



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

December 12, 2013

Re: Water District 34 – Expectations for the 2014 Irrigation Season

Dear Water User:

Over the past several years, a number of water users in Water District 34, Big Lost River Valley, have complained that the Idaho Department of Water Resources ("Department" or "IDWR") is not requiring the watermaster and water users to timely comply with Idaho water laws, Water District 34 water distribution rules (IDAPA 37.03.12), and IDWR watermaster instructions. Similar complaints were vocalized at the hearing I held last July in Arco regarding the petitions to remove the Water District 34 watermaster. In response to these on-going concerns and complaints, the following are my expectations for Water District 34 for the 2014 irrigation season. You are receiving this letter because you are a holder of record of a water right administered by Water District 34 and may have some responsibility for, or be affected by, the expectations listed below.

1) Measurement of Ground Water Diversions

On July 10, 2013, the Department issued a Final Order Requiring Measuring Devices for Ground Water Diversions ("ground water measurement order"). Measuring devices must be installed or approved alternative methods must be implemented for most ground water diversions in the water district by the start of the 2014 irrigation season. In accordance with the provisions of Idaho Code § 42-701(2), the ground water measurement order authorizes the watermaster to shut off any ground water diversion that is not in compliance with the requirements of the ground water measurement order. I will instruct the watermaster to curtail pumping from any well not in compliance with the ground water measurement order after the start of the 2014 irrigation season until measurement requirements for the well are satisfied. Additionally, the Department may rely upon the enforcement procedures of Idaho Code § 42-1701B to seek compliance with the ground water measurement order. These provisions include the issuance of notices of violation with civil penalties.

2) Measurement of Surface Water Diversions

Many of the surface water diversions from the Big Lost River and main tributaries in Water District 34 have adequate measuring devices and control works, but the Department recognizes that some diversions either lack adequate devices or are in need of repair. IDWR staff is completing an inventory of diversions to identify the diversions for which measuring devices and control works are inadequate or in need of maintenance. I will soon be issuing a final order that will establish measuring device and controlling works requirements for surface water diversions in the water district ("surface water measurement order"). This order will apply to all surface water diversions in the district, but will identify specific diversions that must be brought into compliance by the start of the 2014 irrigation season. The surface water measurement order will also authorize the watermaster to shut off any surface water diversion that is not in compliance with the requirements of the order. I will instruct the watermaster to curtail

diversions not in compliance with the surface water measurement order. IDWR may rely upon the enforcement procedures of Idaho Code § 42-1701B to seek compliance with the forthcoming surface water measurement order.

3) Rotation of Natural Flow Water Rights

The Big Lost River Irrigation District (BLRID) reported that nearly 2,500 acre-feet of natural flow that could have been diverted pursuant to decreed water rights were rotated and stored in the Mackay Reservoir last year without being used. The BLRID reported that the amount of rotation credit remaining in storage at the end of the 2011 and 2012 irrigation seasons was approximately 6,800 AF and 14,600 AF, respectively. Additionally, IDWR received complaints that some water users rotate their natural flow water rights in the reservoir while using supplemental ground water rights at the same time. The Department views these practices as injurious to the holders of other decreed natural flow rights. These practices are particularly egregious when viewed in the context of the conjunctive management issues facing the valley. The Water District 34 Water Distribution Rules recognize that senior water rights are not fully satisfied due in part to depletions caused by ground water pumping. Further depleting the flow of the river by rotating water into storage that will never be used, or to compound the problem by both rotating and pumping is particularly troubling.

Storage of natural flow water rights in Mackay Reservoir also complicates the accounting of water deliveries from the Big Lost River. IDWR's water right accounting program currently does not account for rotation credit due to the complexity of implementing rotation and because IDWR has lacked a clear understanding of the practice.

The Water District 34 Water Distribution Rules provide that rotation for credit must be approved by the director of IDWR and must be pursuant to the BLRID's approved plan of operation. The BLRID's plan of operation contains very little mention of rotation credit and provides essentially no guidance on the subject. Given the concerns stated above about rotation credit practices, and the director's authority under the rules, I am considering limiting or discontinuing the rotation of natural flow water rights into storage in 2014 and beyond until a suitable delivery and accounting system is in place that will help ensure that water rotated into storage is properly accounted for and beneficially used.

The Department is willing to work with the BLRID and watermaster in developing transparent accounting procedures that can accommodate rotation, but developing these procedures will take some time and will require some commitment and support from the Water District 34 watermaster, the water district advisory committee, and the BLRID. IDWR will work with the water district and BLRID this winter to better define the practice and to develop procedures for the watermaster to document and account for rotation credit.

