



State of Idaho

DEPARTMENT OF WATER RESOURCES

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March 18, 2005

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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.

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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

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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

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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

2005 Consolidated Bain-Wide Mitigation Plan¹ for Basin 34 Water Users

Revised – February 10, 2005

DRAFT

Submitted - , 2005

DRAFT

Basin 34 water users Feb 20 edits

This mitigation plan is proposed pursuant to Rule 50 of the Water District 34 Water Distribution Rules (IDAPA 37.03.12) for those junior ground water users whose ground water rights are administered conjunctively as part of the Big Lost River and tributaries. These rules provide that junior ground water users can continue to divert ground water when mitigation is provided pursuant to Rule 50.04. This plan is intended to meet those requirements by providing 6,110 ac-ft² of water to augment the natural flow of the Big Lost River.

Basin 34 Water Users understand the purpose of mitigation is to augment the natural flow of the Big Lost River downstream from Mackay Dam. Mitigation does not guarantee any particular water right will receive a full water supply in any year. Basin 34 Water Users also understand the administration of this plan will be implemented by the Watermaster of Water District 34 under the supervision of the Director of IDWR.

The Watermaster of Water District 34 will administer and provide the accounting necessary to ensure the total mitigation burden (6110 ac-ft) will be satisfied pursuant to this plan. All ground water users within Water District 34 may participate in this plan. Each ground water user who chooses to be covered under this plan will pay an administrative fee to the Water District to cover the administration of the mitigation plan. The "total mitigation burden" is defined as the total amount of water (6110 ac-ft) ground water users are required to provide as river augmentation for mitigation purposes. The portion of this total mitigation burden each ground water user is required to provide is defined as

¹ This mitigation plan is a consolidation of the Basin 34 Water Users Plan dated January 7, 2005 and the Participants Universal Mitigation Plan dated December 14, 2005, and recent updated versions of these two plans. This consolidated plan is prepared under the direction of this group for the benefit of their respective members but with the objective of making the consolidated plan acceptable and accessible to all ground water users whose rights are conjunctively managed in the Basin.

² Water users within Basin 34 understand the Director of IDWR is willing to accept a mitigation supply of 6,110 ac-ft. Water users also understand individual mitigation plan(s) may be proposed offering supplies of water based upon their actual previous year's pumpage quantities. These individual mitigation supplies will be subtracted from the 6,110 ac-ft proposed in this consolidated plan.

33 the “individual’s mitigation burden” which is based on the individual ground
34 water user’s proportionate share of the previous year’s actual pumpage³.
35

36 Collecting mitigation water supplies that will be used for reducing the total
37 mitigation burden within Water District 34 will be done in the following
38 manner (with the exception relating to CREP individual credits):

39 1. Recharge - Managed Aquifer Recharge supplies will be the first preferred
40 option for providing mitigation to whatever extent such supplies are
41 available. Recharge conducted by the Water District’s recharge committee,
42 in compliance with the plan of operation incorporated into and made part of
43 water rights nos. 34-7571 and 34-7573, will be considered as replacement
44 credit supplies for quantities of pumped ground water. Managed recharge
45 supplies will be credited towards mitigation at a rate equal to the depletion
46 factor described in Rule 50.04.c or higher as may be determined by future
47 studies. Additionally, future studies may indicate managed aquifer recharge
48 supplies should be credited towards the total mitigation burden of
49 subsequent years. When recharge supplies⁴ are of great enough quantities,
50 the entire mitigation burden could be satisfied with such supplies.

51
52 2. CREP - Irrigated lands within Basin 34 may have an opportunity to be
53 enrolled in CREP. Although the emphasis of this program appears to be on
54 reducing ground water withdrawals, some of these same lands may also be
55 associated with surface water rights. At the time of submitting this plan, the
56 details of this CREP program regarding water rights have not been fully
57 determined and disseminated to the public. If allowed by CREP, these un-
58 diverted surface water rights may be used to satisfy individual mitigation
59 burdens of program participants and, to the extent additional credit is
60 available, this credit will be used to satisfy or reduce the total mitigation. No
61 monetary compensation from the Water District for these credits will be
62 allowed.

