



# State of Idaho

## DEPARTMENT OF WATER RESOURCES

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DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

April 25, 2005

Richard Reynolds  
Chairman  
Big Lost River Irrigation District  
3253 W 2800 N  
Arco, ID 83213

Dear Richard;

I am responding to your letter of March 12, 2005 regarding definitions contained in the IDAPA 37.03.12 - Water District 34 Water Distribution Rules (rules) and certain practices used in Water District 34.

Impounded water includes both storage water held by the Big Lost River Irrigation District (BLRID) in Mackay Reservoir, and rotation credit water kept in Mackay Reservoir. The rules define storage water as a category of impounded water

15. Storage Water. Water impounded in a storage facility, including Mackay Reservoir, pursuant to a water right which includes storage as a purpose of use.

The rules define rotation credit as follows:

12. Rotation Credit. Water impounded in Mackay Reservoir pursuant to a water right whose source of water is the Big Lost River and which does not include storage as a purpose of use. The impoundment of water as rotation credit is described in Rule Subsection 040.02.

In this definition above, rotation credit is water impounded for a water right that does *NOT* have storage as a nature of use. In contrast storage water is defined as water that includes storage as nature of use in the water right decree. The only rights in the Big Lost River Basin 34 that include storage as a nature of use are those held by the BLRID. When the rules, such as Rule 40.03.b, refer to impounded water, the reference includes both the BLRID storage water and the rotation credit water

You asked whether IDWR controls "the method of shrinkage used for the 'Storage Water Rights' held by BLRID or is that decision left to the Board of Directors of the district?" The Water Distribution Rules – Water District 34 do not use the work "shrink" but discuss water lost as conveyance loss or evaporation loss.

Rule 40.03.b states:

|                        |  |               |               |
|------------------------|--|---------------|---------------|
| Post-it® Fax Note 7671 |  | Date 8/8      | # of pages 10 |
| To KEVIN FLETCHER      |  | From G. BRENN |               |
| Co./Dept.              |  | Co IDWR       |               |
| Phone #                |  | Phone #       |               |
| Fax # 208 878 2548     |  | Fax #         |               |

Conveyance losses in the natural channel shall be proportioned by the watermaster between natural flow and impounded water. The proportioning shall be done on a river reach basis. Impounded water flowing through a river reach that does not have a conveyance loss will not be assessed a loss for that reach. Impounded water flowing through any river reach that does have a conveyance loss will be assessed the proportionate share of the loss for each losing reach through which the impounded water flows. To avoid an iterative accounting procedure, impounded water conveyance loss from the previous day shall be assessed on the current day.

IDWR staff in Boise calculates natural flow according to Rule 40.03.b. IDWR staff use a computer program that calculates conveyance losses on a reach-by-reach basis. IDWR reports the computer calculated natural flow to the watermaster to assure compliance with Rule 40.03.b.

In order to timely deliver water with the tools available to the watermaster, the watermaster determines natural flow by calculating the natural channel conveyance loss for the entire length of the Big Lost River from below Mackay Reservoir to the Arco Gage. After receiving IDWR's calculation natural flow data, the watermaster compares his method of calculation to IDWR's method, and uses his judgment to decide what natural flow to use for determining priority cut dates.

The watermaster for Water District 34 also hand calculates the losses for the reach from Mackay Dam to Leslie, and from Leslie to Moore for the BLRID. The BLRID uses this information to calculate the "shrink" on storage water deliveries. The watermaster does not use his calculated reach-by-reach losses to calculate natural flow. The watermaster hand calculates reach-by-reach natural channel losses solely as a courtesy to the irrigation district for purposes of calculating its storage shrink.

IDWR does not control the BLRID's method of assessing its patrons with "shrinkage" for storage rights held by BLRID. The BLRID Board of the Directors and ultimately, the BLRID patrons, are responsible for determining how the shrink is allocated to each of the patrons. The Water Distribution Rule – Water District 34 do not require that BLRID assess its members for shrink on a river reach basis. The by-laws or perhaps even tradition may dictate how BLRID assigns shrink to its patrons. If allowed by BLRID's operating requirements, BLRID can require that each patron share equally in the shrink, or BLRID can assign the losses to each of the patrons based on some other method.

