



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

April 5, 2017

BUTTE COUNTY COMMISSIONERS
PO BOX 737
ARCO, ID 83213

RE: Butte County Request to Divert "Additional Flows" for 2017

Dear Commissioners,

Thank you for your letter dated February 27, 2017, in which you request to divert additional flows of water in Water District Nos. 33 and 34 for the 2017 irrigation season. As your letter acknowledges, this last winter's storms deposited abundant snow across the state. As the snow melts, high water could flood some communities and property.

I assume your request for additional diversions means diversion of surface water in addition to the quantities described by existing water right permits, licenses, and decrees. Because the hydrology, water rights, and water administration are different in Basins 33 and 34, my response to your request is, in part, unique to each basin.

Basin 34 – Big Lost River

In Basin 34, the Idaho Department of Water Resources ("IDWR") issued water right permit nos. 34-7571 and 34-7573 to Water District No. 34 for ground water recharge. Water District No. 34 can divert water for recharge under these water right permits consistent with their elements and limits. In addition, for the 2017 irrigation season, I will allow the diversion and recharge of water in excess of the diversion and volumetric limits of the recharge water rights when the following conditions are met:

- senior surface water rights are satisfied;
- senior surface water rights have been notified by the water district watermaster that excess diversions for recharge will occur;
- all diversions for recharge are measured and reported by the water district watermaster; and
- diversions in excess of the recharge water right elements and limits do not pose a risk to public health and safety.

In addition, Rule 40.06 of the Water District 34 Water Distribution Rules (37.03.12) allows for the diversion of surface water for irrigation in addition to the quantity of surface water

described by a water right when certain conditions are met. IDWR's interpretation of Rule 40.06 is described in detail in a letter from IDWR to the Water District No. 34 watermaster dated July 19, 2011. A copy of the July 19 letter is included with my correspondence for your reference. Surface water right holders can legally divert additional surface water for irrigation in Water District No. 34 pursuant to Rule 40.06.

Basin 33 – Little Lost River

In Basin 33, IDWR issued water right permit no. 33-14956 to the Little Lost River Watershed Improvement District ("LLWID") for ground water recharge. The LLWID can divert water for recharge under this water right consistent with the elements and limits of the water right permit. In addition, similar to the administration of recharge water rights in Basin 34, for the 2017 irrigation season, I will allow the diversion and recharge of water in excess of the diversion and volumetric limits of the water right when the conditions bulleted above are met.

In contrast to Basin 34, there are no administrative rules or provisions that allow for the diversion of water in Water District No. 33 in excess of the quantity described in a water right for irrigation use.

HB319 – Amendment to Idaho Code § 42-202A Temporary Approval of Water Use

Please be aware that a recent legislative amendment to Idaho Code § 42-202A (House Bill 319) modified the volume limits for certain temporary uses of water in Idaho. Historically, IDWR could approve a temporary use of water for a use "not intended to become an established water right and for a use which will not exceed a total diverted volume of five (5) acre feet." This year, the legislature amended the statute to remove the five (5) acre foot volume limit for three specific uses: (a) for prevention of flood damage; (b) for ground water recharge; and (c) for ground or surface water quality remediation. For any other use the five (5) acre foot limit still applies.

The governor signed House Bill 319 on March 30, 2017, with an emergency clause for immediate implementation. IDWR is currently receiving and processing temporary use applications under the amended statutory guidelines. Butte County, or other appropriate entities, could apply for a temporary use of water under the amended statute to address the need to divert additional flows for the 2017 irrigation season to "abate flooding potential and recharge the aquifer" in Water Districts Nos. 33 and 34.

Conclusions

The spring runoff may result in flooding that threatens personal property and the health and safety of the public in Basins 33 and 34. I am not vested the unconditional authority to allow the unrestricted diversion of water you have requested. However, I recognize and have identified a number of existing water rights, water administrative rules, and application processes that may

allow Butte County and other local entities in Basins 33 and 34 to mitigate for flooding and recharge local area aquifers. IDWR staff will work with Water District Nos. 33 and 34, the Big Lost River Irrigation District, the District No. 34 Recharge Committee and others to address your concerns in this year of overabundant water supply.

Respectfully,

A handwritten signature in black ink, appearing to read "Gary Spackman". The signature is fluid and cursive, with the first name "Gary" being more prominent than the last name "Spackman".

