional Aquifer System, Eastern Snake River Plain, Idaho, USGS Professional Paper 1408-F, 1992 excluding areas south of the Snake River and west of the line separating Sections 34 and 35, Township 10 South, Range 20 East, Boise Meridian. (10-7-94)

a. The Eastern Snake Plain Aquifer supplies water to and receives water from the Snake River. (10-7-94)

b. The Eastern Snake Plain Aquifer is found to be an area having a common ground water supply. (10-7-94)

c. The reasonably anticipated average rate of future natural recharge of the Eastern Snake Plain Aquifer will be estimated in any order issued pursuant to Rule 30. (10-7-94)

d. The Eastern Snake Plain Aquifer area of common ground water supply will be created as a new water district or incorporated into an existing or expanded water district as provided in Section 42-604, Idaho Code, when the rights to the diversion and use of water from the aquifer have been adjudicated, or will be designated a ground water management area. (10-7-94)

051. -- 999. (RESERVED).

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**IDAPA 37
TITLE 03
CHAPTER 12**

**37.03.12 - IDAHO DEPARTMENT OF WATER RESOURCES WATER
DISTRIBUTION RULES - WATER DISTRICT 34**

000. LEGAL AUTHORITY (RULE 0).

The Idaho Department of Water Resources (IDWR) is authorized under Section 42-603, Idaho Code, to adopt rules for the distribution of water from the streams, rivers, lakes, ground water and other natural water sources. (10-26-94)

001. TITLE AND SCOPE (RULE 1).

These rules shall be cited in full as "Idaho Department of Water Resources Water Distribution Rules - Water District 34". This chapter contains the rules which shall govern the distribution of surface and ground water within Water District 34, the Big Lost River Basin, by the duly appointed watermaster pursuant to the provisions of Chapter 6, Title 42, Idaho Code, and applicable court decrees. This chapter shall not be construed to limit the authority of the Director of the Idaho Department of Water Resources in exercising the duties and responsibilities of the director or the department under other provisions of Idaho law. (10-26-94)

002. WRITTEN INTERPRETATIONS (RULE 2).

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency does not have written statements which pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. (10-26-94)

003. ADMINISTRATIVE APPEALS (RULE 3).

Appeals of actions and determinations by the director pursuant to the rules of this chapter may be taken in compliance with Section 42-1701A, Idaho Code, and the "Rules of Procedure of the Department of Water Resources," IDAPA 37.01.01. (10-26-94)

004. SEVERABILITY (RULE 4).

The rules governing this chapter are severable. If any rule, or part thereof, or the application of such rule to any person or circumstance is declared invalid, that invalidity does not affect the validity of any remaining portion of this chapter. (10-26-94)

005. -- 009. (RESERVED).

010. DEFINITIONS (RULE 10).

For the purposes of these rules, the following terms will be used as defined below. (10-26-94)

01. 2-B Gage. The U.S. Geological Survey gaging station located below Mackay Dam in the SW1/4SW1/4NE1/4, Section 18, Township 7 North, Range 24 East, B.M. (10-26-94)

02. Acre-Foot (AF). The unit commonly used to measure a volume of water which is equal to the amount of water to cover one (1) acre of land one (1) foot deep and is equal to forty-three thousand five hundred sixty (43,560) cubic feet or three hundred twenty-five thousand eight hundred fifty-one (325,851) gallons. (10-26-94)

03. Acre-Foot Per Year (AFY). Acre foot per calendar year. (10-26-94)

04. Arco Gage. The U.S. Geological Survey gaging station located near the town of Arco in the SW1/4SE1/4SW1/4, Section 17, Township 3 North, Range 27 East, B.M. (10-26-94)

05. Conjunctive Administration. When two (2) or more water sources are to be administered as a single water system, diversion pursuant to junior rights from one water source shall be regulated as provided by these rules to provide water to senior rights from the other water source. (10-26-94)

06. Cubic Foot Per Second (CFS). The unit used to express a rate of flow of water equal to fifty (50) miner's inches or about four hundred forty-eight and eight tenths (448.8) gallons per minute. (10-26-94)

07. Delivery Call. A request from the holder of a water right for administration of water rights under the prior appropriation doctrine. (10-26-94)

08. Director. The Director of the Idaho Department of Water Resources (IDWR) or the director's duly authorized designee. (10-26-94)

09. Eastside Canal. The Eastside Canal diverts from the east side of the Big Lost River in the NW1/4SE1/4SE1/4, Section 4, Township 5 North, Range 26 East, B.M. and extends southerly to the point it discharges back into the Big Lost River in the NW1/4NW1/4NW1/4, Section 26, Township 4 North, Range 26 East, B.M. (10-26-94)

10. Holder Of A Water Right. The legal owner or user pursuant to lease or contract of a right to divert or to protect in place surface or ground water of the state for a beneficial use or purpose. (10-26-94)

11. Howell Gage. The U.S. Geological Survey gaging station located above Mackay Reservoir in the SE1/4NE1/4NW1/4, Section 30, Township 8 North, Range 21 East, B.M. (10-26-94)

12. Rotation Credit. Water impounded in Mackay Reservoir pursuant to a water right whose source of water is the Big Lost River and which does not include storage as a purpose of use. The impoundment of water as rotation credit is described in Rule Subsection 040.02. (10-26-94)

13. Small Domestic And Stock Water Uses. Water uses meeting the definition of Section 42-111 or Section 42-1401A(12), Idaho Code. (10-26-94)

14. SRBA. The Snake River Basin Adjudication of water rights is Civil Case No. 39576 filed in the Fifth Judicial District Court of the State of Idaho in and for Twin Falls County on June 17, 1987 entitled In Re the General Adjudication of Rights to the Use of Water from the Snake River Basin Water System, which was commenced pursuant to Section 42-1406A, Idaho Code (1987). (10-26-94)

15. Storage Water. Water impounded in a storage facility, including Mackay Reservoir, pursuant to a water right which includes storage as a purpose of use. (10-26-94)

16. Watermaster. The duly elected and appointed state watermaster of Water District 34 who is authorized to perform duties pursuant to Chapters 6 and 8, Title 42, Idaho Code, and the decree, or order for interim administration, of water rights for Basin 34. (10-26-94)

011. -- 019. (RESERVED).

020. ADMINISTRATION OF SURFACE WATERS WITHIN BASIN 34 (RULE 20).

All surface waters of the Big Lost River and its tributaries shall be administered as a single water system, except as provided in Rule Subsections 020.01 through 020.04. (10-26-94)

01. Connected River. During the period May 1 through October 15 of each year, from the time the flow at the Howell Gage increases to or exceeds a flow of seven hundred fifty (750) CFS, until the time when the flow recedes to a flow of three hundred (300) CFS or less, all surface waters of the Big Lost River and its tributaries, except as listed in Rule Subsections 020.02 and 020.04, shall be administered as a single water source. At all other times natural flow surface water rights (other than water rights for storage purposes) with a point of diversion upstream from Mackay Reservoir shall be administered separately from the natural flow surface water rights with a point of diversion downstream from Mackay Reservoir. This provision is made under conditions existing as of the commencement of the SRBA (including diversions above the Howell Gage); if diversions are made from the Big Lost River or its tributaries above the Howell Gage pursuant to rights not existing as of the commencement of the SRBA, then the amounts diverted will be added to the amount of the flow at the Howell Gage for the purposes of applying this rule. (10-26-94)

02. Separate Surface Water Sources. The surface waters of the following streams have been administered as separate water sources pursuant to the Utah Construction v. Abbott Decree, Equity No. 222 (1925) and shall continue to be administered as separate from the surface waters of the Big Lost River pursuant to these

rules: Rock Springs Creek, Rock Creek, Bada Creek, Corral Creek, Sage Creek, Upper Cedar Creek, Lower Cedar Creek, Dry Creek (also known as Cedar Creek), Pete Creek, Willow Creek, Pinto Creek, Lehman Creek, Vance Creek (also known as Elkhorn Creek), Grant Creek and Hamilton Creek. (10-26-94)

03. The Back Channel. The Back Channel, which separates from the main channel of the Big Lost River in the NE1/4NE1/4, Section 5, Township 8 North, Range 22 East, B.M., shall be administered as part of the natural channel of the Big Lost River. (10-26-94)

a. When the flow at the Howell Gage is less than one thousand four hundred (1,400) CFS, the flow in the Back Channel shall be kept as near as practicable to one hundred fifty (150) CFS as determined by the director, but shall not exceed that amount. It is the responsibility of the appropriators diverting from the Back Channel to adjust the flows into the Back Channel when so instructed by the watermaster to comply with this rule. (10-26-94)

b. When the flow of the Howell Gage is at or exceeds one thousand four hundred (1,400) CFS, the flow in the Back Channel shall be kept as near as practicable to two hundred (200) CFS as determined by the director. The flow shall not exceed that amount unless all surface water rights existing at the time of administration (including water rights with a junior priority), and that are within their period of use, are satisfied. It is the responsibility of the appropriators diverting from the Back Channel to adjust the flows into the Back Channel when so instructed by the watermaster to comply with this rule. (10-26-94)

c. These provisions shall not be considered to enlarge the amount of water to which appropriators diverting from the Back Channel are entitled. (10-26-94)

d. The water users of Water District 34 may by resolution duly adopted at an annual meeting of Water District 34 determine that a measuring device and control works are to be installed at the head of the Back Channel. In this event, the costs of installation and maintenance shall be borne by the water users of Water District 34 as costs of the water district in the manner prescribed by statute. The measuring device and control works shall be of a type approved by the director, and must be approved prior to installation. This rule does not relieve or waive any requirement to comply with federal, state or local requirements for building and operating the structure. (10-26-94)

04. Futile Call For The Delivery Of Surface Water. When curtailment of junior upstream surface water rights will not make water available for delivery and use to senior downstream surface water rights, without unreasonable waste as determined by the director, the watermaster will not curtail the junior water rights in a futile effort to deliver water to the senior rights. The director may consult the Water District 34 advisory board, the Big Lost River Irrigation District and other impacted water users when determining whether attempting to deliver senior downstream surface water rights would be futile. (10-26-94)

021. -- 024. (RESERVED).