I have attached a copy of a memorandum dated May 19, 1995. This memorandum documents a meeting between the BLRID manager, Tim Luke of IDWR's staff, and the Watermaster. Paragraph four of this memorandum describes how BLRID's manager contemplated changing the method river loss is assessed to patrons. From this discussion, it is evident that in 1995, BLRID had initiated making changes in water delivery and management methods, and not IDWR.

In response to the question in the third paragraph of your letter, water in excess of decreed rights should not be delivered for winter stockwater purposes through canals. The SRBA decrees for winter stockwater in Basin 34 on private canals have a clause allowing diversion at the canal heading of up to the full decreed irrigation amount when necessary to get the decreed stockwater amount from the canal heading to the decreed place of use. The SRBA decrees with this clause are for places of use that are not appurtenant or close to the legal point of diversion at a private canal heading. The clause also states that there should be no unreasonable waste of

water, as determined by the IDWR Director, when using the irrigation decree flow in delivering stockwater amounts. I have attached a letter from IDWR to the Watermaster that provides comprehensive guidance on delivering winter stockwater.

I apologize for the tardiness of this response and not having it by the April 5, 2005 meeting. The correct address for future correspondences is in the letterhead, and should assure more timely receipt by us.

I hope this letter answers your questions. Please call at the above number if you have further questions.

Sincerely,



Steve Burrell  
Water Distribution Engineer

pc: IDWR Eastern Region – Idaho Falls (W/ATTACH)  
Bob Duke, Water District 34 Watermaster – Mackay (W/ATTACH)  
WATER DIST 34 2005 FILE (W/ATTACH)

Attachments: /1/ Memorandum of May 19, 1995 from Tim Luke to Norm Young/Dave Shaw  
re: Big Lost River Accounting and Rotation of Natural Flow Rights.  
/2/ Letter of 11/17/2003 from Jennifer Berkey to Bob Duke re: Winter  
Stockwater Delivery

MEMORANDUM

TO: NORM YOUNG, DAVE SHAW

FROM: TIM LUKE

DATE: MAY 19, 1995

RE: BIG LOST RIVER ACCOUNTING & ROTATION OF NATURAL FLOW RIGHTS

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On May 17, I met with Doug Rosenkrance, Big Lost River watermaster, and Don Scarr, Big Lost River Irrigation District manager at the BLRID office in Mackay. Sheryl Howe also attended this meeting. I had initiated the meeting to discuss the status and responsibilities concerning rotation of natural flow rights.

Based on our review and discussion of rotation, it is my understanding that rotation currently involves physical rotation of natural flow rights within canals, which thereby reduces demand for storage and thus reduces the amount of stored water that is released from the reservoir. Both Don and Doug assured me that natural flow at the 2B gage and reservoir inflow would not be changed or adjusted to accommodate rotation of natural flow rights. Doug explained that in the past, reservoir inflow was often stored and not by-passed by the amount that was being rotated. Furthermore, the former rotation practice involved releasing rotated water stored in the reservoir without assessment of river losses. Since our rules and regulations and BLRID's own plan of operation documents do not allow for this 're-delivery without loss', the BLRID now considers rotation to involve rotation of rights within canals instead of physical rotation with the reservoir.

10.  
- The only  
NATURAL  
flow

Individual BLRID share holders who do not divert their deliverable natural flow rights on a given day will have their storage accounts credited. This storage account crediting is a bookkeeping procedure that is internal to BLRID and should not affect our accounting of natural flow and storage water, nor the amount of water recorded as diverted at each point of diversion from the river.

It is also understood that starting this year, the BLRID will no longer determine and implement a pre-shrink to stored water. Instead, BLRID will apply river losses (river shrink) to stored water using IDWR's accounting model. This means that BLRID will use real time flow data to determine river losses assessed to transmission of stored water. This represents a major change in BLRID's water management and delivery policy.

