



State of Idaho
DEPARTMENT OF WATER RESOURCES

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May 23, 1995

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Water District 34
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Mitchell Sorensen
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Dave Nelson
5688 Chilly Road
Mackay, ID 83251

Gentlemen:

Enclosed to each of you is an original of the PLAN OF OPERATION, BASIN 34 RECHARGE and a proposed AGREEMENT adopting the plan and withdrawing the protests by the applicants for application no. 34-07573 against application no. 34-07571.

The AGREEMENT and PLAN are the product of meetings I attended with the applicants for both applications. My participation in the meetings was to facilitate the resolution of the dispute between the two groups of applicants and, at the request of both groups of applicants, I have put in writing the consensus of the applicants. If the AGREEMENT is put in place it will resolve the protests between these two groups of applicants and will allow the administrative process to continue to consider the applications and the remaining protests against them.

May 23, 1995
Page 2

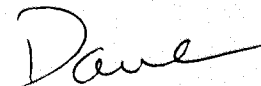
I have tried to incorporate the changes discussed at the meeting on May 15 and prepare an agreement that does the things I understood were the consensus of the group at that meeting. If further changes to either are needed please let me know.

The names on the agreement for signature are the names of those who signed the original applications or protests. In order for the protest to be withdrawn an original of the signed agreement will need to be filed with IDWR. You can send the signed agreement to me if you wish.

As a suggestion, you may wish to sign three originals of the agreement, one for IDWR and one for each group of applicants.

Please let me know if I can do anything further.

Yours truly,

A handwritten signature in cursive script, appearing to read "Dave", written in dark ink.

David B. Shaw
Adjudication Bureau Chief

Enc.

AGREEMENT

This Agreement is entered into this ____ day of _____, 1995 by the applicants of water right application for permit nos. 34-07571 and 34-07573 for the purposes of:

- 1) Adoption and support of the PLAN OF OPERATION, BASIN 34 RECHARGE, dated May 23, 1995 attached hereto and made a part of this Agreement.
- 2) Withdrawal of protests by the applicants for water right application for permit no. 34-07573 against application for permit no. 34-07571.
- 3) Agreement by applicants for water right application for permit no. 34-07571 not to protest application for permit no. 34-07573.
- 4) Providing mutual support for approval of both water right application for permit nos. 34-07571 and 34-07573.

Signed and effective the day first above written.

Representatives for application for permit no. 34-07571.

Mitchell D. Sorensen

Seth Beal

Representatives for application for permit no. 34-07573 and protestants against application for permit no. 34-07571.

Dave Nelson

Randy McAfee

Melvin Marx Hintze

Harry Crawford

PLAN OF OPERATION
BASIN 34 RECHARGE
May 23, 1995

Introduction

This plan of operation is intended to implement the recharge effort in Basin 34 to accomplish the objectives of the applicants. The applicants are those individuals, and their successors in interest, who have filed applications for water rights nos. 34-07571 and 34-07573 seeking to appropriate water from the Big Lost River and its tributaries for recharge purposes. (Therefore, applicants also means those individuals who hold an ownership interest, either directly or through an organization, in any permit or perfected water right developed pursuant to either or both of these applications.) Under this plan of operation the recharge water rights are to be used without regard for the relative priority between the two water right filings in a manner to fully and efficiently use the available water supplies and provide benefit to all applicants.

The objectives of the applicants are to benefit all lands in the basin from flood water supplies that would otherwise exit the basin by maintaining reasonable river flows from the head of the valley to the Arco gaging station and the controlled diversion of otherwise unappropriated water into selected recharge sites. The expected basin wide project benefits are anticipated to be the following:

- 1) greater usage of flood water supplies.
- 2) flood control/stream bank protection.
- 3) recharge to natural springs and aquifer levels.
- 4) enhancement to wildlife habitat and aesthetic values.
- 5) reduce damage caused by sub-water adjacent to river.
- 6) extended periods of river flows.
- 7) improved conveyance of diverted water supplies.
- 8) aquifer replacement of ground water supplies.
- 9) mitigation for senior surface water rights.
- 10) demonstration of community cooperation.
- 11) reduce or eliminate the need to curtail existing ground water rights.
- 12) maintain ground water levels for domestic wells.