025. RIVER REACHES (RULE 25).

01. Divisions Of The Big Lost River. For the purposes of quantifying river gains, losses, and calculating and accounting for natural flow, but not for determining when the river is connected as described in Rule Subsection 020.01, the Big Lost River shall be divided into the reaches identified below. Reference to a specific river reach will be by the name of the downstream station or terminus point. (10-26-94)

a. Above Howell Gage. (10-26-94)

b. Howell Gage to Chilly Bridge located in the NW1/4NE1/4NW1/4, Section 5, Township 8 North, Range 22 East, B.M. (10-26-94)

c. Chilly Bridge to the 2-B Gage. (10-26-94)

d. 2-B Gage to Leslie Gage located in the NW1/4SW1/4SE1/4, Section 10, Township 6 North, Range 25 East, B.M. (10-26-94)

e. Leslie Gage to Moore diversion located in the NW1/4SE1/4SE1/4, Section 4, Township 5 North,

Range 26 East, B.M. (10-26-94)

f. Moore diversion to Arco diversion located in the NW1/4NW1/4NW1/4, Section 26, Township 4 North, Range 26 East, B.M. (10-26-94)

g. Below Arco diversion to the Arco Gage. (10-26-94)

02. River Reach Computations. For each reach of the river the natural flow will be computed as the natural flow entering the reach plus gains entering the reach minus losses from the reach. The natural flow thus calculated will be allocated as described in Rule 40. (10-26-94)

03. Gage Station Or Other Flow Measuring Facility. A gage station or other flow measuring facility, as approved by the director, shall be located at the Howell Gage, Chilly Bridge, 2-B Gage, Leslie Gage, Moore diversion, Arco diversion and Arco Gage. The Howell, 2-B and Arco gages shall be maintained as part of the USGS Cooperative Program, or equivalent measurement program, and operated continuously. Water District 34 shall continue to contribute to the maintenance and operation of these gage sites in the same proportion as is currently contributed. All other gages shall be operated when water diversions, other than solely storage in Mackay Reservoir, are being made from the river. The cost of installation, operation and maintenance of these other measuring facilities is the responsibility of Water District 34. (10-26-94)

026. -- 029. (RESERVED).

030. NATURAL FLOWS (RULE 30).

Natural flow shall be delivered through the natural river channel to the point of diversion of record except as provided in these rules. (10-26-94)

01. Eastside Canal. The watermaster, with the approval of the director and after consultation with the Big Lost River Irrigation District, may elect to deliver the natural flow of the river through the Eastside Canal when the following conditions are met: (10-26-94)

a. The full flow of the river, including impounded water, to be delivered downstream of the Moore diversion is not greater than the capacity of the Eastside Canal. (10-26-94)

b. More natural flow water can be delivered to calls for natural flow than could be delivered by using the natural river channel. (10-26-94)

c. No water right is injured. (10-26-94)

d. Measuring devices of a type acceptable to the director are installed and maintained where the flow leaves the river channel and where it returns to the river channel. (10-26-94)

e. When used for the delivery of natural flow to the Arco diversion, the Eastside Canal is considered to be the river channel for water delivery accounting purposes and the watermaster shall protect the natural flow for delivery to prior water rights. Water rights diverting water from the river channel downstream from the point the Eastside Canal returns to the river channel shall be measured at their point of diversion from the river downstream from the Eastside Canal return. (10-26-94)

f. Conveyance losses in the Eastside Canal, when considered to be the river channel, shall be proportioned between the river flow, the diversions from the Eastside and pumps that inject ground water into the Eastside Canal. The proportioning will be based upon the ratio of total Eastside diversions and injected ground water to the total inflow to the canal. (10-26-94)

02. Alternate Point Of Diversion. The watermaster may elect, with the approval of the director, to deliver natural flow water rights to the alternate point of diversion described in Rule Subsection 030.02.a. below when conditions in Rule Subsections 030.02.b. through 030.02.f. below are met: (10-26-94)

a. This rule may be used to deliver water rights through the Munsey diversion located in the NW1/

4NW1/4NW1/4, Section 26, Township 4 North, Range 26 East, B.M. as an alternate point of diversion for water rights with a recorded point of diversion at the McLaughlin diversion located in the NE1/4NW1/4SE1/4, Section 12, Township 3 North, Range 26 East, B.M. (10-26-94)

b. The additional delivery losses through the natural channel to the recorded point of diversion for a water right prevents delivery of natural flow to one (1) or more other water rights then calling for water. (10-26-94)

c. The user receives the same amount of water at the field headgate from the natural flow water right that would be delivered to the field headgate had the natural flow right been delivered at the recorded point of diversion. (10-26-94)

d. Delivery of the water right at the alternate point of diversion is limited to the period of time the water right could have been delivered to the recorded point of diversion based upon the natural flow available at any time delivery is called for and the loss of the river channel at the time the alternate point of diversion began to be used for the delivery of this water right. (10-26-94)

e. No water right is injured by the use of the alternate point of diversion. (10-26-94)

f. The owner of the diversion works at the alternate point of diversion and the ditch(es) used to deliver the water to the field headgate from the alternate point of diversion concurs in the use of those facilities. (10-26-94)

031. -- 034. (RESERVED).

035. MEASURING DEVICES AND CONTROL WORKS (RULE 35).

01. Installation And Maintenance Of Measuring Devices And Control Works. In addition to measuring devices or control works specifically described in the listing of the water right, each water user, except small domestic and stock water users from ground water, shall, at the water user's expense, install and maintain measuring devices and control works of a type acceptable to the director, at all points of diversion and any other points, as determined necessary by the director for the proper administration of the use of water. The director may prohibit or prevent the diversion of water by a water user who refuses or fails to comply with this rule in accordance with the provisions of Chapter 7, Title 42, Idaho Code. (10-26-94)

02. Measuring Ground Water Diversions. All ground water diversions, excluding small domestic and stock water diversions, shall be measured by one of the following methods. Any ground water diversion requiring an instantaneous flow measurement as described in Rule Subsection 035.02.a. or for checking of an in-line flow meter as described in Rule Subsection 035.02.b. which is not properly configured to permit an accurate measurement must comply with Rule Subsections 035.03.a. through 035.03.c. (10-26-94)

a. Instantaneous flow rate will be measured by the water district utilizing a polysonic flow meter or other means of measuring instantaneous flow acceptable to the director. Annual volume will be determined by electrical power consumption records which the water user must release from the electrical energy provider to the watermaster. (10-26-94)

b. Where an in-line flow meter with totalizing capabilities is installed, the meter will be periodically checked for accuracy by the water district staff. (10-26-94)

c. An open channel measuring device of a type and installed in a location acceptable to the director will be read and recorded daily by water district staff. (10-26-94)

03. System Configuration For Accurate Measurements. All ground water diversions, excluding small domestic and stock water uses, shall configure their diversion systems so that accurate measurement can be accomplished. The polysonic flow meter requires a straight and uniform section of pipe which is free from obstructions, valves and couplings for a minimum distance of ten (10) pipe diameters upstream from the measurement site and five (5) pipe diameters downstream from the measurement site. If a pump is nearby up to thirty (30) pipe diameters of a straight uniform pipe section may be required upstream from the measurement site.

(10-26-94)

a. If an accurate measurement of a ground water diversion can not be accomplished, the water user shall be required to provide, at the water user's expense, an annual determination of the system capacity certified by a qualified engineer licensed in the state of Idaho. The certification shall include the relationship which can be used, under conditions at the time of the certification, to relate the volume of water pumped to the electrical energy used by the pump. (10-26-94)

b. If the certified system capacity exceeds the diversion rate of the water right for the ground water use, the water user shall, at the water user's expense, modify the diversion to limit the system capacity to no more than the diversion rate of the water right and shall have the capacity and power usage of the system, as modified, recertified by a qualified engineer licensed in the state of Idaho. (10-26-94)

c. For purposes of these rules, at all times when water is being diverted from a diversion that is required to have the diversion capacity certified under this rule, the diversion rate will be assumed to be the system capacity. The annual volume of water pumped will be determined by the power consumption records, which the water user must release from the electrical energy provider to the watermaster, and the power usage relationship included with the system capacity certification. (10-26-94)

04. Access To Diversion Works. Water users shall provide the water district staff continual access to all diversion works, measuring devices and control structures, except ground water diversions for small domestic and stock water uses. (10-26-94)

05. Diversions Which May Be Exempt. Diversions below the Chilly Bridge and above the Mackay Reservoir that divert water from the Big Lost River, whose place of use is within the flood plain of the Big Lost River as determined by the director, may be exempt from the requirement for measuring devices and control works with the approval of the director. Flow rates through exempt diversions will be estimated by the watermaster for accounting purposes by assuming the recorded flow rate of the water right is being diverted. (10-26-94)

06. Good Cause For Exemption. The director may exempt water users from the requirement to install measuring devices and or control works for good cause shown. Good cause will include diversions which can not be measured or controlled due to flooding conditions at the diversion for a significant portion of the year when water is available for diversion so as to render a measuring device or control works impractical. (10-26-94)

07. Measuring Devices And Control Works - Water Conveyance Entities. Irrigation districts, canal companies and other water conveyance entities diverting from any natural channel through which natural flow is being carried shall install and maintain measuring devices and control works of a type acceptable to the director at their point(s) of diversion. Measuring devices and control works thus installed and maintained will replace the requirement of individual measuring devices and control works at these locations for each water user. (10-26-94)

036. -- 039. (RESERVED).

040. ALLOCATION OF NATURAL FLOW (RULE 40).

01. Administration Of Surface Water Rights. Administration of surface water rights is based upon the list of water rights approved for interim administration by the court or as subsequently decreed by the court in the SRBA. Water not diverted or rotated for credit is available for the next in time water right. Natural flow rights are delivered to the point of diversion with no conveyance loss assessment. A natural flow water right delivered through a lateral or canal of a water conveyance entity shall be assessed the conveyance loss for the canal through which the water right is delivered. (10-26-94)

a. All natural flow will be allocated based upon a four (4) day moving average of the natural flow computed by the watermaster. (10-26-94)

b. All water deliveries must be called for by the water user at least forty-eight (48) hours in advance of the actual water delivery. Water which can be delivered by the watermaster in less than forty-eight (48) hours may be used by the water user. (10-26-94)

c. The water user must notify the watermaster of the water users intent to use water as required by Rule Subsection 040.05. (10-26-94)