Gary Spackman
Director, Idaho Department of Water Resources

Cc. IDWR - Lyle Swank, James Cefalo, Tim Luke

David S. Andreason
Watermaster Water District No. 33
PO Box 31
Howe, ID 83244

Lucas Yockey
Watermaster Water District No. 34
PO Box 53
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Big Lost River Irrigation District
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Little Lost River Watershed Improvement District
c/o Rory Pancheri
3695 N 1700 W
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JULY 19, 2011

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

ROGER TOTTEN
WATERMASTER, WATER DISTRICT NO. 34
PO BOX 53
MACKAY, ID 83251-0053

RE: Request for the Diversion of Additional Flows for the 2011 Irrigation Season

Dear Roger:

This letter approves the request for users to divert additional water during the 2011 irrigation season as provided by Rule 40.06 of the Idaho Department of Water Resources Water Distribution Rules - Water District No. 34 (IDAPA 37.03.12, hereafter referred to as "the Distribution Rules"). After carefully considering the Distribution Rules and your valuable input, as well as that of the Advisory Committee members and water users, the request is granted. The approval is subject to the limitations and procedures outlined in this letter.

This approval is for the 2011 irrigation season only. However, the procedures and process outlined in this letter may form the basis for future approvals. As such, this letter includes information that may not be pertinent to the 2011 season, but is included to document the analysis and help expedite evaluation of future requests. Water delivery in the Big Lost Basin is complex and the potential to overlook important considerations is high. As you implement this approval, you may find that unforeseen circumstances or overlooked considerations may suggest that changes should be made to the procedures outlined in this approval. If that is the case, please contact IDWR and we will work to improve the process.

The rule reads as follows:

040. ALLOCATION OF NATURAL FLOW (RULE 40).

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

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

1. The Director interprets this rule as a request to authorize the watermaster to deliver calls for water to augment an existing natural flow surface water right that authorizes irrigation as a beneficial use. This interpretation suggests that any water right that names the Big Lost River or its tributaries as a source may receive additional flows. Note that only those elements related to the quantity of water are augmented; other elements of the water right are not affected. Based on the foregoing, the following limitations apply to delivery of additional flows:
 - Deliveries of additional flows must be made to the legal point of diversion described on the surface water right being augmented
 - Only those acres described in the water right place of use may be irrigated with the additional flows. All limitations regarding the number of acres that can be irrigated within a permissible place of use remain applicable.
 - Irrigation of up to 32,000 acres may occur on lands within the Big Lost River Irrigation District (BLRID) place of use. Although this approval does not authorize additional storage under the BLRID water rights, it does authorize users within the place of use to divert natural flow for irrigation use within the BLRID place of use.
2. The Director interprets paragraph a of the rule to mean that the user's water right and additional flows must be put to beneficial use for or in support of irrigation of a crop, pasture land, or other economically beneficial vegetation. Rule 55.04 of the Distribution Rules states, "The rate of flow generally required at the field head gate for irrigation of lands in Basin 34 is two hundredths (0.02) CFS per acre." Given this limitation in the Distribution Rules, the amount of water available to be diverted and put to beneficial use is limited to the amount required to provide 0.02 CFS per acre at the field head gate.
3. The Director interprets paragraph b of the rule to mean that all natural flow surface water rights are satisfied (rather than "Could be satisfied"). A right that has not been called for or that is not deliverable due to unmet conditions on the right is considered satisfied. The watermaster should determine whether all rights are satisfied. A general guideline for the watermaster is that all rights are satisfied when all users that have called for water are receiving the water they have called for.

Additional discussion is included below for determining whether water right permits 34-7571 and 34-7573 for groundwater recharge, and the BLRID storage rights are satisfied. While the foregoing general guideline applies in part to determining whether these rights are satisfied, the complexities of the diversion and use of the recharge permits and BLRID storage rights renders some additional discussion necessary. The discussion below assumes all other rights are satisfied.

- **Recharge** is satisfied while more than 60 cfs is at the Arco Gage. If there is less than 60 cfs at the Arco Gage, then the watermaster, in consultation with the Recharge Committee, should determine whether 60 cfs will be available at the Arco Gage and whether the Recharge Committee intends to call for the

right. If the Arco Gage is likely to reach 60 cfs and the recharge rights have been called for, the watermaster is not to deliver additional flows until the Arco Gage exceeds 60 cfs and the recharge right is satisfied. If the average daily flow at the Arco Gage then falls below 60 cfs for three consecutive days, and the Recharge Committee is calling for water, then diversion of additional flows should be curtailed on a pro-rata basis to determine whether the additional flow deliveries are preventing the gage from reaching 60 cfs. If the watermaster determines the flow at the Arco Gage would be less than 60 cfs even without the additional deliveries, then the watermaster should consult with the Recharge Committee to determine to what extent additional deliveries and/or recharge should be regulated in an attempt to keep the recharge rights and/or additional flows deliverable. In no case should the recharge deliveries be made for more than three days after the average flow at the Arco Gage falls below 60 cfs for the third consecutive day. After it is determined that the recharge rights are not deliverable, then delivery of additional flows can resume on a priority basis, based on the earliest priority of the water rights appurtenant to the lands being irrigated.