Since the rotation of natural flow rights appears to be limited to rotation of rights within canals and will only affect the demand of stored water, I see no reason why IDWR needs to account for

rotation. It is my opinion that any attempt to do so is only duplicating the bookkeeping efforts of BLRID which are external to IDWR's responsibilities and accounting procedures. I propose therefore that we remove the rotation files and programs from the 1995 Big Lost River accounting program. I have advised both Doug and Don that I would propose IDWR eliminate rotation from its' 1995 accounting program as long as rotation is within canals, is lawful, and will not injure natural flow rights.

cc: Sheryl Howe  
Bob Sutter  
Gary Spackman  
Glen Saxton  
Doug Rosenkrance



State of Idaho

**DEPARTMENT OF WATER RESOURCES**

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DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

November 17, 2003

Robert Duke, Watermaster  
Water District 34  
P.O. Box 53  
Mackay, ID 83251

Dear Mr. Duke:

As you have requested, this letter is intended to provide written documentation of our telephone discussion on October 9, 2003 regarding the delivery of winter stockwater in Water District 34. As we discussed, a memorandum providing additional detail on the basis for these directions, is attached for your reference.

As you noted, a number of water rights within Water District 34 were decreed with the comment, "The appropriator is entitled to the quantity of water described for stockwater purposes at a point of measurement where the delivery ditch enters the place of use described." For water rights decreed with this comment, the flow rate delivered at the diversion heading may exceed the stockwater flow rate if necessary to supply the stockwater flow rate where the delivery ditch enters the place of use described by the water right. However, water delivered in excess of the stockwater flow rate must not result in unreasonable waste of water, must be necessary to compensate for conveyance loss in the ditch, and may not be stored, used to increase soil moisture, or used for any type of beneficial use. Further, the flow rate delivered at the heading may not exceed the total flow rate of the water right.

For water rights that provide for winter stockwater, but do not include the comment referenced in the paragraph above, the flow rate at the diversion heading must be restricted to the winter stockwater flow rate, regardless of conveyance losses. Stockwater may not be delivered at points of diversion or places of use that are not authorized by a water right that specifies winter stockwater as a use. Incidental stockwater use is only allowed during the irrigation season of use.

As with irrigation water, stockwater may only be delivered when the water right is in priority. For stockwater rights below Mackay Reservoir, the general provisions define the minimum winter release from Mackay Reservoir. Stockwater rights below the reservoir may be called for and delivered if it does not interfere with storage in Mackay Reservoir by requiring a release of water in excess of the minimum release required at the 2b gauge, or the actual release of water, whichever is greater. A water right holder calling for delivery of winter stockwater must have access to a point of diversion and delivery system to convey the right to the place of use. If the headgate and delivery system are controlled by an entity other than the water user, the watermaster will only

deliver the water with the concurrence of the owner of the head gate and delivery system and then only when such delivery does not constitute unreasonable waste as determined by the Director.

For stockwater rights above Mackay Reservoir, stockwater may only be delivered to water rights that are senior to the unfilled reservoir storage rights. For example, until water right 34-10873 has been filled, stockwater rights senior to October 2, 1905 may be delivered, but stockwater rights junior to this date may not be delivered. After water right 34-10873 has been filled, stockwater rights senior to February 7, 1916 may be delivered, but water rights junior to this date may not be delivered until after water right 34-00012 has been filled.

Please contact me if you have any questions regarding this letter or the attached memorandum.

Sincerely,

  
Jennifer Berkey  
Water Distribution Section

Attachment

cc: IDWR Eastern Region  
Bob Schaffer, Big Lost River Irrigation District  
Harvey Walker, Rt 1 Box 200, Arco ID 83213

## MEMORANDUM

TO: Tim Luke and Jennifer Berkey  
Water Distribution, IDWR

FROM: Susan Hamlin Nygard, *shn*  
Deputy Attorney General, IDWR

DATE: October 15, 2003

SUBJECT: Winter Stock Water Delivery in Basin 34

You have requested a memorandum regarding delivery of stock water in Basin 34 during the wintertime. The watermaster has received a number of inquiries on how the winter stock water will be handled. The question you have posed to me is how much water can be delivered to get the .02 cfs of stock water to the property.