4) Water Right Accounting

IDWR is taking the following steps:

- Work with watermaster on refining procedure for predicting delivery of available natural flow in the river.
- Develop a computer program to be used by the watermaster to document demands or calls for delivery of natural flow water rights 48 hours in advance, including demands to rotate natural flow water rights in the Mackay Reservoir. The program will be either a web-based or stand-alone database program that will facilitate data entry of the calls and relevant flow information for the delivery forecast. This will require on-going data entry of demands for

each point of diversion, including demand to rotate water into storage. The watermaster will deliver to each canal heading the amount of natural flow water requested for delivery at each canal heading provided such requested natural flow is available. The watermaster will coordinate with the BLRID to store in Mackay Reservoir the amount of water under the natural flow rights sought to be rotated in the Mackay Reservoir. The BLRID may communicate with water users and communicate delivery requests to the watermaster, but it will be mandatory to identify the natural flow water rights for which delivery is requested either at the canal heading or to be rotated in Mackay Reservoir.

- All deliveries of storage water from Mackay Reservoir to downstream canals must be requested by the BLRID 48 hours in advance and be documented by the watermaster. The watermaster will deliver to each canal heading the amount of storage water requested.
- The Department will utilize the IDWR/Water District 34 Water Right Accounting Program as an after-the-fact accounting tool to determine the actual amount of natural flow and storage water delivered to each canal heading or diversion from the Big Lost River. This program allocates natural flow based upon a four-day moving average of the available natural flow as required by the Water District 34 Water Distribution Rules. The after-the-fact accounting program will provide the basis on which the watermaster will base his annual assessments.
- After the 2014 irrigation season, the BLRID will receive one assessment for delivery of all storage water below Mackay Reservoir. The watermaster's assessment for delivery of stored water will be based on the total amount of stored water delivered at the canal headings. After the 2014 irrigation season, individual water users will not be assessed for their individual storage water use. Individual water use assessments will be limited to their diversion of natural flow at the canal heading or point of diversion, including any ground water diversions.

5) Big Lost River Measuring Facilities

IDWR expects measuring device construction/installation at the Chilly Bridge, the Moore Diversion, and the Arco Diversion to be complete by the start of the 2014 irrigation season.

Some construction is complete at the Moore Diversion. In addition, in 2013, the Water District 34 Advisory Committee committed to work with the BLRID to develop a plan for reconstruction of the Arco Diversion to incorporate measurement capability. However, I am aware there were some difficulties experienced over the last year both developing and then implementing the measurement plan at the Moore Diversion and that the plan was never fully formalized and has yet to be fully implemented. I have some concern that the process of developing and implementing measurement solutions at the Arco Diversion and Chilly Bridge could be similarly compromised and that measurement at the Moore Diversion will be delayed. To ease these concerns, I will assign a member of my staff to work with the Water District 34 Advisory Committee to develop plans and specifications for these measurement facilities and oversee the process of bidding and construction. While I expect the Water District to adopt a budget that funds these facilities, I expect the IDWR staff member to work with the Water District 34 Advisory Committee to investigate or solicit funding sources to offset the cost of design and construction. Low-interest loans or grants from the Idaho Water Resource Board, or grants through the Bureau of Reclamation's WaterSMART program are two initial options.

6) IDWR Assistance and Oversight

I realize some of the expectations outlined above will require increased efforts and will result in some disruption to the usual water delivery process. Further, I realize that successful

implementation of the new accounting system and delivery process will, at least initially, require close evaluation and oversight as water managers, users, and IDWR adopt the new process. I am committed to see that this happens and will dedicate additional staff resources to provide on-the-ground support throughout 2014.

I will assign additional staff to travel to Water District 34 throughout 2014 as necessary to work with water users, the watermaster, and district staff to 1) ensure compliance with the measurement requirements, 2) assist in implementing and evaluating and streamlining the new accounting procedure, and 3) provide independent oversight and training of the watermaster.

Some of the above expectations are necessarily lacking in detail and may raise as many questions as they answer. Nevertheless, IDWR is committed to ensuring that Water District 34 is equipped, trained, and committed to distribute water to users in accordance with the priority of their water rights and consistent with Idaho Law.

Sincerely,

A handwritten signature in black ink, reading "Gary Spackman". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Gary Spackman,
Director

Cc:
IDWR Eastern Region
Seth Beal, Chairman, Water District 34 Advisory Committee
Big Lost River Irrigation District