63
64 3. Donated Water – Irrigators in the Big Lost River drainage may elect to
65 donate their water (storage, rotation credit, or decreed) to mitigation. When
66 water is donated, it will be used to reduce the general mitigation burden (*i.e.*
67 subtracted from the general mitigation burden to lower the percentage of the

³ IDWR administrators have prepared a preliminary summary of 2004 pumpage, dated 1/21/2005, from individual well records. This document, or a final version of this summary, will be used for determining individual’s proportionate mitigation requirements. Ground water users may substitute actual in-line water flow meter readings that are certified by licensed engineers or verified by local deputy water masters.

⁴ During the years of 1995 to 1999 managed recharge in Basin 34 ranged from 33,766 ac-ft to 89,319 ac-ft as reported to IDWR during the developing stage of the two recharge water rights permits.

68 general mitigation burden required by individual groundwater users, as
69 opposed to being donated to an individual to satisfy his individual mitigation
70 burden).

71
72 Any water contributed through these avenues described above will be
73 subtracted from the total mitigation burden, and will reduce each individual's
74 mitigation burden proportionately. The remaining mitigation burden will be
75 provided from individual ground water users proportionately (the amount
76 groundwater that the user pumped during the previous year divided by the total
77 groundwater pumped in Water District 34 during the previous year) as
78 described hereafter. Prior to April 1, individual ground water users will be
79 required to contact the Watermaster to declare how they intend to satisfy their
80 individual mitigation burden. To satisfy their individual mitigation burden,
81 individual ground water users may pledge water supplies owned by themselves,
82 purchase water supplies from other water users to be used to satisfy their
83 individual mitigation burden, or participate in the "willing buyer-willing seller"
84 mitigation acquisition pool. Each proposed water supply will be described by
85 water right number and quantity (to the extent possible) when pledged and/or
86 offered for mitigation. Additionally, the Watermaster will be authorized
87 pursuant to Rule 50.04.d. to acquire mitigation supplies from water right
88 holders who wish to provide their natural flow surface water, rotation credit
89 water, or storage allocations to create an acquisition pool. Any ground water
90 user who wishes to purchase mitigation water from the acquisition pool to
91 satisfy their individual mitigation burden as outlined above, may buy such
92 water supplies acquired by the Watermaster to the extent those water supplies
93 are available.

94
95 Ground water users who are participating in this mitigation plan may satisfy
96 their individual mitigation burden in the following manner:

97 1. Natural Flow (Decreed) Water – Water supplies from natural flow rights
98 and/or rotation credits from those water rights held by any water user
99 within the Water District may be pledged to the extent such water rights
100 provide actual water supplies in their respective priorities. Ground water
101 users will indicate to the Watermaster which natural flow water rights
102 will be used as mitigation and during approximately what time period so
103 the volume of water not diverted for irrigation purposes can be credited
104 as mitigation. Unless the natural flow water right is dedicated to
105 mitigation for the entire irrigation season, ground water users who choose
106 to contribute a portion of a natural flow water right to satisfy their
107 individual mitigation burden must demonstrate to the satisfaction of

108 IDWR that they will forgo a beneficial use of that contributed water
109 supply. If any natural flow water right (in part or in its entirety) is
110 pledged by a ground water user, an approved IDWR temporary transfer
111 must accompany that pledge prior to that supply actually being accepted
112 and used for river augmentation. The use and exercise of any such water
113 right will not be deemed to be a forfeiture or loss of priority when used
114 for mitigation purposes. Natural flow water rights used for mitigation
115 will be credited based upon the actual quantity/volume of water made
116 available under such rights.

