



State of Idaho

**DEPARTMENT OF WATER RESOURCES**

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C.L. "BUTCH" OTTER  
Governor

GARY SPACKMAN  
Director

July 19, 2016

**Re: Final Order Regarding Instructions to Water District 34 Watermaster in the Matter of Administration and Accounting of the Practice of Rotating Natural Flow Water Rights to Mackay Reservoir for Storage**

Dear Water Right Holder,

Enclosed please find a copy of a Final Order regarding the above referenced matter.

A copy of the attached order and this letter is being sent to *all* holders of water rights from the Big Lost River below Mackay Reservoir. Please contact this office if you have any questions concerning the attached order.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Luke".

Tim Luke  
Water Compliance Bureau

Encl: *Final Order Regarding Instructions to Water District 34 Watermaster;  
Explanatory Information to Accompany a Final Order*

**BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO**

|                                |   |                                |
|--------------------------------|---|--------------------------------|
| IN THE MATTER OF THE           | ) |                                |
| ADMINISTRATION AND ACCOUNTING  | ) | <b>FINAL ORDER REGARDING</b>   |
| OF THE PRACTICE OF ROTATING    | ) | <b>INSTRUCTIONS TO WATER</b>   |
| NATURAL FLOW WATER RIGHTS INTO | ) | <b>DISTRICT 34 WATERMASTER</b> |
| MACKAY RESERVOIR FOR STORAGE   | ) |                                |
|                                | ) |                                |

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The practice of rotating natural flow water rights into storage (sometimes referred to as “rotation into storage” or “rotation for credit”) in Water District 34 has been scrutinized by the Idaho Department of Water Resources (“Department”) in recent years for two reasons: (1) some water users in Water District 34 (“WD34”) have voiced concerns that the practice is being implemented in a manner inconsistent with the general provision authorizing the practice; and (2) the Department has undertaken a multi-year effort to modernize, update, and augment the computerized accounting programs and practices for WD34, including accommodating the practice of rotation for credit.

Proper implementation of rotating natural flow water rights into storage requires close coordination between WD34 and Big Lost River Irrigation District (“BLRID”). In the past, administration and implementation of rotation for credit has been disorganized and not well documented. As a result, rotation credit has not always been administered in conformance with the conditions described in the *Order of Partial Decree for General Provisions in Administrative Basin 34, Snake River Basin Adjudication, May 8, 2001* (“General Provisions”)<sup>1</sup> or Rule 40.02 of the Idaho Department of Water Resources’ Water Distribution Rules- Water District 34 (“IDAPA 37.03.12” or “WD34 Rules”). To ensure conformance with the General Provisions and WD34 Rules it is necessary to issue detailed instructions regarding the implementation of rotation for credit.

**APPLICABLE PROVISIONS OF LAW**

The practice of rotation for credit in Water District 34 is authorized, subject to conditions, by the General Provisions and WD34 Rules.

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<sup>1</sup> On July 7, 2004, the Snake River Basin Adjudication District Court issued an *Order Amending Partial Decree for General Provisions in Administrative Basin 34 to Include General Provision 7 on Connected Sources*. The amended order did not modify the general provision related to the practice of rotation credits.

Provision 3 of the General Provisions, states in pertinent part:

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.

Rule 40.02 of the WD34 Rules, states in pertinent part:

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:

- a. Rotation for credit must be approved by the director as provided by these rules.
- b. Rotation for credit must be pursuant to the Big Lost River Irrigation District's approved plan of operation.
- 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.
- 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.

- i. Natural flow must be available at the river headgate point of diversion for the water right requesting rotation credit.
  - 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.
  - iii. If natural flow cannot 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.
- 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.
- 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.
- 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.
- 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.

## ANALYSIS

The practice of rotation for credit in WD34 is unique in water right administration in Idaho. The practice allows the holder of a natural flow water right to cease diverting the water right for direct irrigation purposes and instead store the water in Mackay Reservoir. The water stored in Mackay Reservoir can then be released and delivered at the request of the water right holder for use on the land to which the natural flow water right is appurtenant.

