



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

September 11, 2012

WATER DISTRICT 34
ADVISORY COMMITTEE
C/O SETH BEAL, CHAIRMAN
2827 N 3375 W
MOORE, ID 83255

RE: COMPLIANCE WITH WATER DISTRICT NO. 34 WATER DISTRIBUTION RULES

Dear Committee Members:

The Department received your July 30, 2012 Initial Compliance Work Plan (hereafter, the Work Plan), submitted pursuant to the Director's letter of May 2, 2012. The Work Plan addresses two broad categories: 1) installation of measuring devices to aid in determining available natural flow, and 2) calculation/distribution/accounting of that natural flow to users. The Work Plan does not provide adequate information for the Director of IDWR (hereafter, the Director) to evaluate the proposals for measurement of the Big Lost River, nor does it contain a plan for Water District 34 (hereafter, the District) to comply with Rule 40. The Work Plan contents for both of the broad categories described above are summarized and reviewed below.

Part 1 – Installation of Measuring Devices on the Big Lost River

The May 2, 2012 Director's letter required the district to submit a detailed plan to establish measurement facilities at three locations on the Big Lost River. After reviewing the submitted plan for measurement at each of the three locations, it appears that the proposal is to install a measurement system at the Moore Diversion this season. Assuming that system proves reliable and functional, the proposal is to install a similar system at the Arco Diversion in 2013. For the Chilly Bridge location, the plan proposes no measurement system and instead appears to propose that the two reaches above the reservoir be combined as one reach (Howell to 2B). None of the three plans is acceptable to the Director as written. Each is addressed below.

Review of the proposal for measuring at the Moore Diversion:

The Work Plan proposal for measurement of the Big Lost River at the Moore Diversion is to, "either significantly add cement structure to the diversion spill-way or channel the spill into a narrower fixed section of the structure, utilize a flow rating curve, and record that flow using data loggers." It is unclear from the text of the Work Plan which of the two methods is being proposed as there is no further description of the proposal. The proposed plan lacks sufficient detail for the Director to evaluate the proposals and provide the approval described in Rule 25.03 of the WD 34 Distribution Rules. As such, the Director cannot accept the plan as submitted in the Work Plan. The

district must, within 30 days, resubmit the plan for measuring the Big Lost River at the Moore Diversion.

The measurement plan must include the following:

- Detailed description of the measurement method selected including construction details and locations of any new structure, such as stilling wells, gages, control sections, etc.
- Proposed timeline for bringing the measurement facility into service.
- Detail of the plan to fund, operate, and maintain the measurement facility.

The Work Plan indicates the measurement system will be installed starting in July of 2012. Based on conversations between IDWR staff, the district, and David Shaw, the equipment has been purchased and may be in place at the time of this writing. Nevertheless, the rule requires that the Director approve the measurement facility, so a plan must still be submitted and approved.

Review of the proposal for measuring at the Arco Diversion:

The Work Plan proposal for measurement of the Big Lost River at the Arco Diversion states that the “advisory committee is uncertain how to develop a measuring facility at the Arco Diversion site until the functionality of the proposed facility at the Moore Diversion is tested and evaluated. ... This measurement facility will not be funded and constructed until the advisory committee makes recommendations for the 2013 budget.” These statements suggest that the district proposes (provided that system proves to be adequate) to operate a measuring system similar to that proposed for the Moore Diversion, and that the advisory committee will meet this fall and winter to develop a budget to fund the facility, and that the facility is proposed to be installed sometime after the March 4, 2013 annual meeting. It is unclear whether the facility is proposed to be installed prior to the start of the 2013 irrigation season, as required by the Director’s May 2, 2012 letter.

As with the other measurement locations, the Director of IDWR must approve the measurement facility plan for the Big Lost River at the Arco Diversion. The plan for measurement at the Arco Diversion as presented in the Work Plan is insufficient. The district appears to be inclined to evaluate the success of the proposed facility at the Moore Diversion prior to proposing a facility at the Arco. However, there is no compelling reason to delay forming a proposal for measurement at the Arco, even if the experiences at the Moore Diversion ultimately result in modification of the proposal for the Arco Diversion. Yet, several factors make further delay undesirable, such as the limited time to install the facility between the annual meeting and the start of the irrigation season, that a measurement proposal is a prerequisite to the advisory committee determining a proposed budget, and that high water could impede construction efforts. For these reasons, the district must, within 30 days, resubmit the plan for measuring the Big Lost River at the Arco Diversion and provide the level of detail described for the Moore Diversion measurement plan.