- 117 • Natural flow water supplies from tributaries to the Big Lost River may
118 also be used for mitigation. Some tributaries may not come into direct
119 contact with the river but can be introduced directly into canals or
120 laterals. When mitigation water is provided in this manner the
121 Watermaster will reduce diversions from the Big Lost River into that
122 canal or lateral by the same measured amount of mitigation water the
123 tributary water right provides. Thus, tributary water can augment the
124 Big Lost River without being physically delivered to the river.
125 Permission must be obtained from the owner of the canal or lateral to
126 place water into the canal or lateral.
- 127 • Natural flow water supplies upstream from the Mackay Reservoir may
128 also be used for mitigation. These designated supplies are natural
129 flow rights and will be deducted from mitigation supplies released
130 from the Mackay Dam.

- 131 2. Rotation credit water - Groundwater users will indicate which decreed rights will be
132 rotated as stored water, and approximately when this rotation might occur.
- 133 3. Storage Water - Groundwater users will indicate which storage rights
134 (owned or rented) and amounts that will be used to satisfy their
135 individual mitigation burden. The Watermaster will communicate this
136 information to the Big Lost River Irrigation District so they can properly
137 note the change in use and charge/credit the appropriate water user's
138 account.
- 139 4. Ground Water – Ground water may be used for mitigation. However, the
140 Watermaster will only accept ground water for mitigation purposes under
141 the following conditions:
 - 142 • No other remaining source of mitigation supply is available to the
143 individual ground water user.
 - 144 • The mitigation water supply is directly injected into the river or a
145 physical exchange of water can be made to the Big Lost River as

148 provided for in Rule 50.04.c.iii. This can only occur when the river is
149 running past the canal in which water is being injected and the
150 physical exchange must occur at the canal heading where the water is
151 injected. These introduced supplies will be deducted from the
152 constant flow mitigation water described below pertinent to Rule
153 50.04.

- 154 • The river reach, canal, or lateral receiving these supplies is not dry.
- 155 • The mitigation water supplies can be put to beneficial use.
- 156 • The mitigation water supply from the well must be measured.
- 157 • No new groundwater rights will be allowed. However, existing
158 ground water rights may be used and/or transferred pursuant to an
159 approved IDWR transfer.
- 160 • Water supplies diverted from any such mitigation well(s) will require
161 approved transfers from IDWR, the same as other potential mitigation
162 supplies.
- 163 • Anyone who uses ground water to satisfy their individual mitigation
164 burden is responsible for the entire cost (i.e. power costs) associated
165 with this source of mitigation.
- 166 • Ground water users may combine, collaborate, and consolidate their
167 individual mitigation burdens and mitigation remedies in a
168 cooperative effort.
- 169 • Proponents of this consolidated plan reiterate the position of using
170 ground water supplies as a supply of last resort, both for economic
171 and social preference reasons.

172 5. Purchase Pool - the Watermaster will be authorized pursuant to Rule
173 50.04.d. to acquire mitigation supplies from water right holders who wish
174 to provide their natural flow surface water, rotation credit water, or
175 storage. Any ground water user who wishes to purchase mitigation water
176 from the purchase pool, to satisfy their individual mitigation burden as
177 outlined above, may buy such water supplies purchased by the
178 Watermaster to the extent those water supplies are available.

179
180 Full participation by the ground water user in this plan will be required before
181 the ground water right(s) held by that ground water user is covered under this
182 plan and therefore protected from curtailment.

183
184 185 Release and timing patterns of mitigation supplies will be as follows:

186 The release and timing patterns of these mitigation supplies will comply with
187 Rule 50.04 as nearly as is practicable. Some flexibility in release patterns will
188 be needed to accommodate the actual conditions of river flow, responses to
189 extemporaneous administrative actions, and for the utilization of all the various
190 mitigation supplies. The intent of this consolidated plan is to provide the entire
191 6,110 ac-ft of mitigation supplies as river augmentation during the irrigation
192 season when water rights having a 1905 or earlier priority are not satisfied that
193 have requested mitigation. The following is a description of how that flexibility
194 will be used for that stated purpose.