The Mackay Reservoir is owned, maintained, and operated by the BLRID for the benefit of their storage space holders. The BLRID manages the water that is stored in Mackay Reservoir pursuant to BLRID's storage water rights and also manages the storage added to Mackay Reservoir by rotation into storage. When the water rotated into storage in Mackay Reservoir is released, the water is comingled with natural flow in the Big Lost River. This requires administration and accounting by both the watermaster and the BLRID. The requirement of joint administration is recognized in the General Provision and the WD34 Rules, wherein both documents describe an oversight role for the Director, and by extension the watermaster, and BLRID. The water rights issued by the SRBA District Court are conclusive as to the nature and extent of the water right. *In Re SRBA Case No. 39576 Final Unified Decree* ("Final Unified Decree"), at 7, 9; (Aug. 25, 2014) *Idaho Ground Water Assoc. v Idaho Dep't of Water Res.*, 160 Idaho 119, 369 P.3d 897, 905 (2016). This includes the General Provisions. *Final Unified Decree* at 10. BLRID was a party to the adjudication and thus is bound by the decrees and the general provisions. See *Rangen, Inc. v. Idaho Dep't of Water Res.*, 159 Idaho 798, 367 P.3d 193, 201 (2016) (Rangen is bound by the decrees of the Court). Effective administration of the practice of rotation for credit consistent with the conditions of the General Provisions and WD34 Rules requires close communication and coordinated oversight and accounting by both the watermaster and BLRID. To ensure that water rights are properly administered consistent with the General Provisions, the Director must issue an order outlining the proper procedures and steps to account for and administer rotation into storage.

## ORDER

IT IS HEREBY ORDERED that the following instructions shall be implemented by the WD34 watermaster in the administration and accounting of rotation for credit. Rotation for credit is only allowed for water users conforming to the requirements detailed in the following instructions.

1. On or before May 1, any water user planning to rotate a natural flow water right into storage in the up-coming irrigation season is required to completely fill out and submit to the watermaster a notice of intent to rotate a natural flow water right into storage. The watermaster shall prepare a standard form for notice of intent to rotate Big Lost River rights into storage ("Notice of Intent Form" or "NOI").
2. The NOI form must contain the following information:
  - A list of all natural flow water rights the water user plans to rotate during the irrigation season;

- Identification of all surface and ground water rights, excluding BLRID storage rights, with places of use overlapping the place of use described by the water right(s) for which rotation into storage notice is being submitted;
  - A map of the irrigated lands to which the natural flow water rights are appurtenant (maps should be on 8.5" x 11" attachments);
  - Personal attestation by the water user in writing of his/her intent to beneficially use the water rotated into storage during the year in which the water is rotated and acknowledgement that rotated water will only be used on the place of use described by the water right.
3. In addition to the NOI form, during the irrigation season, a water user must submit a written request to the watermaster each time the user plans to rotate natural flow into storage. The written request to rotate natural flow into storage must be submitted to the watermaster 48 hours in advance of commencement of rotation into storage, but no more than 72 hours in advance of the calendar date on which rotation will commence. The calendar dates of the requested rotation for credit cannot predate the date of the written request. In-season rotation for credit requests must include the following information:
- Identification of the natural flow water right(s) to be rotated;
  - Specification of the diversion rate to be rotated into storage; and
  - Identification of the specific calendar dates when natural flow will be rotated into storage.
4. Prior to approving rotation into storage requests, the watermaster shall confirm on an individual water right basis the following:
- Whether the water user can beneficially use the rotated water on the land identified on the standard NOI form by the end of the current irrigation season;
  - Whether there is a "reasonable need for irrigation water" on the land identified<sup>2</sup>;
  - Whether the water user has operable diversion, delivery, and application facilities;
  - Whether the water is deliverable to the water right place of use and the irrigated lands identified;

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<sup>2</sup>Because there is a requirement that (1) the water must be beneficially used, and (2) there is a reasonable need for irrigation water, the water user must either have fully irrigated the place of use with the natural flow water right or fully irrigate the place of use with another source of water (i.e. ground water) prior to rotating the natural flow water into storage.

