

GEORGIA	_____	JEANIE	_____
TRISH	_____	FRANK	_____
JIM	_____	STEVE	_____
MARY	X	TERRY	_____
TARA	_____	GARY	_____
DALLAS	_____	DOUG	✓
ALLAN B	_____	COREY	_____

RETURN TO MB
file in Gen. Corr

~~State of Idaho~~
DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301-6105 (208) 736-3033
Fax (208) 736-3037

PHILIP E. BATT
Governor

KARL J. DREHER
Director

June 19, 1996

Chuck Helman
2391 Rock Creek Rd
Hansen, ID 83334

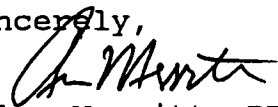
RE: Rotation of rights on creek

Dear Chuck:

As we discussed in our phone conversation last Friday, June 14th, there is precedence for allowing rotations to be established. At the time of our conversation it was my understanding that "rotations" were specifically mentioned in the proposed general provisions in the Basin 36 Director's Report but I find the language is not specific about "rotations". I have further discussed this matter with Lynn Krogh, one of the department's adjudication attorneys, and Dave Shaw, the Adjudication Bureau Chief. Lynn informs me that there is case law that acknowledges "rotations". Dave informs me that §42-220, IDAHO CODE can be interpreted to allow "rotations". Dave also has provided me a draft copy of a rule interpretation which specifically addresses the "rotation" issue. Please find copies of §42-220, IDAHO CODE, and the draft rule interpretation for your review.

Based on the foregoing I find that "rotations" are possible. I would still insist that the water rights in the rotation be out of the same point of diversion and I would highly recommend that those involved in the rotation document how it is to be operated.

If you have questions or further comment please feel free to contact our office.

Sincerely,

Allen Merritt, PE
Southern Region Manager

DRAFT -- March 26, 1996 -- 5:46pm

RULE INTERPRETATION MEMORANDUM

RIM No. 2 - Water District 34

To: Water Management Division

From: Karl J. Dreher, Director

Re: INTERPRETATION OF RULES GOVERNING DISTRIBUTION OF WATER IN WATER DISTRICT 34, THE BIG LOST RIVER BASIN

Date: March ____, 1996

Effective October 26, 1994, the Department of Water Resources promulgated final Rules Governing the Distribution of Water in Water District 34, The Big Lost River Basin. IDAPA 37, Title 3, Chapter 12, 94-10 Idaho Administrative Bulletin 457, Oct. 5, 1994. The Rules prescribe procedures governing the distribution of surface and ground water within the Big Lost River Basin.

Certain water users have filed objections to the recommendation of their water rights in the Director's Report. Their objections raise, among other issues, whether or not the custom and practice of rotation among water users on the same ditch or canal (rotation) can continue with water rights described in the Director's Report and under the Water Distribution Rules - Water District 34 (Rules).

Rotation, for purposes of this Memorandum, is limited to those situations which meet the following criteria:

1. Two or more water rights with different places of use are diverted through the same ditch or canal.
2. The owners of all water rights involved in the rotation agree to participate in the rotation.
3. All of the water rights involved in the rotation are diverting water under their own priority at the time the rotation takes place.
4. The water diverted under all the water rights is used on part of the place of use described in the water rights for a pre-determined period of time and

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then is "rotated" to another part of the place of use described in the water rights for another pre-determined period of time. The rotation continues until all the described places of use that are the subject of the rotation have received water for the pre-determined period of time.

5. None of the elements of any of the water rights, except place of use, is altered or violated by this practice.
6. Rotation has been part of the historical custom and practice of utilization of the water rights involved in the rotation.
7. The owner of the ditch or canal does not prohibit the practice of rotation.

Each water right for the diversion of natural flow or ground water for irrigation includes a diversion rate in cubic feet per second (cfs) as an element of the water right. In those situations in which more than one water right is held by the same water user for the same place of use, a combined use limit may be included in the description of the water rights that describes the total diversion rate in cfs of the water rights when used in combination.

These diversion rate limitations do not prevent rotation among water uses so long as the diversion rates described in the individual water rights, including combined diversion rates, are not exceeded.

Rule 40.01, Administration of Surface Water Rights and Rule 45, Administration of Ground Water Rights describe the distribution of surface and ground water in Water District 34. Rule 40.02, Rotation Credit describes the unique practice of rotating natural flow water rights into Mackay Reservoir for "credit," as described in the Rules. None of these rules prevent rotation among water users.