195
196 As described by Rule 50.04 one third of the required mitigation supply⁵ will be
197 made available to the Watermaster for purposes of augmenting the natural flows
198 of the Big Lost River during the first half of the irrigation season (May 1
199 through July 23, or 84 days). Water supplies⁶ used to "flush" the river system
200 at the commencement of the irrigation season as described in Rule
201 40.02.d.iii,g,h will be considered as mitigation and deducted from the first 1/3
202 of the mitigation supply. The residual balance of the mitigation supply will
203 then be released at a constant release flow rate during the remaining days of the
204 first half season period. If water rights with 1905 and earlier priorities are
205 satisfied during any period of days within this first half of the irrigation season
206 from natural river flows without the use of augmenting supplies, no mitigation
207 supplies will be released for those days. The sum acre-feet of water not
208 released during those days will not be required to be released.

209 Two thirds of the required mitigation supply will be made available to the
210 Watermaster for the second half of the irrigation season (July 24 through
211 October 15, or 84 days) for purposes of augmenting the natural flow of the Big
212 Lost River at a constant flow release rate. If water rights with 1905 and earlier
213 priorities are satisfied during any period of days within this second half of the
214 irrigation season from natural flows without the use of augmenting supplies, no
215 mitigation supplies will be released for those days. Once water rights with
216 1905 or earlier priorities are unable to be satisfied by natural river flows, a
217 calculation of remaining days in the irrigation season will be determined. Using
218 the number of days from the calculations, an augmenting constant release flow
219 rate will then be established by dividing the number of days into the remaining

⁵ This example assumes no managed aquifer charge has occurred during the current and previous years. Managed recharge replacement credits, CREP contributions, donated water, or any other total mitigation burden reduction supply would be subtracted from the 6,110 ac-ft and any remaining balance would then be divided as described.

⁶ Whenever storage water or storage allocations, and whenever natural flows or rotation credits, or any combinations of these water supplies are used to "flush" the river system as described in Rule 40, the entire volume of water will be credited as a mitigation supply.

220 mitigation supply. In every instance of releasing mitigation supplies for the
221 purpose of augmenting river flows, care and flexibility must be exercised to
222 provide for the responsible utilization of the 6,110 ac-ft.

223

224 Water users understand acceptance of this mitigation plan includes distribution
225 of the mitigation water by the Watermaster as illustrated in the above example.
226 This plan does not preclude individual ground water users or other groups of
227 ground water users from offering their own mitigation plans. The mitigation
228 requirement of 6110 ac-ft for this plan will be reduced by the amount of
229 mitigation water required from any/all other mitigation plans combined which
230 are approved by the Director prior to the beginning of the irrigation season.
231 This mitigation plan will commence and be implemented once the call for
232 mitigation has been requested by a valid senior surface right holder, approved
233 by IDWR, and the criteria for conjunctive management have been satisfied.
234 The call for mitigation must be made prior to, or at the time of, the initial
235 delivery call for irrigation water (rotation into credit is considered a delivery
236 call for water) and prior to "river flush" releases.

237

238 Any ground water user who wishes to be covered under this mitigation plan
239 after April 1, will be required to mitigate with money (by purchasing water
240 from the Watermaster's pool) and will be charged a late fee of \$200 or 15% of
241 their individual mitigation burden acquisition costs, whichever is greater.
242 These late fees will be used to buy mitigation water in the following year which
243 will be applied towards that year's total mitigation burden.

244

245 Water users within Water District 34 expect IDWR and the Watermaster to
246 administer ground water rights so that those individuals holding ground water
247 rights which are described by partial decree to be conjunctively administered,
248 and which are not participating in this consolidated plan or participating in
249 another approved mitigation plan, shall not be allowed to divert groundwater
250 after mitigation has been required.