General Conditions of Operation

Water rights for recharge purposes are subject to the control of the Watermaster of Water District 34 and the Water Distribution Rules for Water District 34. Delivery of water pursuant to recharge water rights is limited to use for recharge purposes only and is subject to all prior water rights including, but not limited to, irrigation, stock water and storage. The Watermaster may, however, deliver water

for recharge prior to the filling of all storage rights when the owner(s) of the stored water concurs that the reasonably anticipated runoff is sufficient to fill all storage rights and provide water for recharge.

Calls for delivery of recharge water will be made only by the committee (Recharge Committee) selected by the recharge water right applicants. Calls for and delivery of recharge water will be according to this plan of operation and other applicable laws. The Recharge Committee will consist of six (6) members, an applicant who receives surface water for irrigation from each of the following areas: above Mackay Reservoir, Big Lost River from Mackay Reservoir to above the Moore Diversion, Big Lost River from Moore Diversion to above the Arco Diversion, Big Lost River from Arco Diversion and downstream, and from the Antelope Creek drainage. The sixth member of the Recharge Committee will be the Watermaster of Water District 34 who need not be an applicant. In addition, at least three (3) of the non-watermaster members will also hold and use ground water rights for irrigation within Basin 34.

Property owners adjacent to Spring Creek may request recharge flows, in accordance with this plan of operation, in Spring Creek through a representative committee (Spring Creek Committee). The Spring Creek Committee should be selected by property owners adjacent to Spring Creek in a manner acceptable to the Spring Creek property owners. The Recharge Committee and the Big Lost River Irrigation District may deliver recharge water, when available, to Spring Creek upon request and approval by the Spring Creek Committee.

Diversions of water for recharge should be limited so as not de-water (dry up) stream channels or increase the extent of de-watered stream channels at the time of the recharge diversion. Many tributaries to the Big Lost River and the Big Lost River itself do not have wetted channels for the entire length of the stream channel during portions of the year and during periods of drought. Among the purposes of this recharge plan is to retain water within the basin that would otherwise leave the basin downstream from the Arco gage as "flood flows." While retaining the water as high in the basin as possible may produce some benefit by extending the time the water may remain in the basin that added benefit does not off-set the value of recharging in the immediate vicinity of the stream channel itself to help maintain the integrity of the stream channel. The water supply required for maintaining wetted stream channels is self limiting since, as the ground water is recharged in the vicinity of the stream channel, smaller amounts of water will be required to maintain the stream and larger amounts of water will be available for diversion for other purposes.

Generally, the diversion of water for recharge from tributaries to the Big Lost River should not increase the amount of dry channel that exists for that tributary. For the Big Lost River itself downstream from Mackay Dam, diversion for recharge downstream from Mackay Dam will generally not occur unless the river is reaching the

Arco gage, or is reasonably expected to reach the Arco gage within three days, even though water is being diverted for recharge.

Calls for delivery of recharge water by the Recharge Committee will be consistent with the intent of the applicants to provide benefits for all applicants throughout the basin.

In the event ground water levels become too high while recharge is occurring, the Recharge Committee will consult with the Director of the Department of Water Resources to determine if or where recharge can continue at that time in Basin 34. This consultation will occur within 24 hours of any notification that ground water levels are too high as a result of recharge. The Recharge Committee may, in its own discretion, request the Watermaster to alter recharge diversions to avoid adding additional recharge water to areas where the ground water has become too high. The Director of the Department of Water Resources may, in his sole discretion, instruct the Watermaster to alter recharge diversions to avoid adding additional recharge water to areas where the ground water has become too high. If the Watermaster or the Director of the Department of Water Resources becomes aware of any imminent flood danger caused by recharge diversions the Watermaster may take such action as is reasonable and necessary to avoid or reduce any flooding caused by recharge diversions.