The following quantity remark is included in most partial decrees for stock water: "The appropriator is entitled to the quantity of water described for stock water purposes at a point of measurement where the delivery ditch enters the place of use described." The explanatory material for the stock water right may describe the delivery ditch and the number of head of cattle. If the stock water right is part of an irrigation right, the water right includes a total diversion rate limitation for the water use, which limits the delivery of the stock water. In other words, to get the water to the point of measurement during the non-irrigation season the amount diverted cannot exceed the total diversion rate of the water right. Also implied with the rights and confirmed by IDWR Rules for Distribution is that the delivery of the stock water during the non-irrigation season cannot constitute waste.

The general provisions for Basin 34, as decreed by the SRBA court, address winter stock water issues. General Provision 2, *2-B Gage and Stock Watering During Non-Irrigation Season*, states the following:

During the time period from November 1 of each year to the beginning of the next irrigation season (the "non-irrigation" period), all or a portion of the water of the Big Lost River flowing into Mackay Reservoir may be diverted, according to priority, for storage under water right numbers 34-00012 and 34-10873 provided the natural flow at the 2-B gage is not less than fifty cubic feet per second. During the non-irrigation period, natural flow water rights downstream of Mackay Dam and senior in priority to water rights numbers 34-00012 and 34-10873 may be diverted for domestic and livestock uses under water rights authorized for these purposes.

The clause, "according to priority" implies that wintertime stock water uses upstream from the Mackay Reservoir may divert if they are senior in time to the storage



rights. Additionally it states that senior rights downstream from Mackay Dam may divert for domestic and livestock uses from the 50 cfs.

The *2000 Supplemental Director's Report for Basin-Wide Issue 5-34* dated September 11, 2000, further describes General Provision 2. It states:

General Provision 2 defines and provides for efficient administration of the water rights by specifying when water can be diverted to storage in Mackay Reservoir in preference to earlier in time rights for non-irrigation uses. The general provision further defines that a release of 50 cubic feet per second (cfs) is necessary and sufficient at all times to provide adequate water for domestic and stockwatering uses downstream of Mackay Dam.

The general provision defines the relationship between the storage rights and the domestic and stockwater rights. It provides for efficient administration of the water rights by assuring that water needed for irrigation the next season is available for storage. It further provides for efficient administration by defining an appropriate flow for domestic and stockwater uses without requiring a continual review and revision of the flow released from the dam, as would be required if the release were adjusted to meet changing demands for beneficial use and futile call issues associated with the sink areas downstream from the dam.

Finally, the Idaho Department of Water Resources Water Distribution Rules for Water District 34, IDAPA 37.03.12.06, Winter (Non-Irrigation Season) Stock Water, further define non-irrigation season stock water use. During the non-irrigation season, the storage of water in Mackay Reservoir is superior to all rights from the Big Lost River with points of diversion downstream from Mackay Dam subject to the minimum release at the 2-B Gage. Winter stock water can be called for and delivered pursuant to the list of water rights if it does not interfere with storage in Mackay Reservoir by requiring a release of water in excess of the minimum release required at the 2-B Gage or the actual release, whichever is greater. A right holder calling for delivery of stock water must have access to a diversion point and delivery system to convey the right to the place of use recorded in the list of water rights. If the headgate and delivery system are controlled by an entity other than the water user, the watermaster will only deliver the water with the concurrence of the owner of the headgate and delivery system and then only when such delivery does not constitute unreasonable waste as determined by the Director.

Memorandum  
October 15, 2003  
Page 3 of 3

In sum, winter stock water rights upstream from the Mackay Reservoir may divert if their partial decree provides for such use and if they are senior in time to the BLRID storage rights 34-00012 and 34-10873. Senior rights downstream from Mackay Dam may also divert for non-irrigation season stock water, if their partial decree provides for such use, up to the amount of the minimum release required at the 2-B Gage or the actual release, whichever is greater.

If the right includes the remark that allows delivery to the point of measurement, the amount diverted cannot exceed the total diversion rate of the water right and delivery of that water cannot constitute unreasonable waste as determined by the Director. Finally, if there is no remark referencing delivery to the point of measurement then the right is limited to the diversion rate for stock water measured at the point of diversion.