02. Rotation Credit. Water rights that do not include storage as a purpose of use may not be stored. Water rights whose source is Big Lost River with their point of diversion below the Mackay Dam may, however, be rotated for credit when such practice improves the efficiency of water use as contemplated by the Big Lost River Irrigation District's plan of operation subject to the following conditions: (10-26-94)

a. Rotation for credit must be approved by the director as provided by these rules. (10-26-94)

b. Rotation for credit must be pursuant to the Big Lost River Irrigation District's approved plan of operation. (10-26-94)

c. Any water credited under such a rotation, if not used in the same irrigation season in which it is credited, shall become storage water of the Big Lost River Irrigation District at the end of the irrigation season. (10-26-94)

d. Rotation for credit cannot occur prior to the need for irrigation water on the land, as determined pursuant to these rules, in any year. (10-26-94)

i. Natural flow must be available at the river headgate point of diversion for the water right requesting rotation credit. (10-26-94)

ii. The water user must have operable delivery and use facilities and an actual need for the water on the land in the year rotation is sought. (10-26-94)

iii. If natural flow can not be delivered to a point of diversion at the beginning of the irrigation season and the watermaster determines rotation credit is needed to make possible the delivery of water rights being called for, and there is room in Mackay Reservoir for rotation credit, the watermaster may rotate natural flow rights, which would not otherwise be deliverable to their point of diversion, for credit of up to a combined total of three thousand five hundred (3,500) AF to be released from the reservoir under the control of the watermaster to make natural flow rights deliverable to their point of diversion. The watermaster may use storage water to assist the delivery of natural flow water rights at the beginning of the irrigation season when requested to do so by the storage holder. (10-26-94)

e. Water rotated for credit may only be used on the land to which the water right being rotated is appurtenant (water rotated for credit may not be marketed) except under the provisions of Section 42-222A, Idaho Code. (10-26-94)

f. If the reservoir fills after rotation has begun in any year, (or would have filled except for flood operations) and the natural flow is sufficient to allow diversion of water by 1905 or junior water rights while the reservoir is full, all rotation credits accrued at that time are lost and all water in Mackay Reservoir at that time becomes storage water of the Big Lost River Irrigation District for reallocation. For purposes of this rule Mackay Reservoir will be considered full when the elevation of the water in the reservoir reaches or exceeds a four (4) day average of six thousand sixty-six and twelve one hundredths (6,066.12) feet MSL (spillway crest). Rotation for credit stops at the time Mackay Reservoir fills, and while it remains full, but if the natural flow does not increase sufficiently to allow 1905 or junior water rights to divert after the reservoir fills the rotation credit in the reservoir shall remain the credit of the water user(s) who accrued the rotation credit. (10-26-94)

g. Water rights being rotated must be identified to the watermaster as being rotated into Mackay Reservoir. Water rights identified as such will have the Mackay Reservoir as the temporary point of diversion during the time rotation is occurring. (10-26-94)

h. The rate of diversion for a water right being rotated for credit combined with other water rights for the same place of use being diverted at the same time cannot exceed the combined diversion limit specified in the listing of water rights. This rule does not limit the rate at which rotation credit, once impounded, can be used. (10-26-94)

03. Assessment Of Evaporation And Conveyance Losses To Impounded Water. (10-26-94)

a. Evaporation losses from Mackay Reservoir shall be estimated daily by the watermaster by applying correlated evapotranspiration data from the Aberdeen hydromet station to the Mackay Reservoir and shall be assessed to all impounded water. (10-26-94)

b. Conveyance losses in the natural channel shall be proportioned by the watermaster between natural flow and impounded water. The proportioning shall be done on a river reach basis. Impounded water flowing through a river reach that does not have a conveyance loss will not be assessed a loss for that reach. Impounded water flowing through any river reach that does have a conveyance loss will be assessed the proportionate share of the loss for each losing reach through which the impounded water flows. To avoid an iterative accounting procedure, impounded water conveyance loss from the previous day shall be assessed on the current day. (10-26-94)

i. An exception is made for impounded water delivered through the Beck and Evan diversion located in the SW1/4SE1/4SW1/4, Section 11, Township 6 North, Range 25 East, B.M. Conveyance loss for this impounded water will be assessed the conveyance loss of the Leslie reach, if any, and the additional conveyance loss to the Beck and Evan diversion but not the conveyance loss of the entire Moore reach. (10-26-94)

04. Initiation And Duration Of Surface Water Allocation For Irrigation. Any time after May 1 an irrigation water user can make a delivery call on the natural flow if the water user can make beneficial use of the water for irrigation. If sufficient natural flow exists to deliver the called for water right in a useable amount to the water users place of use, the watermaster shall deliver the right. In addition, the director may allow the diversion of rights or portions of rights for irrigation use from the Big Lost River as early as April 20 and as late as October 31, and from surface water tributaries to the Big Lost River either before or after the period of use for irrigation described in the water right where: (10-26-94)

a. The water so diverted is applied to a beneficial use resulting in an immediate benefit to growing plants or is necessary to allow performance of an agricultural practice generally accepted in the community, as determined by the director. (10-26-94)

b. All surface water rights, regardless of priority, unless subordinated to the water right or class of rights being called for, (now existing or developed subsequent to these rules), existing at the time of diversion that are within their period of use can be satisfied. (10-26-94)

c. The diversion and use of the water does not conflict with the public interest as determined by the director. (10-26-94)

05. Notice To Initiate Delivery. Water users must initiate delivery of their water right(s) by notifying the watermaster that they are ready to put water to beneficial use. (10-26-94)

06. Diversion Of Additional Flows. The director may allow the diversion of surface water in addition to the quantity of surface water described in a water right for irrigation use to be diverted for irrigation of the described place of use where: (10-26-94)

a. The waters so diverted are applied to a beneficial use, as determined by the director. (10-26-94)

b. All surface water rights, regardless of priority, unless subordinated to the water right or class of water rights being called for, (now existing or developed subsequent to these rules), existing at the time of diversion that are within their period of use can be satisfied. (10-26-94)

c. The diversion and use of the water does not conflict with the public interest as determined by the director. (10-26-94)

d. Additional flows diverted pursuant to Rule 040.06 are natural flows and will not be assessed as impounded water. (10-26-94)

07. Mackay Dam Minimum By-Pass. Mackay Dam and Reservoir shall be operated to maintain a minimum flow of fifty (50) CFS at the 2-B gage. (10-26-94)

08. Canal Or Lateral Delivery. In the event a water user feels inappropriate delivery of natural flow water is occurring on any lateral or canal, the water user can request the watermaster to investigate. In the event the watermaster determines that delivery of natural flow water rights within a lateral or canal is being improperly conducted he shall: (10-26-94)

a. Notify the ditch rider and the water delivery entity of the results of his investigation and coordinate efforts to make proper delivery of the natural flow. (10-26-94)

b. If the situation has not been sufficiently resolved within twenty-four (24) hours the watermaster will notify the director who may take all actions authorized by law to remedy the situation. (10-26-94)

041. -- 044. (RESERVED).

045. ADMINISTRATION OF GROUND WATER RIGHTS (RULE 45).

Administration of ground water rights is based upon the list of water rights approved for interim administration by the court or as subsequently decreed by the court in the SRBA. Should curtailment of ground water rights become necessary to protect a senior ground water right(s), administration will be based upon reasonable pumping levels and the prior appropriation doctrine as required by law. (10-26-94)

046. -- 049. (RESERVED).

050. CONJUNCTIVE ADMINISTRATION OF GROUND AND SURFACE WATER RIGHTS (RULE 50).

01. Conjunctive Administration - Exceptions. All ground water rights shall be administered conjunctively as part of the Big Lost River and tributaries unless the ground water user can show to the satisfaction of the director, that due to well construction or location, the diversion of ground water from a particular point of diversion does not reduce the flow of the Big Lost River above the last (most downstream) diversion from the Big Lost River. An exception to conjunctive administration in Water District 34 exists for those ground water rights in the list of water rights containing a remark noting that the right will be administered as separate from the Big Lost River and its tributaries. (10-26-94)

02. Water Rights Not Subject To Administration. Small domestic and stock water rights from ground water are not subject to administration at this time; however, these rights may be made subject to administration in the future to provide water to senior water rights from the water system. (10-26-94)

03. General Rule. Data currently available to IDWR shows ground water rights that are to be administered conjunctively with surface water deplete the flows of the Big Lost River downstream from Mackay Dam. Surface water users with water rights from the Big Lost River with points of diversion downstream from Mackay Dam are not required to seek curtailment of or mitigation by junior ground water rights and may develop water rights to supplement their Big Lost River water rights as provided by law. (10-26-94)

04. Mitigation/Augmentation. Water users with water rights whose source is Big Lost River with their point of diversion downstream from Mackay Dam who seek to have the water supply for their water right augmented to provide for their water right the water supply that would have been available for diversion absent the diversion of ground water under junior water rights shall request mitigation pursuant to this rule. Water users who seek such mitigation from ground water users must notify the watermaster at the time those water users make their initial request to the watermaster for delivery of their water right of their desire for mitigation. Mitigation of the effects of ground water diversion, when requested, will occur as more fully described below. (10-26-94)

a. Mitigation will not occur prior to May 1 or after October 15 of any year. (10-26-94)

b. Mitigation will be available to water rights with 1905 and earlier priority dates. (10-26-94)

c. Water rights will be eligible to receive mitigation through augmented natural flow water supply based upon a river depletion due to ground water diversions currently estimated to be thirteen percent (13%) of the average annual diversion from wells subject to conjunctive administration currently estimated to be forty-seven thousand (47,000) AFY or a depletion of six thousand one hundred ten (6,110) AFY. The estimated percentage of depletion and annual volume of diversion from wells will be reviewed annually by the director and modified as data becomes available to refine these estimates. Any revised estimate of depletion or annual diversion shall be presented to the water users at the annual meeting of Water District 34 prior to adoption of the values by order of the director.

(10-26-94)

i. Natural flow will be assumed to be augmented by one-third (1/3) of the depletion during the first one-half (1/2) of the period of time that any 1905 or earlier water right being called for can not be filled by the natural flow through October 15 of each year. Natural flow will be assumed to be augmented by two-thirds (2/3) of the depletion during the second one half (1/2) of this period each year.

(10-26-94)

ii. Water users who have requested mitigation and who have water rights being called for that could be filled by augmentation described in Rule Subsection 050.04.c.i shall be provided with water by augmenting the natural flow to the extent of their water right or the amount of water described in Rule Subsection 050.04.c.i., whichever is less.

(10-26-94)

iii. Augmentation of natural flow for purposes of mitigation may be accomplished by making additional water available for diversion from the Big Lost River, including increased river flows resulting from recharge efforts approved by the director, or by adding water to canals or laterals.

(10-26-94)

iv. In any year in which the ground water users believe the annual diversion from ground water for the year will be significantly less than the estimated annual diversion from ground water described above, the ground water users may present their evidence of the anticipated diversions to the director by May 1 of the year along with a request to modify the estimated annual diversion for the year. Upon a determination by the director, based upon the information presented by the ground water users, that the annual diversion from ground water for the year being considered will be less than the annual average, the director will set an estimated ground water diversion for the year to be used for conjunctive administration as described in this rule.