251

252 If mitigation is called for prior to the irrigation season, then the water users intend to also
253 request an early start of the irrigation season

254

255

256 We reserve the right to modify this plan. However, no modification can take
257 place during the irrigation season

2005 Consolidated Bain-Wide Mitigation Plan¹ for Basin 34 Water Users

Revised – February 23, 2005

DRAFT

Submitted - _____, 2005

DRAFT

This mitigation plan is proposed pursuant to Rule 50 of the Water District 34 Water Distribution Rules (IDAPA 37.03.12) for those junior ground water users whose ground water rights are administered conjunctively as part of the Big Lost River and tributaries. These rules provide that junior ground water users can continue to divert ground water when mitigation is provided to senior water rights pursuant to Rule 50.04. This plan is intended to meet those requirements by providing 6,110 ac-ft² of water to augment the natural flow of the Big Lost River below the Mackay Dam.

Mitigation does not guarantee any particular water right will receive a full water supply in any year. Water users understand the administration of this plan will be implemented by the Watermaster of Water District 34 under the supervision of the Director of IDWR. Water users also understand all mitigation supplies provided for within this plan must be made available to senior water right holders as river augmentation prior to a futile call determination as described in Rule 20.04, and mitigation supplies are not required to be provided for when water can not be delivered due to a futile call (except as provided for at the commencement of the irrigation season as described in Rule 40.02.).

Basin 34 Water Users propose to use various water supplies such as replacement credits from managed aquifer recharge, storage allocation from the Mackay Reservoir³, natural flow and impounded natural flow rotation credits, and/or ground water pumpage as mitigation supplies as described and allowed for in Rule 50.04.c.iii. Each of these supplies (with the exception of managed recharge) does not currently have a descriptive beneficial use element as "mitigation". However, each proposed water supply to be used as river augmentation does have "irrigation" listed as a beneficial use. The use of these proposed water supplies for "mitigation" purposes is incidental, and the primary beneficial use will remain as "irrigation". Approval of this proposed consolidated basin-wide mitigation plan by the Director will constitute formal IDWR approval for such supplies to be used as "mitigation/irrigation". Once this plan is approved, any supply used to augment the flows of the Big Lost River will be treated as natural flow for regulatory and conveyance purposes.

If the Director approves this consolidated plan, it is proposed the plan will be presented to the water users at the annual water district meeting scheduled for March 7, 2005. It is also proposed and anticipated a resolution will be presented at this annual meeting allowing water users to vote on the water district's adoption and sponsorship of this consolidated plan for all water users within the water district. If adopted, participating water users who wish to receive the protective benefits of this

¹ This mitigation plan is a consolidation of the Basin 34 Water Users Plan dated January 7, 2005 and the Participants Universal Mitigation Plan dated December 14, 2005, and recent updated versions of these two plans. This consolidated plan is prepared under the direction of this group for the benefit of their respective members but with the objective of making the consolidated plan acceptable and accessible to all ground water users whose rights are conjunctively managed in the basin.

² Water users within Basin 34 understand the Director of IDWR is willing to accept a mitigation supply of 6,110 ac-ft for the 2005 irrigation season if such a supply were incorporated into a single basin-wide plan that is available for participation in by all ground water users in general. Water users also understand individual mitigation plan(s) may be proposed offering supplies of water based upon their actual 2003 and 2004 pumpage quantities. These individual mitigation supplies will be subtracted from the 6,110 ac-ft proposed in this consolidated plan.

³ At the time of this submission, it is understood the Board of Directors of the Big Lost River Irrigation District have unanimously voted to prevent and not allow the use of storage water supplies held by the irrigation district to be used as mitigation by any water user within basin.

38 mitigation plan will be allowed to continue the diverting of their ground water rights. Water users
39 who do not wish to participate in this consolidated plan may "opt-out" by giving written notice to
40 IDWR of their intent as allowed for in Rule 50.04.e. Each ground water user who chooses to be
41 covered under this plan will pay a nominal administrative assessment fee (\$20.00) to the water district
42 to cover the administration of the mitigation plan. Ground water users will have the option of
43 pledging their own mitigation water supplies directly to the Water District and/or participating in the
44 "willing buyer-willing seller" mitigation acquisition pool to the extent needed to satisfy their
45 respective individual mitigation burden. These acquisition assessment revenues will then be used and
46 integrated into the annual water district budget for the purpose of acquiring water supplies on a
47 "willing buyer-willing seller" basis, and at fair market prices negotiated by the parties

48
49 The "Total Mitigation Burden" is defined as the total amount of water (6,110 ac-ft) all basin ground
50 water users are cumulatively required to provide as river augmentation for mitigation purposes.
51 The "Individual Mitigation Burden" is defined as that portion of this total mitigation burden each
52 ground water user is responsible for, which is based on the individual ground water user's
53 proportionate share of the 2004 year actual pumpage⁴.

