



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

May 13, 2004

Re: Mitigation for ground water use pursuant to IDAPA 37.03.12.050

Dear Ground Water User:

You have received this notice because our records show that you are the owner of a ground water right diverted within Water District 34, or because Water District 34 records show you are an operator assessed by the water district for ground water use. If you are no longer the owner or operator of a ground water right diverted within Water District 34, please disregard this notice.

The purpose of this letter is to inform you that water users with senior surface water rights diverted from the Big Lost River have filed requests for mitigation with Water District 34, pursuant to the "Water Distribution Rules – Water District 34" IDAPA 37.03.12.050 (Rule 50). The Idaho Department of Water Resources (IDWR) received a copy of these mitigation requests on April 29, 2004 and May 13, 2004 and has determined that these water rights are eligible to receive mitigation from junior ground water users pursuant to this rule. The surface water rights for which mitigation has been requested are water rights 34-00372A, 34-00372B, 34-00690B, 34-00666, 34-00621B, and 34-10872. Water rights 34-00372A, 34-00372B, and 34-00690B have a total maximum diversion rate of 6.53 cfs and have priority dates of June 1, 1883 and June 30, 1883. The point of diversion for these water rights is the Moore diversion. Water rights 34-00666, 34-00621B, and 34-10872 have a total maximum diversion rate of 6.4 cfs and have priority dates of June 1, 1887, January 1, 1892, and June 1, 1896. The point of diversion for these water rights is the Eastside diversion.

As a ground water user, you are subject to conjunctive administration and are obligated to provide mitigation to the above-mentioned surface water rights unless all of your ground water rights meet one of the following exceptions.

1. Your ground water rights contain a remark specifically stating that the right will be administered as separate from the Big Lost River and its tributaries.
2. Your ground water rights are small domestic and stock water rights.

Based on Rule 50, there are three options for fulfilling these requests for mitigation. The required mitigation may be fulfilled by the water district, individual ground water users, an organization of ground water users, or a combination thereof. These options are:

1. Provide water to the water users who have called for mitigation by augmenting natural flow in the Big Lost River at the point of diversion for the Moore and Eastside Canals or by adding water to canals or laterals that can be used to deliver water to the applicable places of use (Rule 50.04.c.ii and iii). Flow will need to be augmented by 6.53 cfs at the Moore diversion on each day during the 2004 irrigation season that water delivery is called for and the natural flow is not otherwise available to fulfill these water rights. Flow will need to be augmented by up to 6.4 cfs at the Eastside diversion on each day during the 2004 irrigation season that water delivery is called for, the natural flow is not otherwise available to fill these rights, and the water rights would have been in priority absent diversion of ground water.
2. Provide 6,110 AF of water to augment natural flow in the Big Lost River system (Rule 50.04.c and 50.04.c.i). This water may be added to the Big Lost River at any point(s) between Mackay Dam and the Moore diversion. The schedule for delivery of the 6,110 AF for flow augmentation is outlined in Rule 50.04.c.i.
3. Submit an alternative mitigation plan(s) (Rule 50.04.e), which identifies actions and measures to prevent or compensate for impacts to diversions by junior ground water users, to the director for consideration pursuant to IDAPA 37.03.11.043 (Idaho Rules for Conjunctive Management of Surface and Ground Water Sources). Alternative mitigation plans could include monetary compensation, partial fulfillment of the flow augmentation requirements combined with a partial reduction in ground water use, non-use of wells, or other combinations of actions that prevent or compensate for the impacts.

Per Rule 50.04.d, Water District 34 is authorized to acquire water supplies, on behalf of the ground water users, to augment natural flow for mitigation purposes. The water district is authorized to add the cost of acquiring mitigation water to the annual assessment of ground water users who do not provide separate augmentation or a separate mitigation plan. Junior ground water right holders who propose to provide alternative mitigation plans must file a written mitigation plan with Water District 34 and IDWR by June 4, 2004. If Water District 34 does not acquire water for mitigation or file an alternative mitigation plan on behalf of the ground water users, ground water users must submit mitigation plan(s) to IDWR either individually or through another organization by June 4, 2004. Mitigation plans submitted to IDWR should be addressed to IDWR at the address shown on this letterhead. Holders of junior ground water rights who do not divert or use ground water in 2004 will not be subject to mitigation costs.