(10-26-94)

d. Water District 34 is authorized to acquire, through the watermaster, water supplies necessary to augment natural flow for mitigation purposes as described in this rule. The watermaster will add the cost of acquiring the mitigation water to the annual assessment of ground water users subject to conjunctive administration, who do not provide separate augmentation pursuant to Rule Subsection 050.04.c.iii. or separate mitigation pursuant to a plan approved as provided by Rule Subsection 050.04.e., in the same proportion as each ground water user is assessed for the costs of the water district relative to all other ground water users. Ground water users who fail to pay the assessed costs for acquiring mitigation water shall be penalized in the same manner as any other water user failing to pay any water district assessment.

(10-26-94)

e. Junior ground water users may submit an alternative mitigation plan(s), which identifies actions and measures to prevent or compensate for impacts of diversions by the junior ground water users, to the director for consideration pursuant to Rule 43 of the "Rules for Conjunctive Management of Surface and Ground Water Resources," IDAPA 37, Title 03, Chapter 11.

(10-26-94)

05. Direct Interference. This rule does not prevent a senior surface water user from seeking curtailment and/or damages from a junior ground water user when the senior surface water user can show direct identifiable impact on the water supply for the senior water right as a result of the diversion of water pursuant to the junior ground water right.

(10-26-94)

051. -- 054. (RESERVED).

055. WATER USAGE (RULE 55).

01. Firefighting Purposes.

(10-26-94)

a. Firefighting purposes is an alternate use to which any water right may be put, and firefighting is

recognized as a lawful use of water with or without a water right. (10-26-94)

b. Firefighting purposes means the use of water in times of emergency: to extinguish an existing fire on private or public lands, facilities, or equipment; to prevent an existing fire from spreading to private or public lands, facilities, or equipment within the vicinity of and endangered by an existing fire; and by firefighting personnel engaged in fighting an existing fire. Firefighting purposes does not include the use of water to prevent a fire from occurring in the future, the use of water for domestic purposes in regularly maintained firefighting stations, or the storage of water for fighting future fires. (10-26-94)

02. Diversion Volume For Irrigation. The maximum annual volume of water reasonably required at the field headgate for irrigation of lands in Basin 34 is three and five tenths (3.5) AFY per acre. Where diversion volume is not stated for water rights or portions of water rights in the list of water rights for irrigation purposes, allocation of water for those water rights will not be limited by volume at this time. (10-26-94)

03. Amount Of Combined Water Rights For Irrigation. Unless specifically stated otherwise in the water right, the combined use of more than one right for irrigation purposes is limited to: (10-26-94)

a. A combined total rate of diversion of two hundredths (0.02) CFS per acre for water rights from ground water, or a total combined rate of diversion of two hundred eighty-six ten thousandths (0.0286) cfs per acre for water rights from surface water. (10-26-94)

b. A combined total annual diversion volume of three and five tenths (3.5) AFY per acre, or a greater volume per acre as provided in Rule Subsection 055.02. (10-26-94)

c. A combined total annual consumptive use volume of two and five hundredths (2.5) AFY per acre. (10-26-94)

04. Conveyance Losses. The rate of flow generally required at the field headgate for irrigation of lands in Basin 34 is two hundredths (0.02) CFS per acre. (10-26-94)

a. The total per acre rate of diversion, measured at the point of diversion from a surface water source, shown for some rights is greater than two hundredths (0.02) CFS per acre. This is due to actual conveyance losses in the distribution system. Although diversion amounts greater than two hundredths (0.02) CFS per acre, but not greater than two hundred eighty-six ten thousandths (0.0286) CFS per acre, are not specifically identified in the water right, amounts in excess of two hundredths (0.02) CFS per acre that are not specifically identified in the surface water right are limited to use for conveyance losses. (10-26-94)

b. Some water rights are shown with a remark limiting the right or a portion of the right to use for conveyance losses in delivery of the right and/or other rights. When a remark is included in the listing of water rights limiting a right or a portion of a right to use for conveyance losses, the total per acre rate of diversion shown for the right (including conveyance losses specifically noted in remarks) is greater than two hundredths (0.02) CFS per acre for ground water rights and greater than two hundred eighty-six ten thousandths (0.0286) CFS per acre for surface water rights. (10-26-94)

c. In those cases in which the water right(s) includes an amount in excess of two hundredths (0.02) CFS per acre for conveyance loss, the total amount shown for the right(s) includes: (10-26-94)

i. The standard amount generally required for the purpose of use of the right, which includes reasonable conveyance losses associated with such uses; plus (10-26-94)

ii. An additional amount required for conveyance losses in the particular distribution system determined to be reasonable under currently existing conditions. (10-26-94)

d. Diversion of rights or portions of rights limited to use for conveyance losses may continue so long as: (10-26-94)

i. The use does not constitute unreasonable waste, as determined by the director; and (10-26-94)

- ii. The use does not conflict with the public interest, as determined by the director. (10-26-94)

05. Incidental Stock Water. When stock water is not specifically included for a water right that includes irrigation, a portion of the quantity described for irrigation use may be diverted and used, from the same point of diversion and at the same place of use as the irrigation use, for purposes of maintaining a reasonable water supply for stock watering use during the period of use for irrigation described in the water right. (10-26-94)

06. Winter (Non-Irrigation Season) Stock Water. During the non-irrigation season, from October 16 through April 30 except as modified by Rule 040.04, the storage of water in Mackay Reservoir is superior to all rights from the Big Lost River with points of diversion downstream from Mackay Dam, subject to the minimum release required by Rule Subsection 040.07. (10-26-94)

a. Winter stock water can be called for and delivered pursuant to the list of water rights if it does not interfere with storage in Mackay Reservoir by requiring a release of water in excess of the minimum release required by Rule Subsection 040.07 or the actual release, whichever is greater. (10-26-94)

b. A right holder calling for delivery of stock water must have access to a diversion point and delivery system to convey the right to the place of use recorded in the list of water rights. If the headgate and delivery system are controlled by an entity other than the water user, the watermaster will only deliver the water with the concurrence of the owner of the headgate and delivery system and then only when such delivery does not constitute unreasonable waste as determined by the director. (10-26-94)

056. -- 059. (RESERVED).

060. ACCOUNTING FOR WATER DELIVERY (RULE 60).

Water diversions shall be accounted for continuously, throughout the year by the watermaster. (10-26-94)

061. -- 999. (RESERVED).

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DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA) Subcase No. 91-00005-34
)
Case No. 39576) ORDER AMENDING PARTIAL
) DECREE FOR GENERAL
) PROVISIONS IN ADMINISTRATIVE
) BASIN 34 TO INCLUDE GENERAL
) PROVISION 7 ON CONNECTED
) SOURCES
)

I.

PROCEDURAL BACKGROUND

A. On May 9, 2001, Judge Burdick, then presiding, issued an *Order of Partial Decree for General Provisions in Basin 34*. The *Partial Decree* decreed recommended general provisions 1-6 as modified by stipulation of the parties to subcase 91-00005-34. The Director also recommended a General Provision 7 which dealt with the conjunctive administration of connected sources in the entire Snake River Basin.¹

B. Recommended General Provision 7 was separated from subcase 91-00005-34 and consolidated with Basin-Wide Issue 5 which addressed conjunctive management for the entire Snake River Basin. See *Order of Consolidation/Separation of Issues (Realignment and Redesignation of Issues) of Basin-Wide Issues 5, 5A and 5B AOI § 11, Subcases 91-00005, 91-00005A and 91-00005B (In the future: 91-00005-34, 91-00005-36 and 91-00005-57) (Aug 31, 1999)*.

C. On February 27, 2002, Judge Burdick issued a *Partial Decree on Connected Sources (Conjunctive Management)*, which among other things modified the language

¹ The recommended provision provided: "All water rights within Basin 34 are from connected sources of water in the Snake River Basin and shall be administered conjunctively."

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recommended in General Provision 7 in Basin 34 as well as for all other administrative basins, as follows:

Except as otherwise specified above, all other water rights within Basin _____ will be administered as connected sources of water in the Snake River Basin in accordance with the prior appropriation doctrine as established by Idaho law.

D. Pursuant to Basin-Wide Issues this general provision applied to all basins within the SRBA. Because the issue was not resolved at the time the general provisions for Basin 34 were initially decreed this language was not included in the *Order of Partial Decree for General Provisions in Basin 34*.

II.

ORDER

Because Basin-Wide Issue 5 is complete this Court finds it appropriate to now amend the general provisions for Basin 34 to include the general provision on connected sources rather than by a separate decree. Any opposition to the inclusion of this language was resolved in Basin-Wide Issue 5.

Therefore, IT IS ORDERED that the *Partial Decree* for the general provisions in Basin 34 is amended to include General Provision 7 as set forth in Exhibit A.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DATED July 7, 2004.



JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

recommended in General Provision 7 in Basin 34 as well as for all other administrative basins, as follows:

Except as otherwise specified above, all other water rights within Basin _____ will be administered as connected sources of water in the Snake River Basin in accordance with the prior appropriation doctrine as established by Idaho law.

D. Pursuant to Basin-Wide Issues this general provision applied to all basins within the SRBA. Because the issue was not resolved at the time the general provisions for Basin 34 were initially decreed this language was not included in the *Order of Partial Decree for General Provisions in Basin 34*.

II.

ORDER

Because Basin-Wide Issue 5 is complete this Court finds it appropriate to now amend the general provisions for Basin 34 to include the general provision on connected sources rather than by a separate decree. Any opposition to the inclusion of this language was resolved in Basin-Wide Issue 5.

Therefore, IT IS ORDERED that the *Partial Decree* for the general provisions in Basin 34 is amended to include General Provision 7 as set forth in Exhibit A.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DATED July 7, 2004.



JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

General Provisions 1-7 for Basin 34

The following general provisions apply to rights to water from Basin 34.