54
55 Mitigation water supplies used for reducing the total mitigation burden can be done in the following
56 manner:

57 1.) Recharge - Managed Aquifer Recharge supplies will be the first preferred option for
58 providing mitigation to whatever extent such supplies are available. Recharge conducted by the water
59 district's recharge committee, in compliance with the plan of operation incorporated into and made
60 part of water rights nos. 34-7571 and 34-7573, will be considered as replacement credit supplies for
61 quantities of pumped ground water. Managed recharge supplies will be credited towards mitigation at
62 a rate equal to the depletion factor described in Rule 50.04.c or higher as may be determined by future
63 studies. Additionally, future studies may indicate managed aquifer recharge supplies should be
64 credited towards the total mitigation burden of subsequent years. When recharge supplies⁵ are of
65 great enough quantities, the entire mitigation burden could be satisfied with such supplies.

66 2.) CREP - Irrigated lands within Basin 34 may have an opportunity to be enrolled in CREP.
67 Although the emphasis of this program appears to be on reducing ground water withdrawals, some of
68 these same lands may also be associated with surface water rights. At the time of submitting this
69 plan, the details of this CREP program regarding water rights has not been fully determined and
70 disseminated to the public. Water users reserve any and all rights to benefit from this program.

71 3.) Donated Water – Water users in the Big Lost River drainage may elect to donate their water
72 supplies (i.e. storage allocations, natural flow and/or rotation credits) towards mitigation burdens.
73 When such water supplies are donated, they will be used to reduce the total mitigation burden rather
74 than any particular individual mitigation burden. All donated water supplies will be subjected to an
75 approved IDWR transfer before mitigation credits can be acquired.

76
77 Any mitigation supplies collected from the sources described above will be subtracted from the total
78 mitigation burden, resulting in a reduction of the individual(s) mitigation burden. The remaining
79 mitigation burden will be provided from individual ground water users proportionately as described
80 hereafter. Individual ground water users will be required to contact the water district and declare how
81 they intend to satisfy their portion of the remaining mitigation burden prior to May 1, 2005.

⁴ IDWR administrators have prepared a preliminary summary of 2004 pumpage, dated 1/21/2005, from individual well records. This document, or a final version of this summary, will be used for determining individual's proportionate mitigation requirements. Ground water users may substitute actual in-line water flow meter readings that are certified by licensed engineers or verified by local deputy water masters.

⁵ During the years of 1995 to 1999 managed recharge in Basin 34 ranged from 33,766 ac-ft to 89,319 ac-ft as reported to IDWR during the developing stage of the two recharge water rights permits.

82 Individual ground water users may pledge water supplies owned by themselves or may purchase other
83 water supplies to be used to satisfy their individual mitigation burden. Additionally, the Watermaster
84 will be authorized pursuant to Rule 50.04.d. to acquire mitigation supplies from water right holders
85 who wish to rent/lease their natural flow surface water, rotation credit water, or storage allocations to
86 create an acquisition pool. Any ground water user who wishes to purchase mitigation water from the
87 acquisition pool, to satisfy their individual mitigation burden as outlined above, may buy such water
88 supplies acquired by the Watermaster to the extent those water supplies are available.
89

90 Ground water users may satisfy their individual mitigation burden in the following manner:
91 1.) Natural Flow Water – Natural flow rights diverted from the Big Lost River and/or rotation
92 credits from natural flow water rights pledged by any water user or acquired by the water district may
93 be used for mitigation to the extent such water rights provide actual water supplies in their respective
94 priorities. If the natural flow water right is used for mitigation purposes (in part or in its entirety
95 during the irrigation season) the ground water user must complete a transfer application and
96 demonstrate to the satisfaction of IDWR they will forgo a beneficial use of that contributed water
97 supply. The use and exercise of any such water right will not be deemed to be a forfeiture or loss of
98 priority when used for mitigation purposes.