The Director of IDWR may order curtailment of ground water use pursuant to Rule 40 of the "Rules for Conjunctive Management of Surface and Ground Water Resources," IDAPA 37.03.11 if both of the following occur.

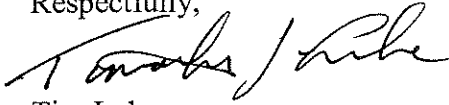
1. The water users who have requested mitigation also file a petition with the director of IDWR requesting curtailment of junior ground water users pursuant to IDAPA 37.03.11.040.
2. The mitigation requirements under IDAPA 37.03.12.050 are not fulfilled by the junior ground water users.

May 13, 2004

Page 3

If you have any questions regarding this letter please contact Jennifer Berkey or Tim Luke at 208-327-7900 or Water District 34 at 208-588-3137.

Respectfully,

A handwritten signature in black ink, appearing to read "Tim Luke", written over a horizontal line.

Tim Luke

Water Distribution Section

cc: Bob Duke, Watermaster, Water District 34
IDWR Eastern Region

Enclosure: Rule 50, Water Distribution Rules – Water District 34

N:\Lost River WD34\Corrspndc\2004\05-13MitigationWU.doc

07. Mackay Dam Minimum By-Pass. Mackay Dam and Reservoir shall be operated to maintain a minimum flow of fifty (50) CFS at the 2-B gage. (10-26-94)

08. Canal Or Lateral Delivery. In the event a water user feels inappropriate delivery of natural flow water is occurring on any lateral or canal, the water user can request the watermaster to investigate. In the event the watermaster determines that delivery of natural flow water rights within a lateral or canal is being improperly conducted he shall: (10-26-94)

a. Notify the ditch rider and the water delivery entity of the results of his investigation and coordinate efforts to make proper delivery of the natural flow. (10-26-94)

b. If the situation has not been sufficiently resolved within twenty-four (24) hours the watermaster will notify the director who may take all actions authorized by law to remedy the situation. (10-26-94)

041. -- 044. (RESERVED).

045. ADMINISTRATION OF GROUND WATER RIGHTS (RULE 45).

Administration of ground water rights is based upon the list of water rights approved for interim administration by the court or as subsequently decreed by the court in the SRBA. Should curtailment of ground water rights become necessary to protect a senior ground water right(s), administration will be based upon reasonable pumping levels and the prior appropriation doctrine as required by law. (10-26-94)

046. -- 049. (RESERVED).

050. CONJUNCTIVE ADMINISTRATION OF GROUND AND SURFACE WATER RIGHTS (RULE 50).

01. Conjunctive Administration - Exceptions. All ground water rights shall be administered conjunctively as part of the Big Lost River and tributaries unless the ground water user can show to the satisfaction of the director, that due to well construction or location, the diversion of ground water from a particular point of diversion does not reduce the flow of the Big Lost River above the last (most downstream) diversion from the Big Lost River. An exception to conjunctive administration in Water District 34 exists for those ground water rights in the list of water rights containing a remark noting that the right will be administered as separate from the Big Lost River and its tributaries. (10-26-94)

02. Water Rights Not Subject To Administration. Small domestic and stock water rights from ground water are not subject to administration at this time; however, these rights may be made subject to administration in the future to provide water to senior water rights from the water system. (10-26-94)

03. General Rule. Data currently available to IDWR shows ground water rights that are to be administered conjunctively with surface water deplete the flows of the Big Lost River downstream from Mackay Dam. Surface water users with water rights from the Big Lost River with points of diversion downstream from Mackay Dam are not required to seek curtailment of or mitigation by junior ground water rights and may develop water rights to supplement their Big Lost River water rights as provided by law. (10-26-94)