1. The following definitions apply to these provisions:
 - a. The "Howell gage" is a stream gaging station on the Big Lost River located upstream from Mackay Reservoir in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 30, Township 8 North, Range 21 East, B.M.
 - b. The "2-B gage" is a stream gaging station on the Big Lost River located downstream from Mackay Dam in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 18, Township 7 North, Range 24 East, B.M.
 - c. Mackay Reservoir is "full" when the water surface elevation of the reservoir is at the spillway crest as it was configured on November 19, 1987.
 - d. The "Back Channel" separates from the main channel of the Big Lost River in the NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 5, Township 8 North, Range 22 East, B.M.
 - e. "Basin 34" refers to IDWR Administrative Basin 34 as it is described in the Amended Director's Report Part 1 for Reporting Area 1 (Basin 34) dated December 15, 1995.
 - f. As used in these provisions the term "water rights" refers to water rights as decreed in the case In Re SRBA, Fifth Judicial District Court Case No. 39576.
2. During the time period from November 1 of each year to the beginning of the next irrigation season (the "non-irrigation period"), all or a portion of the water of the Big Lost River flowing into Mackay Reservoir may be diverted, according to priority, for storage under water rights nos. 34-00012 and 34-10873 provided the natural flow at the 2-B gage is not less than fifty cubic feet per second. During the non-irrigation period, natural flow water rights downstream of Mackay Dam and senior in priority to water rights numbers 34-00012 and 34-10873 may be diverted for domestic and livestock uses under water rights authorized for these purposes.
3. Water rights from the Big Lost River diverted below Mackay Dam and Reservoir may be rotated into storage with the consent of the Big Lost River Irrigation District when such practice improves the efficiency of water use.

Such rotation is subject to the following conditions and review and approval by the Director of the Idaho Department of Water Resources.

- a. Water may only be rotated into storage if it will be beneficially used at the place of use under the water right during the year in which it is stored.
 - b. Rotation into storage cannot occur prior to the reasonable need for irrigation water.
 - c. Rotation into storage can only occur when the water is otherwise deliverable to the place of use under the water right.
 - d. The diversion rate of water rights being rotated into storage shall be included in the calculation of total combined diversion rate limitations.
 - e. If the reservoir fills after water has been rotated into storage, all water in the reservoir at the time it fills becomes storage water of the Big Lost River Irrigation District.
 - f. Any water stored under such rotation that is not used in the same irrigation season in which it is stored shall become storage water of the Big Lost River Irrigation District at the end of the irrigation season.
 - g. When the river is connected as specified in General Provision No. 6, while a right is rotated into storage, it is subordinate to all rights diverted above Mackay Reservoir with a priority date earlier than October 1, 1936.
4. The Back Channel is a natural channel of the river that has been historically regulated to a maximum of 200 cubic feet per second to provide irrigation water. This provision shall not be considered to enlarge the amount of water to which appropriators diverting from the Back Channel are entitled.
 5. The following surface water rights from the following sources of water in Basin 34 shall be administered separately from all other surface water rights in Basin 34:

SEE ATTACHMENT A

6. The following surface water rights from the Big Lost River and its tributaries upstream of Mackay Reservoir shall be administered separately

from all other non-storage, surface water rights from the Big Lost River downstream of Mackay Reservoir during two periods of time as follows:

- a. From the beginning of the irrigation season until the time on the rising stage of the Big Lost River when the maximum flow at the Howell gage reaches at least 750 cubic feet per second at any time for three consecutive days; and
- b. After the time on the falling stage of the Big Lost River when the minimum flow recedes to no more than 450 cubic feet per second at any time for three consecutive days until the end of the irrigation season.
- c. For purposes of determining the amount of water being supplied to Mackay Reservoir from curtailment of diversions upstream from the reservoir, measurements will be made on the Big Lost River at the Pense Bridge located in the T 8 N, R 23 E, S 30, SW ¼ NE ¼, and on the Donahue Bridge on Parsons Creek located in the T 8 N, R 22 E, S 24, SW ¼ SE ¼. These measurements will be used by the Watermaster to make futile call determinations.

SEE ATTACHMENT B

7. Except as otherwise specified above, all other water rights within Basin 34 will be administered as connected sources of water in the Snake River Basin in accordance with the prior appropriation doctrine as established by Idaho law.

ATTACHMENT A

WATER SOURCE: BADDY CREEK

34-00002
34-02508
34-13565

WATER SOURCE: CEDAR CREEK

34-00834
34-00835
34-00839
34-02303

WATER SOURCE: ELKHORN CREEK

34-00766

WATER SOURCE: GRANT CREEK

34-00769
34-02245

WATER SOURCE: LEHMAN CREEK

34-00472
34-04068

WATER SOURCE: LOWER CEDAR CREEK

34-00146
34-00153
34-00175
34-00543
34-00582
34-00585
34-00586
34-00808
34-00884
34-00885
34-00886
34-10434
34-10435

WATER SOURCE: PINTO CREEK

34-00341

WATER SOURCE: ROCK CREEK

34-00057

34-00058
34-00836
34-04039
34-10585

WATER SOURCE: ROCK SPRINGS CREEK

34-00352

WATER SOURCE: SAGE CREEK

34-00334
34-00335
34-00336

WATER SOURCE: UPPER CEDAR CREEK

34-10538
34-12599

WATER SOURCE: WILLOW CREEK

34-00057
34-00058

ATTACHMENT B

Big Lost River and Tributaries Above Mackay Dam

WATER SOURCE: BARTLETT CREEK

34-00056

WATER SOURCE: BIG LOST RIVER

34-00004	34-00220	34-00561	34-00760
34-00024	34-00221	34-00562	34-00764
34-00025	34-00222	34-00563	34-00767
34-00026	34-00252	34-00566	34-00768A
34-00030	34-00290A	34-00567	34-00768B
34-00048	34-00290B	34-00568	34-00770
34-00054	34-00291A	34-00573A	34-00771
34-00055A	34-00291B	34-00573B	34-00772
34-00055B	34-00292A	34-00583B	34-00774
34-00084A	34-00292B	34-00583C	34-00775
34-00084B	34-00293A	34-00584D	34-00805
34-00097	34-00293B	34-00584F	34-00859A
34-00099	34-00294A	34-00626B	34-00860A
34-00103	34-00294B	34-00627B	34-00867
34-00125A	34-00297A	34-00628B	34-00868
34-00125B	34-00297B	34-00629B	34-10164
34-00139	34-00298A	34-00630B	34-10165
34-00145	34-00324A	34-00693	34-10166
34-00147B	34-00324B	34-00694	34-10227
34-00147C	34-00325A	34-00699A	34-10228
34-00147D	34-00338	34-00699B	34-10229
34-00148B	34-00339	34-00699C	34-10250
34-00148C	34-00340	34-00700A	34-10282
34-00148D	34-00344	34-00700C	34-10557
34-00151	34-00346	34-00701A	34-10558
34-00152	34-00347	34-00701C	34-10563
34-00154	34-00348	34-00702A	34-10567
34-00155	34-00349	34-00702B	34-10568
34-00156	34-00351	34-00702C	34-10587
34-00158	34-00363	34-00734	34-10619
34-00161A	34-00364	34-00735	34-10688
34-00162A	34-00421	34-00742	34-10920
34-00162B	34-00454	34-00743	34-13566
34-00208A	34-00455	34-00755	
34-00208B	34-00456	34-00757	
34-00211	34-00535	34-00758	

WATER SOURCE: BIG LOST RIVER, EAST FORK

34-00625
34-00662

WATER SOURCE: BIG LOST RIVER, NORTH FORK

34-00053A
34-00053B
34-00053C
34-00053D
34-00053E
34-13550

WATER SOURCE: BIG LOST RIVER AND PARSONS CREEK

34-00142
34-00564
34-00565
34-00611B
34-00612B
34-00613B
34-00626A
34-00627A
34-00628A
34-00629A
34-00630A
34-00773
34-10553

WATER SOURCE: BIG LOST RIVER, PARSONS CREEK AND POLE
STACKYARD CREEK

34-00812
34-00813
34-00815
34-00816
34-00867

WATER SOURCE: BOONE CREEK AND FOX CREEK

34-00529

WATER SOURCE: BRADSHAW SPRINGS

34-00128A
34-10620

WATER SOURCE: DEER CREEK

34-00624

WATER SOURCE: GARDEN CREEK

34-07010

WATER SOURCE: HAMILTON SPRINGS

34-00398

34-00399

34-07034

WATER SOURCE: HOWELL SPRING

34-00337

WATER SOURCE: LONE CEDAR CREEK

34-02144

WATER SOURCE: NAVARRE CREEK

34-00081

34-00820

34-00821

WATER SOURCE: NEWTON CREEK

34-07005

WATER SOURCE: PARSONS CREEK

34-00443
34-00444
34-00445
34-00611A
34-00612A
34-00613A
34-00801
34-00802

WATER SOURCE: PARSONS CREEK AND POLE STACKYARD CREEK

34-10801

WATER SOURCE: POISON SPRING

34-07124

WATER SOURCE: RIDER CREEK

34-04001

WATER SOURCE: SPRING

34-00337
34-04019
34-04137
34-07124
34-10168
34-10251

WATER SOURCE: SPRINGS

34-10635

WATER SOURCE: THOUSAND SPRINGS CREEK

34-04127
34-10167

WATER SOURCE: UNNAMED STREAM

34-04005A
34-04005B

WATER SOURCE: WARM SPRINGS CREEK

34-00123A
34-00123B
34-00124A
34-00124B
34-00236
34-00237
34-00251
34-00353
34-00420
34-00457
34-00458
34-00467
34-00468
34-00469
34-00470A
34-00471
34-00483A
34-00483B
34-00527
34-00528
34-00703A
34-00703B
34-00703C
34-00704A
34-00704B
34-00704C
34-00803
34-00861A
34-00861B
34-00869
34-00870
34-00871
34-10919
34-13564

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER AMENDING PARTIAL DECREE FOR GENERAL PROVISIONS IN ADMINISTRATIVE BASIN 34 was mailed on July 07, 2004, with sufficient first-class postage to the following:

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-- STAR ROUTE--
MACKAY, ID 83251

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DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

June 4, 2001

Mr. Doug Rosenkrance
Watermaster, Water District 34
Mackay, ID

Sent by FAX to (208) 588-3137

RE: Implementation of General Provisions in Water District 34

Dear Doug:

I am writing as the senior IDWR representative who participated in the negotiations that developed the new General Provisions in Water District 34. It is my understanding that you and others in Water District 34 have expressed concerns about the implementation of the new General Provisions. Because the General Provisions have been decreed by the District Court, these General Provisions should be implemented as soon as is practicable. If an appeal is filed, the provisions remain in effect unless stayed by the Court.

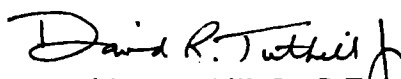
I have been advised that you have a specific question about General Provision 3g, which has been decreed as follows:

When the river is connected as specified in General Provision No. 6, while a right is rotated into storage, it is subordinate to all rights diverted above Mackay Reservoir with a priority date earlier than October 1, 1936.