- Whether the Big Lost River is disconnected as described by the General Provisions, or if connected that the priority date on the river is October 1, 1936, or junior;
  - Whether the rotation conforms to all combined use limits identified on the water right at both the point of rotation (i.e. Mackay Reservoir) and at the water right points of diversion, including overlapping ground water rights;
  - Whether the water right(s) being rotated overlap with supplemental ground water rights with provisions requiring the user to make full beneficial use of all surface water available to the user for irrigation prior to utilizing ground water. Ground water rights with these provisions cannot be utilized while overlapping surface water rights are being rotated into storage; and
  - That the rotation conforms to all conditions of the General Provisions and the WD34 Rules.
5. If the watermaster determines rotation cannot be approved for any reason, the watermaster will notify the water user in writing and explain the basis for the denial.
  6. If the watermaster has determined that water can be rotated into storage under a specific water right, the watermaster will notify the BLRID in writing, and will identify the water right, quantify of water under that water right to be rotated, and specify the dates when natural flow will be rotated into storage.
  7. During the irrigation season, users with rotation storage balances that wish to request delivery of rotation storage must submit a written request for delivery of rotation storage to BLRID and the watermaster 48 hours in advance, but no more than 72 hours in advance of the calendar date when rotation delivery should commence. The written request for delivery must identify the natural flow rights rotated to storage for which rotation delivery is sought, the rate of diversion to be released from storage, and the point of diversion to which the water is to be delivered. The watermaster will review delivery requests to ensure that rotation storage will be beneficially used at the same place of use from which it was rotated.
  8. For delivery of rotation storage, the watermaster will consult with the BLRID and determine the total amount of rotation storage to be released from the reservoir, the amount of rotation water to be released for each user and for each point of diversion, and the dates when rotation storage will be delivered. The BLRID and watermaster shall assess the same conveyance losses to the delivery of rotation storage as BLRID storage water from Mackay Reservoir.
  9. The watermaster will retain the following information in the Water District archives and make it available for public review:
    - All rotation for credit NOI forms submitted by water users;

- All of the in-season written requests to rotate natural flow rights to storage submitted by water users;
  - All written watermaster correspondence denying requests for rotation for credit;
  - All written notifications sent to BLRID approving rotation credit;
  - All written notifications sent to BLRID approving delivery of rotation storage; and
  - The annual rotation for credit summary report submitted by BLRID.
10. A summary of rotation for credit for the irrigation season will be included in the watermaster's annual report. The intent of the summary is to provide transparency so water users in WD34 understand how rotation for credit was implemented during the irrigation season. The watermaster has discretion concerning the content and format of the summary report. The report may vary from year to year based on the circumstances of the irrigation season, but at a minimum it should include the following information:
- Identification of each user that rotated natural flow into storage, by canal or point of diversion;
  - Volume of water rotated to the reservoir and rotation water released from the reservoir for each user at each point of diversion;
  - Volume of any unused rotation for credit that remained in Mackay Reservoir for each user for each point of diversion;
  - Each user who was denied rotation for credit and a discussion of reasons for denying rotation for credit;
  - A discussion of positive and negative input received from water users regarding how rotation for credit is being implemented; and
  - Recommendations by the watermaster and/or water district advisory committee for improving implementation of rotation for credit.

IT IS FURTHER ORDERED that the following instructions shall be implemented by the BLRID in the administration and accounting of rotation for credits.

1. The BLRID must adopt and implement accounting procedures to track rotation of natural flow water into storage and the subsequent delivery of rotated water that produce data that can be shared with and used by WD34 for administrative and accounting processes. Accounting procedures implemented by the BLRID must:

- a. Identify individual water right rotation for credit balances on a daily time step in real time, and publish such information on a weekly basis to its webpage;
- b. Apply storage losses to the rotation storage due to evaporation, seepage, and other incidental reasons;
- c. Apply conveyance losses associated with the delivery of rotation water;
- d. Prohibit negative rotation for credit balances;
- e. Prohibit the cancellation of negative storage water account balances with rotation for credit balances;
- f. Require use of rotation storage balances before regular BLRID water storage account balances;
- g. Prohibit the use of rotation storage water on lands separate from the place of use under the rights rotated into storage (rotation for credit must be used on the same land as the rights rotated to storage);
- h. Ensure that if the Mackay Reservoir fills after natural flow rights have been rotated into storage during an irrigation season, all rotation storage balances become storage water of the BLRID; and
- i. Ensure rotation water not used in the same season it was stored becomes storage water of the BLRID at the end of the irrigation season. Each year, after the end of the irrigation season, but no later than December 15, the BLRID will prepare and submit an annual report to the watermaster and the Director summarizing rotations for that year. The written summary must include daily rotation balances and storage water right balances for all water rights for which rotation occurred. The summary must also include year-end rotation balances and storage water right balances for all water rights for which rotation occurred.

The following standards shall be used for the determination by the watermaster that natural flow water rotated into storage increases the efficient use of the water as required by the General Provisions.

1. Water rotated into the reservoir must be used, to the extent possible, in the same irrigation season in which it is rotated.
2. Storage water from rotation should be delivered before delivery of storage water accrued under the storage water right for Mackay Reservoir.
3. Rotation to storage shall not be allowed after September 15.