Recharge During the Non-Irrigation Season

For purposes of this plan of operation the non-irrigation season is the period of the year when surface water is not being diverted for irrigation purposes from the source of water sought to be used for recharge. The non-irrigation season, for purposes of this plan, may differ from one portion of the basin to another in any year as well as differing from year to year.

The diversion of water for recharge may begin from tributaries to the Big Lost River during the non-irrigation season at any time that water is available for recharge and diversion facilities are available and capable of diverting and recharging the diverted water. Care must be taken to avoid ice damage to diversion facilities and to avoid flood threats that could result from icing conditions.

No diversion of water from the Big Lost River upstream from Mackay Reservoir can occur which would interfere with filling the storage rights for the reservoir. Diversions for recharge upstream from Mackay Reservoir should only be made after consultation and concurrence by the Directors of the Big Lost River Irrigation District and when diversion facilities are available.

Diversion of water from the Big Lost River downstream from Mackay Reservoir may occur when the conditions of stream flow described in the General Conditions

of Operation have been satisfied and diversion facilities are available. During the non-irrigation season water diverted into the irrigation canals and "lost" from seepage from those canals is a viable form of ground water recharge. This recharge benefits both ground water users by raising the level of the aquifer and surface water users by reducing the losses that will occur from the canals when irrigation deliveries begin.

Recharge During the Irrigation Season

For the purpose of this plan of operation the irrigation season is the period during each year when surface water is being diverted for irrigation purposes from the source of water sought to be used for recharge. The irrigation season, for purposes of this plan, may differ from one portion of the basin to another in any year as well as differing from year to year.

Recharge during the irrigation season will generally follow the same procedures as recharge during the non-irrigation season. All senior rights being called for must be filled prior to the use of water for recharge. Water rights for purposes other than recharge will not be diverted or delivered solely for purposes of recharge.

Current irrigation diversion and delivery facilities may not have enough capacity to meet irrigation demands and divert water for recharge. The applicants should begin immediately to identify recharge sites and provide facilities that can be used for recharge during the irrigation season. Possible recharge sites, in addition to existing irrigation canals, are abandoned irrigation canals, gravel pits and other as yet unidentified sites. Among the possible sites are the Darlington bypass, the Beck Ditch, the Lower Burnett Ditch, Congden Springs area, Leslie gravel pit, Moore gravel pit, Chili Canal, Nielsen Ditch and the UC Canal. Sites and facilities that can be used to divert and recharge "flood flows" that normally occur after the beginning of the irrigation season are essential to a successful recharge effort. The applicants should have identified additional recharge sites and have in place plans for providing/constructing facilities at sites in addition to those identified above by 1996.

Accounting for Recharge

Recharge diversions will be accounted for by the Watermaster. Only those flows diverted under the authority of the recharge water rights listed above are to be accounted for as recharge. Canal seepage that occurs during the normal delivery of water pursuant to non-recharge water rights will not be counted as recharge.

It is beyond the scope of this plan of operation to propose a specific mitigation plan that utilizes the recharge that will occur under this plan. It is the intent of the applicants, however, that a mitigation plan will be proposed to the Director of the Idaho Department of Water Resources, pursuant to Rule 50.04.c.iii or Rule 50.04.e of the Water Distribution Rules - Water District 34, IDAPA 37 Title 03 Chapter 12,

that will seek a uniform reduction in the percentage of mitigation required of ground water users based upon the amount of recharge occurring under this plan of operation.

Costs

The applicants will be responsible for all costs associated with the recharge effort pursuant to this plan of operation including water district charges, and facilities development and maintenance. The applicants may seek to defray these costs by seeking a waiver of water district charges, by seeking contributions from the beneficiaries of the recharge effort or by other means.

Without formation of a ground water district pursuant to Chapter 52, Title 42, Idaho Code, neither the applicants or the Recharge Committee have authority to levee assessments. This does not prevent the applicants from agreeing to contribute for purposes paying the expenses of the recharge effort conducted pursuant to this plan of operation.