During the negotiations, users of water upstream from Mackay Reservoir stated a concern that the ability of waterusers downstream from the reservoir to rotate direct flow water rights into storage could in some situations cause injury to water rights upstream from the reservoir. In response to this concern, the parties agreed to the language above. This General Provision provides that rotation into storage cannot occur when water rights senior to October 1, 1936 are being curtailed upstream from Mackay Reservoir. Stated another way, rotation into storage can continue when the river is disconnected (as defined by General Provision No. 6), and while the river is connected when curtailments are not being made to water rights upstream from Mackay Reservoir for priority dates senior to October 1, 1936.

Please contact me if this information does not address the question that you have raised. As you are aware, IDWR guidance regarding water distribution in your district comes from Mr. Tim Luke, and he will continue to provide this assistance.

Sincerely,


David R. Tuthill, Jr., P.E.
Adjudication Bureau Chief

Cc: Norm Young, Tim Luke, Susan Hamlin

MAILING LIST FOR
BIG LOST RIVER GENERAL PROVISIONS LETTER
06/15/01

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BIG LOST IRRIGATION DIST
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DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

June 15, 2001

Mr. Doug Rosenkrance
Watermaster, Water District 34
107 S. Main Ave.
Mackay, ID 83251

RE: Implementation of General Provisions 6a and 6b in Water District 34

Dear Doug:

I am again writing to you as the senior IDWR representative who participated in the negotiations that developed the new General Provisions in Water District 34. In my letter to you dated June 4, 2001, I discussed Provision 3g. It is my understanding that waterusers in Water District 34 have also expressed concerns about the implementation of Provisions 6a and 6b. While we have discussed these provisions to some extent, we have not yet provided a written analysis. This is the first such written analysis to be issued by IDWR relative to these provisions since they have been decreed by the SRBA Court.

General Provision No. 6 is written as follows:

6. The following surface water rights from the Big Lost River and its tributaries upstream of Mackay Reservoir shall be administered separately from all other non-storage, surface water rights from the Big Lost River downstream of Mackay Reservoir during two periods of time as follows:
 - a. From the beginning of the irrigation season until the time on the rising stage of the Big Lost River when the maximum flow at the Howell gage reaches at least 750 cubic feet per second at any time for three consecutive days; and
 - b. After the time on the falling stage of the Big Lost River when the minimum flow recedes to no more than 450 cubic feet per second at any time for three consecutive days until the end of the irrigation season.
 - c. For purposes of determining the amount of water being supplied to Mackay Reservoir from curtailment of diversions upstream from the reservoir, measurements will be made on the Big Lost River at the Pense Bridge located in the T 8 N, R 23 E, S 30, SW 1/4 NE 1/4, and on the Donahue Bridge on Parsons Creek located in the T 8 N, R 22 E, S 24, SW 1/4 SE 1/4. These measurements will be used by the Watermaster to make futile call determinations.

June 15, 2001

Page 2 of 2

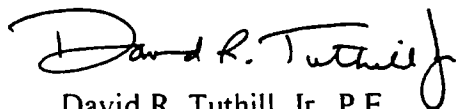
It is my understanding that a question has arisen regarding the potential for a situation whereby the river (1) connects on the rising stage of the river at flows of 750 cfs or greater for three consecutive days, (2) disconnects on the falling stage of the river at flows of 450 cfs or less for three consecutive days, and (3) experiences flows of greater than 750 cfs for three consecutive days again during the same irrigation season.

Analysis of these General Provisions requires that the terms "rising stage" and "falling stage" be interpreted. While formal definitions are not included in the General Provisions, the terms are commonly used by hydrologists to refer to trends in water levels as depicted on a hydrograph. For example, a one-day spike on a hydrograph due to a flash flood, or a one-day depression in a hydrograph due to a freeze would not be considered to depict the "rising stage" or the "falling stage." Stages are considered to be multi-day trends. However, it is possible that during a year a stream could experience more than one "rising stage" and "falling stage", as confirmed by the senior hydrologist at IDWR, Mr. Bill Ondrechen. As an example, in 1992 the hydrograph clearly depicts two separate rising and falling stages, one in early May and another in late May. Thus, it is possible for the river to connect on the rising stage as described in General Provision 6a, and for the river to disconnect as described in General Provision 6b, more than one time during the year.

To assess the impact of this analysis we have reviewed the hydrographs for Howell Gage on the Big Lost River for recent years. We have found that this situation is infrequent, but can occur. This year, for example, it is possible that this situation will again occur. As you are aware, we have already experienced the connection of the river at 750 cfs or greater, and the disconnection of the river at 450 cfs or less. In the event that the river again reaches 750 cfs or greater for three days, the river will be considered to have experienced another rising stage and will reconnect again under General Provision 6a.

I recognize that this assessment is different from off-the-cuff discussions that various IDWR members, including myself, have had at various times with various waterusers during recent weeks. However, this assessment, which has been reviewed by knowledgeable people in the Department, represents our official interpretation at this time. Thus, please consider this letter to serve as guidance for you as Watermaster on this issue.

Sincerely,



David R. Tuthill, Jr., P.E.
Adjudication Bureau Chief

Cc: Attached Mailing List
Norm Young, Tim Luke, Susan Hamlin, Carter Fritschle

Enclosure: Letter dated June 4, 2001



State of Idaho

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DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

May 16, 2002

Distribution: Parties in the SRBA who participated in the negotiated settlement for General Provisions in Basin 34

RE: Additional Considerations for General Provision 3g

Dear Parties:

As you are aware, I sent a letter to this group of participants on June 26, 2001, which solicited input regarding application of General Provision 3g in the Big Lost River Basin. The provision is repeated here for your convenience.

When the river is connected as specified in General Provision No. 6, while a right is rotated into storage, it is subordinate to all rights diverted above Mackay Reservoir with a priority date earlier than October 1, 1936.

In response to the letter, we received telephonic inquiries questioning the interpretation provided thus far. Accordingly, I initiated a discussion with the Watermaster and other parties who have expressed an interest in this provision.

The discussion, held on April 30, 2002, resulted in the review of various interpretations of General Provision 3g. These interpretations are expressed as options in the enclosed meeting notes. The result of the discussion was the confirmation of the guidance in earlier correspondence that rotation storage cannot take place when the river is connected and when water rights above Mackay Reservoir senior to October 1, 1936 are being curtailed. We also confirmed that rotation into storage can occur both before and after connection of the river, and delivery of this stored water can occur at any time during the irrigation season.

We found that there is nothing in the General Provisions to prevent rotation within the existing canals during periods before, during and after connection of the river. Rotation within the existing canals is also consistent with the approach offered in the draft Statewide Water Management Rules.

If you have further input in this regard, please feel free to contact either Watermaster Doug Rosenkrance or myself.

Sincerely,

A handwritten signature in dark ink, appearing to read 'David R. Tuthill, Jr.', is written over a horizontal line.

David R. Tuthill, Jr., P.E.
Adjudication Bureau Chief

Enclosures: Distribution List and Meeting Notes

Cc: Norm Young, Susan Hamlin-Nygard, Carter Fritschle, Tim Luke

Notes from Meeting on April 30, 2002

Hypothetical Situation

- Flow at Howell Gage is 1000 cfs (river is connected)
 - 1888's are on/1889's are cut
 - 1884 wishes to rotate into storage
- Rotation into storage for this water right is/is not allowed?

Options

- a. During the period when pre-1936 water rights upstream from Mackay Reservoir are curtailed (delivered on a priority basis), then water rotated into storage cannot be released from storage.
- b. If pre-1936 water rights upstream from Mackay Reservoir are not being curtailed (delivered on a priority basis), then water rotated into storage can be released from storage.
- c. During the period when pre-1936 water rights upstream from Mackay Reservoir are curtailed (delivered on a priority basis), then water cannot be rotated into storage.
- d. If pre-1936 water rights upstream from Mackay Reservoir are not being curtailed (delivered on a priority basis), then water can be rotated into storage and out of storage.
- e. Allow for water right holders to individually participate in the options above.

Note: Utilize rotation within ditches instead of rotation into storage during the period when the river is connected.

MAILING LIST FOR
BIG LOST RIVER GENERAL PROVISIONS LETTER
5/16/02

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**DIRK KEMPTHORNE
GOVERNOR**

**KARL J. DREHER
DIRECTOR**

June 11, 1999

Alder Creek Water Users

Re: Final Guidance Document for Distribution of Alder Creek Water Rights and Flows

Dear Water User,

Enclosed is a final copy of the document providing guidance to the water district concerning the distribution of water rights and flows on Alder Creek. A copy of this document has been sent to those individuals listed on the attached mailing list. Several parties submitted comments on the draft document. We appreciate your comments and cooperation.

Most of the revisions made to the final document are minor. Note that the time to install measuring devices and controlling works has been extended to June 28, 1999. This extension is provided since high flows in the creek may interfere with installations.

Further questions or inquiries for assistance may be addressed to Tim Luke at the above address, or by E-mail at tluke@idwr.state.id.us, or by calling 208-327-7864.

Sincerely,

A handwritten signature in cursive script that reads 'Tim Luke'.

Tim Luke
Water Distribution Section

Cc: Mailing List

Enclosure

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IDAHO DEPARTMENT OF WATER RESOURCES
GUIDANCE FOR DISTRIBUTION OF ALDER CREEK
WATER RIGHTS AND FLOWS, WATER DISTRICT 34

DESCRIPTION OF ALDER CREEK AND ALDER CREEK WATER RIGHTS

Attached to this document is a listing of Alder Creek water rights. Also attached is a map showing the location of lands owned by Alder Creek right holders. JB Gould now owns the lands shown as being owned by Carol Palmer. There are seven rights on the creek that share a priority date of September 30, 1882, which is the most senior priority date on the creek. The 1882 rights are all diverted from Alder Creek upstream from its confluence with the Darlington Ditch.

There are four other Alder Creek rights with junior priority dates ranging between 1896 and 1928. These latter four rights are all diverted into the Darlington Ditch where the creek intersects the ditch, and are then re-diverted at each right holder's turnout on the ditch. One of these junior rights, 34-00333, owned by James Lambert, is diverted in exchange with water from the Big Lost River. Lambert's turnout from the Darlington Ditch is upstream from the intersection of Alder Creek and the Darlington Ditch. Therefore, Lambert's Alder Creek right is delivered by diverting water from the Big Lost River at the head of the Darlington Ditch in exchange for an equal amount of water diverted in to the ditch from Alder Creek downstream of the Lambert ditch turnout.