- **BLRID storage rights** can be assumed to be satisfied under nearly all conditions where additional flows are available. The assumption is that they are storing all they intend to or are physically able to at any given time, so the natural flow leaving the reservoir has been intentionally not stored and so is available to downstream users.

While additional flows are being delivered, only those deliveries made to BLRID patrons that are made with a corresponding decrease in the physical contents of Mackay Reservoir can be, but (do not necessarily need to be) accounted for as a storage delivery.

4. Paragraph c of the rule requires that the diversion of additional flows must not conflict with the public interest. To this end, the Director relied on input from the Water District no. 34 Watermaster, Advisory Committee, and water users. The comments provided to the Director are summarized below.
 - put as much water to use as possible and distribute it fairly to those that can use it.
 - any deliveries of additional flows must be fully documented and accounted for.
 - diverting additional flows is desirable in that it may offset groundwater pumping, but this benefit would be lost if the diversion of additional flows interferes with groundwater recharge or dries up reaches of the Big Lost River or its tributaries.

In response to these comments, the following apply.

- Users wanting additional flows must receive their full surface water right amount first. However, users may and should seek additional flows if those

flows can replace irrigation currently sourced from a supplemental groundwater well.

- Deliveries will not be made to diversions that do not have adequate measuring devices (as well as in-stream pumps that are assumed to already operate at capacity).
 - Deliveries of additional flows will be recorded on the daily ditch rider logs and fully accounted for at the head of each canal.
 - Diversion of additional flows cannot result in dewatering any reach of the Big Lost River or tributaries.
 - During this period, the Eastside Canal cannot be used as the river channel as provided in Rule 30.01 of the Distribution Rules.
5. The Director interprets paragraph d of the rule to mean that, during the period that additional flows are available for diversion, the additional flow deliveries are to be considered natural flow and are not to be considered storage water. The use will be accounted for assessment purposes as a delivery of natural flow to the canal heading. While additional flows are being delivered, storage deliveries are not to be delivered without a corresponding decrease in reservoir contents.
6. After considering the implications of the rule, some practical considerations remain.
- The watermaster should inform the users, via the ditch riders or other means as the watermaster sees fit, that additional flows are available.
 - Delivery of additional flows can begin when the 3-day average flow at the Arco Gage is greater than 60 cfs and the recharge permit is satisfied. Alternatively, delivery of additional flows may begin, subject to the consent of the Recharge Committee, when the flow at the Arco Gage is less than 60 cfs and greater than zero.
 - Delivery of additional flows will be made on a pro-rata basis throughout the system to users calling for additional flows. Reduction of additional flow deliveries on a pro-rata basis by canal will occur when:
 - i. the average 3-day flow at the Arco Gage falls below 60 cfs and the Recharge Committee is calling for water, or
 - ii. the quantity of available additional flows is insufficient to supply the demand for additional flows.

Note that delivery and reduction in delivery of additional flows refers only to the amount of water being diverted in excess of a user's water right. In no case shall any user receive additional flows while any other user has called for a water right and that right is not being filled.

- Delivery of additional flows will cease:
 - i. upstream of any dewatered channel.
 - ii. throughout the system whenever a natural flow right cannot be satisfied.
 - iii. throughout the system when water does not flow past the Arco Gage or the lowest diversion on the Big Lost River if that user is calling for

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- water. The lowest diversion on the Big Lost River is the lower Quist pump, located in the NENW of Township 3N, Range 27E, Section 20, approximately 1,000 ft downstream of the Arco Gage.
- iv. if the BLRID chooses to deliver storage water beyond that accompanied by a corresponding decrease in reservoir contents.

Note that fair and equitable distribution of additional flows requires that users know that flows are available and that they must call for the water. Please inform the users, via the ditch riders or other means as you see fit, that additional flows are available.

If you have any questions or concerns about this approval, please contact our office.

Sincerely,



Gary Spackman
Interim Director, IDWR

cc:

IDWR – Eastern Region, WD34 Advisory Committee,
BLRID, WD34 Recharge Committee, Mitchell Sorensen