Review of the proposal for measuring at the Chilly Bridge:

The Work Plan proposal for measurement of the Big Lost River at the Chilly Bridge contains a statement that “the remaining portion of this provision needs considerable work” indicating that the plan was knowingly submitted in an incomplete state. The Work Plan proposal, though incomplete, seems to propose no measurement of the Big Lost River at that location, but does not provide comprehensible support for the proposal. The district must, within 30 days, submit

a complete plan for measuring the Big Lost River at the Chilly Bridge. If the district proposes a measuring facility, the plan must contain the level of detail required of the other two plans. If the district is proposing no measurement, the plan must contain a clear request that the requirement for measurement at the Chilly Bridge not be enforced, and must provide compelling reasons that enforcement of the requirement would not improve the watermaster's ability to deliver water.

Part 2 – Compliance with Rule 40 and Independent Accounting

The second part of the Director's May 2, 2012 letter required the district to develop a plan to bring the district into compliance with Rule 40. As part of the effort to develop the work plan, the WD34 advisory committee held a number of open meetings, including those I attended on May 2, May 24, and June 14, 2012. During those meetings, some attendees expressed opinions that the district was already compliant with Rule 40, including the requirement for 48-hr advance notice of water deliveries, and that the accounting system maintained by the Big Lost River Irrigation District should be considered sufficient. Others present at the meetings disagreed. The May 2, 2012 letter from the Director contains a very general description of his understanding (based on information I provided to him from my experience with the district) of how WD34 currently determines and allocates the available natural flow and accounts for deliveries. The letter describes why that process is not fully compliant with Rule 40 and the watermaster's duty to deliver water to users according to the priority of their water rights. However, during the meetings some users, including the watermaster and irrigation district staff suggested the general description provided in the letter is not consistent with how the district actually functions. Further, there was disagreement among the users present as to whether the 48-hr call for water was currently practiced.

Given the suggestion that I inaccurately represented the operation of the district to the Director, and the potential that the actual operation and accounting system would be found adequate by the Director, it is imperative that the watermaster provide a detailed description of how he calculates the available natural flow, determines demand for that natural flow, and delivers the natural flow to users according to the priority of their water rights. Based on my conversations with the committee at these meetings, I understood the work plan would address this and contain documentation of how the district currently operates and note the disagreement on whether the current practices constitute compliance with the rule and accounting requirement. We had discussed that a written description of the current practice would provide transparency to the process and serve as a starting point from which the process could be honestly evaluated.

While the Work Plan states that the watermaster would submit one or more statements to provide that documentation, it was not submitted with the plan. During my conversations with the watermaster over the last month since the Work Plan was submitted, he has indicated such a description is difficult to provide, but he is willing to do so. As it would not be possible to develop a plan to bring the district into compliance with Rule 40 without a clear description of how the district currently operates, and as such a description may reveal that the district is already compliant, the watermaster must, within 30 days, submit a detailed description of how he calculates the available natural flow, determines demand, and delivers natural flow to users or rotates it into storage according to the priority of their water rights. The detailed description should include a narrative of the process and examples of worksheets, calculations, and other documentation to support the description. With that detailed description, and any subsequent clarification or supplemental information the Director finds is needed from the watermaster and/or district staff, the Director can evaluate the extent to which the district is in compliance with the rules based on the District's own account of its practices. At that time, to the extent the district is not compliant with the rules, the

Director will provide guidance and enlist the help of the advisory committee to bring the district into compliance.

The Work Plan asks the Director to provide additional guidance and assistance with development of an independent accounting system. I will prepare that guidance and work with the district to develop the system over the next few months. The guidance will likely include a description of the roles and responsibilities of the various entities that provide input to the accounting system and an evaluation of how to integrate the new system into the district. We will attempt to incorporate existing practices and preferences to the extent those practices and preferences do not conflict with the rules or confound the responsibilities of the participating entities.

If you have any questions or concerns, please feel free to contact me.

Sincerely,



Nick Miller
Water Distribution Section Manager, IDWR

cc.

Seth Beal via email - bealseth@yahoo.com
WD34 Watermaster Roger Totten via email - rt@atcnet.net, waterdist34@atcnet.net
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Miller, Nick

From: Miller, Nick
Sent: Tuesday, September 11, 2012 9:51 AM
To: Seth Beal (bealseth@yahoo.com); 'rt@atcnet.net'; waterdist34@atcnet.net; blrid@atcnet.net; 'soremd@ida.net'; 'soremd@gmail.com'; Loy Pehrson (pehrsonlk@aol.com); Jay Jensen (jjensen@atcnet.com)
Cc: Spackman, Gary; Luke, Tim
Subject: Compliance with Water District No. 34 Distribution Rules

I've attached a letter responding to the July 30, 2012 Initial Compliance Work Plan. A printed copy is going in the mail to Seth Beal today.

Please call if you have any questions.

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