Alder Creek flows directly into the Darlington Ditch. A spill structure with wood stop logs on the other side of the ditch is used for directing flows into the creek below the ditch. From the Darlington Ditch, the creek flows eight or nine-tenths of a mile before merging and commingling with water in the Vanous Ditch. The Vanous Ditch takes out from the Big Lost River about one and one-half miles northwest of its confluence with Alder Creek. A spring source that is drained by a small natural channel also commingles with the Vanous Ditch upstream of the point where Alder Creek intersects the Vanous. Two water rights are decreed from this spring source. Vivian and Melvin Ellwein, and the Houston Grazing Association own these rights. Both rights are re-diverted about two-tenths of a mile below the Vanous-Alder Creek confluence. The Big Lost River is located about four-tenths of a mile downstream of the Vanous-Alder Creek confluence.

The confluence of Alder Creek and the Big Lost River is located nearly two and one-half miles above Leslie. The river reach between the USGS gage below Mackay Reservoir and Leslie is either a gaining or a losing reach depending on river flow and ground water conditions. Losses in this reach are generally much less than losses in downstream reaches.

1. DISTRIBUTION OF WATER

A. Determining Water Right Priority Cuts:

The watermaster has responsibility for determining which water rights are in priority to receive water. In making this determination, the watermaster shall use the Idaho Department of Water Resources (IDWR)/Water District 34 water right accounting program. This is a computer program developed and supported by IDWR to determine water right priority cuts, river reach gains and losses, and distribution of both natural flow and storage water below Mackay Reservoir.

Alder Creek is a tributary of the Big Lost River and is to be administered in priority with the Big Lost River unless a futile call determination has been made.

B. Delivery of Alder Creek Water Rights to Creek Diversions and Darlington Ditch:

The watermaster shall deliver Alder Creek rights according to dates of priority as specified on the attached listing of Alder Creek rights. The watermaster shall only deliver rights which are called for and that can be delivered according to priority. All water right holders on the creek, and those Alder Creek right holders who re-divert water from the Darlington Ditch must call for water in accordance with Rule 040.01b of the Water District 34 Rules, which states:

All water deliveries must be called for by the water user at least forty-eight (48) hours in advance of the actual water delivery. Water which can be delivered by the watermaster in less than forty-eight (48) hours may be used by the water user.

Holders of Alder Creek rights who re-divert from the Darlington Ditch must also inform the watermaster as to when the rights should not be delivered to the Darlington Ditch at any time when those priority rights are on. These same right holders may also inform the Big Lost Irrigation District (BLRID) ditch rider regarding their intent to stop delivery while their rights are on, and the ditch rider may request that the watermaster stop delivery of the rights to the Darlington Ditch.

In delivering any Alder Creek water to right holders on the Darlington Ditch, the watermaster shall have responsibility for determining the amount of water that is delivered to the ditch. The watermaster must coordinate this delivery with the appropriate BLRID ditch rider. The watermaster is responsible for determining the amount of water entering the Darlington Ditch from the creek. It is the responsibility of the BLRID to deliver this water with appropriate losses to the individual right holders' point of re-diversion on the ditch. However, the watermaster has the authority to oversee delivery at points of re-diversion on the ditch and may make his own measurements at such points for the purpose of assuring that the Alder Creek water is being properly distributed. This oversight should be invoked at any time Alder Creek right holders, the BLRID or other interested parties raise concerns or questions.

IDWR and the water district recognize that storage water and/or Big Lost River rights may also be delivered by the BLRID at the Alder Creek right holders points of re-diversion on the Darlington Ditch. Additionally, the BLRID may charge certain transmission losses or rotation credits to individual users or turnouts. The water district has no authority over how the BLRID records or credits deliveries to its individual shareholders, nor does the water district have authority over how the BLRID manages its accounts or assessments. As a result, the Water District 34 watermaster does not have full responsibility to address all questions and concerns relative to individual ditch turnouts and credits assigned by the BLRID to individual BLRID share holders. The watermaster and BLRID therefore must cooperate with each other and share information in order to address questions concerning individual water delivery credits.

Alder Creek water rights will not be rotated for credit with storage water from the Mackay Reservoir. Also, the watermaster will not deliver water to any user with an unclaimed/unrecorded domestic or stock water use until the use is claimed and adjudicated.

C. Delivery of Water when Supply is Short:

Rule 20.04 of the Water District 34 Rules provides some guidance regarding futile call for delivery of surface water. It states as follows:

When curtailment of junior upstream surface water rights will not make water available for delivery and use to senior downstream surface water rights, without reasonable waste as determined by the director, the watermaster will not curtail the junior rights in a futile effort to deliver water to the senior rights. The director may consult the Water District 34 advisory board, the Big Lost Irrigation District and other impacted water users when determining whether attempting to deliver senior downstream surface water rights would be futile.

When determining a futile call, the watermaster must first consult with director. The final decision of a futile call rests with the director. There may be several types of futile call scenarios regarding Alder Creek.

1. Futile call regarding rights above the Alder Creek-Darlington Ditch confluence:

All of the rights on the creek above the confluence with the Darlington Ditch are senior to the rights that are re-diverted from the Darlington Ditch. Obviously, water failing to reach the ditch when upstream rights are either on or off will not fill rights on the ditch.

If Alder Creek fails to reach the Darlington Ditch, then the 1882 priority rights upstream of the ditch may be filled as follows:

- a) Fill the 1882 rights on a pro-rata basis (the rights may be filled even if they are junior to the last priority right filled on the main river as determined by the IDWR water right accounting program).

- b) If there is an amount of water that exceeds the 1882 rights, then the extra water may be divided among the right holders on a pro-rata basis.
2. Futile call regarding junior priority rights from Alder Creek that are re-diverted on the Darlington Ditch:

The need to determine a futile call under this scenario should be triggered by a call from the holder of a valid junior priority water right. Determination of a futile call and delivery of water to junior priority Alder Creek rights that are re-diverted from the Darlington Ditch must be based on the watermaster's measurement of Alder Creek at the Alder Creek-Darlington Ditch confluence and the Alder Creek-Vanous Ditch confluence. Measurement options at these locations are discussed in Section 2 of this document. The watermaster must also follow the guideline provided under Rule 20.04 of the Water District 34 Rules.

The watermaster will consider that any flow reaching the Big Lost River will be adequate to help other rights unless the Big Lost River will not reach the most immediate downstream diversions.

A. Alder Creek Reaches Darlington Ditch but does not Reach Vanous Ditch/Big Lost River:

If the watermaster's measurements of Alder Creek between the Darlington Ditch and the Vanous Ditch show that no flow reaches the river, then the watermaster may deliver junior priority rights from Alder Creek as follows:

- a) Fill all the 1882 priority rights on Alder Creek upstream of the Darlington as called by the right holders.
- b) Fill all the junior priority Alder Creek rights on the Darlington Ditch to the extent possible according to priority.
- c) If excess water exists, that water may be turned into the ditch and credited as a gain (or reduced loss) to the Darlington Ditch (no adjustment to heading of Darlington Ditch required).

Upon making a futile call determination, the watermaster shall notify the BLRID that such a determination has been made and that water from Alder Creek can be delivered to Alder Creek rights on the Darlington Ditch. The appropriate BLRID ditch rider will then notify the Alder Creek right holders on the Darlington Ditch that this water can be delivered. The right holders can either accept or refuse delivery. If delivery is refused or the water can not be delivered to these Alder Creek right holders for any reason, the BLRID can use the water for the general benefit of BLRID shareholders on the Darlington Ditch, including offsetting ditch conveyance and transmission losses.

B. Alder Creek Reaches Darlington Ditch and Vanous Ditch/Big Lost River, but Loss Between Darlington and Vanous Ditches is Significant:

If the watermaster's measurements of the creek between the Darlington and Vanous Ditches show a significant loss, then the watermaster must seek approval from the director of IDWR to turn the flow of Alder Creek into the Darlington Ditch and account for that water as being delivered from the Big Lost River. In seeking this approval, the watermaster's measurements must show a loss greater than 50 percent. In considering this request, the director will require that the diversion to the Darlington Ditch from the Big Lost River be reduced by the amount of flow from Alder Creek that is turned into the Darlington Ditch. Junior priority Alder Creek rights will not be delivered unless those priority dates are on as determined by the IDWR water rights accounting program.

D. Delivery of Excess Water (Excess Water and Alder Creek Reaches Vanous Ditch/Big Lost River):

During times of high runoff or when there is excess flow in the creek, the watermaster may deliver some excess flow into the Darlington Ditch if there are benefits to doing so. This practice should generally be limited to times when all priority rights in the water district can be delivered. In addition, the watermaster must implement the following procedures:

- a) Fill Alder Creek rights in priority as determined for the Big Lost River rights.
- b) Water in excess of that needed to fill priority rights from Alder Creek is credited as Big Lost River water and Darlington Ditch diversion heading is reduced accordingly.

E. Record Keeping Procedures:

The watermaster shall have responsibility for keeping records that show water has been properly distributed to all right holders on Alder Creek. The watermaster shall keep a logbook or sheet of all measurements and deliveries made on the creek. Deliveries to individual points of diversion, including deliveries to rights diverting from the Darlington Ditch, shall also be entered into the IDWR water right accounting program. Such records should include the following:

- a) Measured daily deliveries at each point of diversion from Alder Creek.
- b) Total daily deliveries of Alder Creek to the Darlington Ditch, sorted by individual right.
- c) Individual measurements of the creek at the confluence with the Darlington Ditch, and the confluence with the Vanous Ditch.

The watermaster is encouraged to maintain a file or record of all discharge measurements, calculations and field notes pertinent to delivery of water on Alder Creek. The watermaster is further encouraged to maintain a record of all futile call requests and responses.

F. IDWR Assistance:

IDWR staff will provide in-field training and assistance in implementing the procedures outlined under this document. This training and assistance will extend to the

watermaster, deputy watermasters, BLRID ditch riders and/or manager, and other interested water right holders.

G. Recommended Assignment of Water District Staff Duties

IDWR recognizes that many state water district watermasters have some proprietary interest in water rights or have family members that own water rights within the district that he/she has jurisdiction. In some cases, it may be helpful if the watermaster hires an assistant to distribute water to diversions that are owned by the watermaster or his/her immediate family members. Sometimes the choice of an assistant may also be unacceptable to some users. Section 42-609, Idaho Code empowers the water master to employ 'suitable' assistants. If the watermaster hires an assistant, the director of IDWR has authority to approve the selection. The director has no authority under the code to force the hiring of an assistant. The decision to hire an assistant in this case shall be made by the watermaster. If the watermaster's decision is not agreeable to one or more users, then a user may petition the watermaster to re-consider his decision and can also provide suggestions about who to hire. Such petition should be carbon copied to the department and should be signed by more than one right holder on the creek. The users and the watermaster should work together to resolve assignment duties. An assistant, if hired, should be authorized to approach IDWR for instruction.