04. Mitigation/Augmentation. Water users with water rights whose source is Big Lost River with their point of diversion downstream from Mackay Dam who seek to have the water supply for their water right augmented to provide for their water right the water supply that would have been available for diversion absent the diversion of ground water under junior water rights shall request mitigation pursuant to this rule. Water users who seek such mitigation from ground water users must notify the watermaster at the time those water users make their initial request to the watermaster for delivery of their water right of their desire for mitigation. Mitigation of the effects of ground water diversion, when requested, will occur as more fully described below. (10-26-94)

a. Mitigation will not occur prior to May 1 or after October 15 of any year. (10-26-94)

b. Mitigation will be available to water rights with 1905 and earlier priority dates. (10-26-94)

c. Water rights will be eligible to receive mitigation through augmented natural flow water supply based upon a river depletion due to ground water diversions currently estimated to be thirteen percent (13%) of the average annual diversion from wells subject to conjunctive administration currently estimated to be forty-seven thousand (47,000) AFY or a depletion of six thousand one hundred ten (6,110) AFY. The estimated percentage of depletion and annual volume of diversion from wells will be reviewed annually by the director and modified as data becomes available to refine these estimates. Any revised estimate of depletion or annual diversion shall be presented to the water users at the annual meeting of Water District 34 prior to adoption of the values by order of the director.

(10-26-94)

i. Natural flow will be assumed to be augmented by one-third (1/3) of the depletion during the first one-half (1/2) of the period of time that any 1905 or earlier water right being called for can not be filled by the natural flow through October 15 of each year. Natural flow will be assumed to be augmented by two-thirds (2/3) of the depletion during the second one half (1/2) of this period each year.

(10-26-94)

ii. Water users who have requested mitigation and who have water rights being called for that could be filled by augmentation described in Rule Subsection 050.04.c.i shall be provided with water by augmenting the natural flow to the extent of their water right or the amount of water described in Rule Subsection 050.04.c.i., whichever is less.

(10-26-94)

iii. Augmentation of natural flow for purposes of mitigation may be accomplished by making additional water available for diversion from the Big Lost River, including increased river flows resulting from recharge efforts approved by the director, or by adding water to canals or laterals.

(10-26-94)

iv. In any year in which the ground water users believe the annual diversion from ground water for the year will be significantly less than the estimated annual diversion from ground water described above, the ground water users may present their evidence of the anticipated diversions to the director by May 1 of the year along with a request to modify the estimated annual diversion for the year. Upon a determination by the director, based upon the information presented by the ground water users, that the annual diversion from ground water for the year being considered will be less than the annual average, the director will set an estimated ground water diversion for the year to be used for conjunctive administration as described in this rule.

(10-26-94)

d. Water District 34 is authorized to acquire, through the watermaster, water supplies necessary to augment natural flow for mitigation purposes as described in this rule. The watermaster will add the cost of acquiring the mitigation water to the annual assessment of ground water users subject to conjunctive administration, who do not provide separate augmentation pursuant to Rule Subsection 050.04.c.iii. or separate mitigation pursuant to a plan approved as provided by Rule Subsection 050.04.e., in the same proportion as each ground water user is assessed for the costs of the water district relative to all other ground water users. Ground water users who fail to pay the assessed costs for acquiring mitigation water shall be penalized in the same manner as any other water user failing to pay any water district assessment.

(10-26-94)

e. Junior ground water users may submit an alternative mitigation plan(s), which identifies actions and measures to prevent or compensate for impacts of diversions by the junior ground water users, to the director for consideration pursuant to Rule 43 of the "Rules for Conjunctive Management of Surface and Ground Water Resources," IDAPA 37, Title 03, Chapter 11.

(10-26-94)

05. **Direct Interference.** This rule does not prevent a senior surface water user from seeking curtailment and/or damages from a junior ground water user when the senior surface water user can show direct identifiable impact on the water supply for the senior water right as a result of the diversion of water pursuant to the junior ground water right.

(10-26-94)

051. -- 054. (RESERVED).

055. **WATER USAGE (RULE 55).**

01. **Firefighting Purposes.**

(10-26-94)

a. Firefighting purposes is an alternate use to which any water right may be put, and firefighting is