99 Natural flow water supplies from tributaries to the Big Lost River may also be used for mitigation.
100 Some tributaries may not come into direct contact with the river but can be introduced directly into
101 canals or laterals. When mitigation water is provided in this manner the Watermaster will reduce
102 diversions from the Big Lost River into that canal or lateral by the same measured amount of
103 mitigation water the tributary water right provides. Thus, tributary water can augment the Big Lost
104 River without physically being delivered to the river.

105 Natural flow water supplies upstream from the Mackay Reservoir may also be used for mitigation if
106 such supplies actually reach the reservoir. These natural flow rights will be commingled with other
107 natural flow rights, rotation credits, and storage water supplies used to augment the flows of the Big
108 Lost River below the Mackay Reservoir.

109 2.) Stored Water - Storage Allocations from water rights nos. 34-00818, 34-00811, 34-00810,
110 34-10935, 34-00817B, and 34-10873, 34-00012, 34-02507 are normally issued to the patrons of the
111 Big Lost River Irrigation District and may be pledged by individual(s) and/or acquired by the water
112 district after a temporary transfer has been approved by IDWR. The Watermaster will communicate
113 this information to the Big Lost River Irrigation District so they can properly note the change in use
114 and charge/credit the appropriate water user's account. Presently, the BLRID board of directors have
115 unanimously voted not to allow any storage water to be used for mitigation. Water users reserve the
116 right to pursue any legal action they deem necessary to remedy this board action.

117 3.) Ground Water – Ground water supplies may be used for mitigation. No new water rights will
118 be allowed for the use of operating wells that supply mitigation water. Ground water rights (in part or
119 in total) may be accumulated and transferred for the operation of mitigation wells. Ground water
120 supplies may be introduced directly into the Big Lost River or by exchange from canal and laterals as
121 provided for in Rule 50.04.c.iii. These ground water supplies will be measured and treated similarly
122 as other tributary and river augmenting supplies when establishing constant release flow rates as
123 described hereinafter.

124
125 Any water supplies described above, when used for the augmentation of the natural flow of the Big
126 Lost River, will be treated as if it were natural flow and will be distributed and subject to the elements
127 of those benefiting natural flow water rights. All transfers, pledges, acquisitions, and uses of
128 mitigation supplies must be summarized in a supplemental ⁶ report to IDWR by November 15, 2005.
129 This report will be compiled and submitted to IDWR by the Watermaster of Water District 34.

⁶ This report(s) will include any necessary information required by the Director of IDWR (i.e. source of mitigation supplies, transfer(s), actual uses of mitigation supplies, 2005 ground water pumpage records, etc.).

130
131 Release and timing patterns of mitigation supplies will be as follows:

132 The release and timing patterns of these mitigation supplies will comply with Rule 50.04 as nearly as
133 practicable. Some flexibility in release patterns will be needed to accommodate the actual conditions
134 of river flow, responses to extemporaneous administrative actions, and for the utilization of all the
135 various accepted and acquired mitigation supplies. The intent of this consolidated plan is to provide
136 the entire 6,110 ac-ft of mitigation supplies as river augmentation during the irrigation season when
137 water rights having a 1905 or earlier priority are not satisfied. The following is a description of how
138 that flexibility will be used for that stated purpose.