2. MEASURING DEVICES AND CONTROLLING WORKS

Each individual diversion from Alder Creek must have head works that can be controlled by the watermaster or the watermaster's assistants. Such head works must be capable of being locked by the water district. Each individual diversion must also have a suitable measuring device that is approved by the water district or IDWR. Measuring devices and controlling works must be installed prior to the irrigation season. If high stream flow conditions, snow or poor weather makes this installation impractical, then the users must install these devices before water is delivered under a call to the watermaster, but no later than June 28, 1999. Installation of controlling head works is not necessary at the Alder Creek-Darlington Ditch confluence. The watermaster however must have a means to measure the flow of Alder Creek and control the amount of water distributed to the ditch or turned down to Alder Creek below the ditch. Guidance for measuring and controlling flows at this confluence is provided below. Any references to temporary measuring devices below means that the installed device can be removed after the irrigation season and re-installed the following year after high flows have subsided. The devices must remain in place during the irrigation season when flows are regulated. Removal of the devices after the season can prevent them from being damaged in the winter or being washed out from high flows during the spring.

3. MEASUREMENT AND CONTROL OF WATER AT THE ALDER CREEK-DARLINGTON DITCH CONFLUENCE

A number of different methods may be implemented for measuring the flow of Alder Creek at its junction with the Darlington Ditch. Water District 34 is responsible for the installation and costs of measuring devices. IDWR recommends separate measurement of the creek above the Darlington Ditch for determining the natural flow of the creek and the amount of water that can be delivered to the ditch and/or bypassed to the lower portion of the creek. Regulating the delivery or bypass of Alder Creek at the confluence can be accomplished by using the spill structure located directly across the ditch from the creek.

Inflow to the Darlington Ditch from Alder Creek may best be measured by installing a temporary weir or flume in the channel of Alder Creek a short distance upstream of the ditch. Care should be taken installing the device too close to the ditch since higher flows or water levels in the ditch could raise the water level at the mouth of the creek and submerge the weir or flume. The measuring device should be installed after the high seasonal flows subside and prior to any call for water to the watermaster.

To measure water that spills or is turned out to the creek below the ditch, a temporary weir may be placed in the creek on the other side of the road. As an alternative to installing a weir at this location, the stop log structure that spills water from the ditch to the creek may be used directly as a weir providing the following steps are taken:

- Install about a one-eight inch thick metal strip along the top stop log to provide a more standard thin plate weir blade or crest. The plate should protrude an inch or two above the log and must be level.
- Prevent or minimize leaks between stop logs.
- Measure head above the weir crest and apply the standard suppressed rectangular weir formula for calculating discharge.

3. MEASUREMENT OF WATER AT THE ALDER CREEK-VANOUS DITCH/BIG LOST RIVER CONFLUENCE

For the purpose of determining a futile call on the lower part of Alder Creek between the Darlington and Vanous Ditches, a temporary weir or flume should be installed in the creek just upstream of the Alder Creek-Vanous Ditch confluence. It may also be acceptable for water district staff to current meter the creek at this same location in lieu of installing a weir. IDWR encourages use of a weir or flume at this location so that other interested parties can measure the creek at this same point. Again, the measuring device should be installed after the high seasonal flows subside and prior to any call for water to the watermaster.

Mailing List

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Houston

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Alder Creek

Darlington Ditch

06N24E13

McCrays
Irrigation

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Little Blind Canyon

Big Blind Canyon

Bedy Canyon

9. BE IT RESOLVED that Lee R. Peterson, be re-elected Watermaster, for District 37 & 37M, for the ensuing year beginning February 1, 2002 and ending January 31, 2003, and be authorized to hire a full-time staff consisting of three deputies. The Watermaster may hire additional assistants as authorized in Idaho Code 42-609 in an emergency.

10. BE IT RESOLVED that Norma Peterson, be re-elected Secretary-Treasurer, for Districts 37 & 37M for the ensuing year, beginning February 1, 2002 and ending January 31, 2003.

11. BE IT RESOLVED that the elected treasurer of Water District 37 & 37M shall only disburse monies from water district accounts upon a voucher approved by the watermaster. All district checks shall require the signature of the treasurer and be co-signed by an Advisory Board Member. Kenneth Ohlinger or Bob Esterbrook (or other named person) shall serve for the purpose of co-signing all district checks.

12. BE IT RESOLVED that the 2002 assessments be calculated over a five year average, according to Idaho Code 42-612 paragraph 5 which reads as follows:

Other provision of Chapter 6, title 42, Idaho Code, notwithstanding, water users at the annual meeting may provide by resolution that the respective amounts owed by each water user as shown in the adopted budget shall constitute a final determination of the amount due for that year without the need to carry forward any water user debits or credits to the following year.

WD 37 - WATERMASTER SETS
DATE/TIME FOR QUARTERLY MEETINGS
WITH ADVISORY BOARD.

RESOLUTION #11

A motion, to be made and seconded, that the Watermaster is authorized to reimburse the Chairman, Vice Chairman, and Secretary of Water District #65 for any necessary mileage to and from District meetings, at a rate of \$.30 per mile, as well as any other necessary expenses incurred by these Officers deemed appropriate for reimbursement by the Advisory Board.

RESOLUTION #12

A motion, to be made and seconded, to authorize the Watermaster, with the consent of the Advisory Board, to acquire, hold and disburse of real and personal property, equipment and facilities in the name of Water District No. 65 as necessary for the proper distribution of water.

RESOLUTION #13

A motion, to be made and seconded, that the water users of Water District No. 65 hereby adopt the following policy for the operation of the 2002 Water District No. 65 Advisory Board:

The Advisory Board should foster open communications and participation within Water District No. 65 in a cooperative manner in order to strengthen the positions of the water users of the District. The Advisory Board will operate and vote on issues by consensus or agreement of all members in attendance. If an issue is unresolved through consensus or becomes too divisive, the issue will be tabled until a future meeting when consensus is reached. Otherwise, the issue may be voted on at the next Annual or Special Meeting of the District, if necessary.

RESOLUTION #14

A motion, to be made and seconded, that the water users of Water District No. 65 approve the following amendments to the Water District No. 65 Rental Pool Procedures and submit said amendments to the Idaho Water Resource Board for their consideration:

PARA 8. RENTAL FEES AND PAYMENTS TO LESSORS:

(Additional language underlined, with deletions marked as stricken from the paragraph.)

8.1 The price of stored water rented from the Rental Pool for use upstream from the mouth of the Payette River is \$3.20 per acre foot, with \$2.00 per acre foot being paid to the Lessors, a \$1.00 per acre foot administrative fee paid to the District and the \$0.20 surcharge due the Board under the Idaho Water Bank rules. The price of stored water rented from the Rental Pool for use downstream from the mouth of the Payette River is ~~\$5.65~~ 8.50 per acre foot, with ~~\$4.23~~ 6.82 per acre foot being paid to the Lessors, \$2.23 of which is intended to be used by the Lessor for improvements within the Lessor's delivery system, with emphasis given to improvements which would

11. WHEREAS, it is in the best interest of the water users of Water District 1 to be in charge of any water allocation and distribution and to account for all diversions, which might adversely affect any prior natural flow or storage rights;

BE IT RESOLVED that it shall be the duty of the watermaster to distribute water, regulate diversions and collect records of water diversions during the entire year.

12. BE IT RESOLVED that the Committee of Nine be designated to be the advisory committee under Idaho Code §42-605 and be continued with nine regular members. The member representing the Burley and Minidoka Irrigation Districts shall be alternated between the two districts as they arrange. In addition, advisory members to the committee shall consist of a representative from the Bureau of Reclamation, the Teton Basin, the AFRD#2 Canal, A & B Irrigation District, the Wyoming State Engineer, Milner Irrigation District, and the alternate from the Burley or Minidoka Irrigation District who is not currently a member of the Committee of Nine.

13. WHEREAS, the members of the Committee of Nine, as the water district's advisory committee, are elected to represent the general interest of the water users;

NOW, THEREFORE, BE IT RESOLVED that the Committee of Nine is hereby authorized to:

- (a) Advise and consult with the watermaster and director in matters related to water resources management and water distribution.
- (b) Serve as the standing resolutions committee for all meetings of the water district.
- (c) Take those actions necessary to represent and protect the interests of the water users of the water district and to authorize the expenditure of additional funds when necessary.
- (d) Employ such legal, engineering, technical and clerical services that may be deemed necessary by the Committee of Nine to fulfill its responsibilities to the water users of the water district.
- (e) Make and execute such contracts and agreements as may be deemed necessary or convenient.
- (f) Do such other things as the committee shall deem to be beneficial to the water users of the water district.

BE IT FURTHER RESOLVED that the Committee of Nine is hereby ratified as the local committee for the rental of stored water under Idaho Code § 42-1765.

14. WHEREAS, the Committee of Nine has been selected by the water users of Water District 1 to represent their collective interests;

BE IT RESOLVED that the Committee of Nine be authorized to modify the budget and approve the expenditure of funds held by the water district for the following purposes:

- (1) Unanticipated expenses of the water district.
 - (2) Necessary improvements to the water district's facilities.
 - (3) Educational projects designed to increase public awareness in the area of water distribution, water rights and water conservation.
 - (4) Other public projects designed to assist in the adjudication, conservation or more efficient distribution of water.
 - (5) Involvement in legislative, legal and agency deliberations on issues involving water quantity and quality which could affect water users of the water district, including naming Water District 1 as a petitioner in legal actions involving the ESA and the negotiation of federal claims and tribal claims filed in the SRBA, and further, to expend funds as are necessary that may exceed the budgeted amounts for such expenditures and then approved by the Committee of Nine.
 - (6) To reimburse advisory committee members in accordance with the policy attached hereto as exhibit B.
 - (7) Items authorized in resolution no. 13.
15. BE IT RESOLVED that in accordance with the provisions of the March 2, 1993, Memorandum of Understanding with IDWR, the watermaster is hereby designated manager of the Rental Pool for the Committee of Nine.
16. WHEREAS, the watermaster from time to time finds that storage has been used in excess of entitlements, and

WHEREAS, these "excess uses" require an allocation of rental pool storage, and

WHEREAS, the collection of payment for these excess storage uses can be time-consuming and can result in delays in making lease payments to the rental pool lessors;

NOW, THEREFORE, BE IT RESOLVED that the watermaster is authorized to maintain \$100,000 of the funds generated through the administrative charge on water rentals for the purpose of assuring lessors can be paid prior to the final diversion data for the year being available to the watermaster.

BE IT FURTHER RESOLVED that all monies collected for excess use rental charges, plus all appropriate interest and penalties, shall be first used to replace monies spent from this account.