4. The watermaster shall review BLRID storage account balances during the irrigation season that are associated with the same places of use for which Big Lost River water right rotation into storage requests are made. The watermaster may request additional written justification for rotation to storage requests when the water user has a significant BLRID storage account balance and/or has used little to no water under the BLRID storage account balance. The watermaster may deny rotation to storage requests when BLRID storage account balances and/or rotation credit balances are not being used.
5. In the event that a futile call determination on the Big Lost River below the Beck Canal diversion is imminent or likely, the watermaster shall contact water users with diversions below the Beck Canal diversion who have rotation credit balances and request whether the users wish to release rotation credits to improve the delivery of water in the river below the Beck Canal diversion.

IT IS FURTHER ORDERED that these instructions may be modified as necessary to implement the conditions of General Provision 3 and improve the efficiency of water use.

Dated this 18th day of July 2016.

A handwritten signature in blue ink, reading "Gary Spackman", written over a horizontal line.

GARY SPACKMAN  
Director

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18<sup>th</sup> day of July 2016, the above and foregoing was served on the following by the method(s) indicated below:

LUCUS YOCKEY  
P.O. BOX 53  
MACKAY, ID 83251

|                                     |                            |
|-------------------------------------|----------------------------|
| <input checked="" type="checkbox"/> | U.S. Mail, postage prepaid |
| <input type="checkbox"/>            | Hand Delivery              |
| <input type="checkbox"/>            | Overnight Mail             |
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| <input checked="" type="checkbox"/> | Email                      |

JOEL ANDERSEN  
P.O. BOX 205  
MACKAY, ID 83251

|                                     |                            |
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| <input checked="" type="checkbox"/> | U.S. Mail, postage prepaid |
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KENT HARWOOD  
BIG LOST RIVER IRR DIST  
P.O. BOX 205  
MACKAY, ID 83251

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| <input checked="" type="checkbox"/> | U.S. Mail, postage prepaid |
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| <input type="checkbox"/>            | Email                      |

MAX BINGHAM  
BIG LOST RIVER IRR DIST  
P.O. BOX 205  
MACKAY, ID 83251

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LARRY JENSEN  
BIG LOST RIVER IRR DIST  
P.O. BOX 205  
MACKAY, ID 83251

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JIM RINDFLEISCH  
BIG LOST RIVER IRR DIST  
P.O. BOX 205  
MACKAY, ID 83251

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W. KENT FLETCHER  
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LYLE SWANK  
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IDAHO FALLS, ID 83815

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VERNON ROCHE  
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SHANE ROSENKRANCE  
5532 BARTON FLAT RD  
MACKAY, ID 83251

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SHAWN ANDERSON  
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ARCO, ID 83213

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MARSHAL TODD PERKES  
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MIKE TELFORD  
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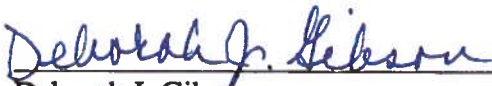
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YOUNG HARVEY WALKER  
2338 N. 2930 W.  
ARCO, ID 83213

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Deborah J. Gibson  
Administrative Assistant for the Director  
Idaho Department of Water Resources

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19<sup>th</sup> day of July 2016, the above and foregoing document was served on each individual or entity on the service list for this matter on file at the Idaho Department of Water Resources, 322 East Front Street, Boise, Idaho and [www.idwr.idaho.gov](http://www.idwr.idaho.gov). Each individual or entity on the service list was served by placing a copy of the above and foregoing document in the United States mail, postage prepaid and properly addressed.

Documents served: **Final Order Regarding Instructions to Water District 34 Watermaster in the Matter of Administration and Accounting of the Practice of Rotating Natural Flow Water Rights to Mackay Reservoir for Storage**



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**Sarah Shaul**  
**Technical Records Specialist**  
**Idaho Department of Water Resources**

## EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER

(To be used in connection with actions when a hearing was not held)

(Required by Rule of Procedure 740.02)

The accompanying order is a "Final Order" issued by the department pursuant to section 67-5246, Idaho Code.

### PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: The petition must be received by the Department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5246(4), Idaho Code.

### REQUEST FOR HEARING

Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person who is aggrieved by the action of the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action. The person shall file with the director, within fifteen (15) days after receipt of written notice of the action issued by the director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the director and requesting a hearing. See section 42-1701A(3), Idaho Code. **Note: The request must be received by the Department within this fifteen (15) day period.**

### APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of: a) the service date of the final order, b) the service date of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.