139
140 As described by Rule 50.04 one third of the required mitigation supply⁷ (2,034 ac-ft) will be made
141 available to the Watermaster for purposes of augmenting the natural flows of the Big Lost River
142 during the first half of the irrigation season (May 1 through July 23, or 84 days) at a constant flow
143 release rate. Water supplies⁸ used to "flush" the river system at the commencement of the irrigation
144 season as described in Rule 40.02.d.iii,g,h will be considered as mitigation and deducted from the
145 2,034 ac-ft. The residual balance of the mitigation supply would then be released at a constant release
146 flow rate during the remaining days of the first half season period. If water rights with 1905 and
147 earlier priorities are satisfied during any period of days within this first half of the irrigation season
148 from natural river flows without the use of augmenting supplies, no mitigation supplies will be
149 released for those days. The sum acre-feet of water not released during those days will then be
150 "carried-over" and become part of the second half of the irrigation season's mitigation supply not to
151 exceed a total of 4,067 ac-ft.

152
153 Two thirds of the required mitigation supply (4,067 ac-ft) will be made available to the Watermaster
154 for the second half of the irrigation season (July 24 through October 15, or 84 days) for purposes of
155 augmenting the natural flow of the Big Lost River at a constant flow release rate. If water rights with
156 1905 and earlier priorities are satisfied during any period of days within this second half of the
157 irrigation season from natural flows without the use of augmenting supplies, no mitigation supplies
158 will be released for those days. Once water rights with 1905 or earlier priorities are unable to be
159 satisfied by natural river flows, a calculation of remaining days in the irrigation season will be
160 determined and/or the number of days remaining before the Director were to declare a futile river as
161 described in Rule 20.04 would be determined. Using the fewer number of days from those two
162 calculations, an augmenting constant release flow rate will then be established by dividing the fewer
163 number of days into the 4,067 ac-ft. If it becomes apparent a futile river declaration is likely to occur
164 before the previously calculated date, all remaining mitigation supplies will be released (as nearly as
165 practicable) prior to the actual futile declaration. In every instance of releasing mitigation supplies
166 for the purpose of augmenting river flows, care and flexibility must be exercised to provide for the
167 entire utilization of the 6,110 ac-ft in an efficient and effective manner.

168
169 Water users understand acceptance of this mitigation plan requires the distribution of the mitigation
170 water supplies by the Watermaster as illustrated in the above example. The mitigation requirement of
171 6,110 ac-ft for this plan will be reduced by the amount of mitigation water required from all other
172 mitigation plans combined which are approved by the director. This mitigation plan will commence
173 and be implemented upon the call for mitigation by a valid senior surface right holder and approved

⁷ This example assumes no managed aquifer charge has occurred during the current year. Managed recharge replacement credits, CREP contributions, donated water, or any other total mitigation burden reduction supply would be subtracted from the 6,110 ac-ft and any remaining balance would then be divided as described.

⁸ Whenever storage water or storage allocations, and whenever natural flows or rotation credits, or any combinations of these water supplies are used to "flush" the river system as described in Rule 40, the entire volume of water will be credited as a mitigation supply.

174 by the Director of IDWR. The call for mitigation must be made prior to, or at the time of, the initial
175 deliver call for irrigation water (rotation into credit is considered a delivery call for water) and prior to
176 beginning of the irrigation season "river flush" releases.

177
178 Water users within Water District 34 expect IDWR and the Watermaster to administer ground water
179 rights in such a manner that those individuals holding ground water rights that are described by partial
180 decree to be conjunctively administered which are not participating in this consolidated plan or
181 participating in another approved mitigation plan shall not be allowed to divert during the 2005
182 irrigation season. Water users within Water District 34 also expect IDWR and the Watermaster to
183 properly administer and regulate all surface water rights as described in partial decree and rule.

184
185 Basin 34 Water Users reserve the right to modify this plan prior to its approval by the Director. This
186 plan can also be modified after approval is granted by submitting an amended mitigation plan to the
187 Director for approval. While the principles and concepts incorporated into and made part of the
188 mitigation plan may be utilized in future plans, no legal precedent can be asserted or claimed from the
189 implementation of this plan except those expressed in rule or partial decree.

190

191

192

193

194

195 Respectfully submitted,
196 Proponents of a single "Consolidated Basin-Wide Mitigation Plan for Basin 34 Water Users"