

## MEMORANDUM

To: Basin 34 Water Users  
From: Gary Spackman  
Date: November 15, 2004

**Re: Proposed Mitigation Plan Submitted on or about October 5, 2004**

This memo is a response to a mitigation plan submitted to IDWR on or about October 5, 2004. Loy Pehrson recently requested a written response.

The proposed mitigation plan requests many actions that conflict with the Water District 34 Distribution Rules. The rules recognize the ability of water users to submit alternative plans, but those plans may have to comply with the rules unless the users unanimously consent to departure from the rules.

1. Mitigation call timing – Requesting mitigation by February 1 would give the ground water users more time to prepare a mitigation plan. The call may be premature because the full extent of the water supply will not be known by February 1. The rules do not require that the request be made until the water users requests delivery of his water. This could only be voluntary unless the rules are amended.
2. Mitigation delivery onset – I don't understand this statement. It needs additional clarification.
3. Mitigation timing – Providing mitigation at the onset of the irrigation season to flush the river and canal systems is a laudable goal. The rules provide for 1/3 mitigation water in the first half of the season, and 2/3 mitigation water in the second half of the season. This proposal may conflict with the rule.
4. Mitigation water –

Storage water that is lost through reservoir seepage or losses to the aquifer in deliveries **will not** be credited as recharge for mitigation. Storage water used to “flush” may be credited to mitigation if released as part of an overall approved plan.

Water delivered to holders of natural flow water rights (decreed rights) lost through conveyance **will not** be credited as recharge for mitigation.

5. Mitigation upstream from Mackay Reservoir

Ground water users pumping ground water above Mackay Reservoir must provide their proportionate share of mitigation as required by the rules.

Storage water dedicated to mitigation will be credited for mitigation. Natural flow water dedicated specifically for mitigation will be credited for mitigation. Seepage lost through delivery or storage will not be recognized as mitigation.

PROPOSED CRITERIA OF ACCEPTANCE FOR A  
MITIGATION PLAN FOR DISTRICT 34 IRRIGATION  
SEASON 2005

1. THE PROPOSED PLAN MUST MEET THE  
"DETERMINATION OF DEPLETION" AS  
CALCULATED BY IDWR FOR IRRIGATION SEASON  
2005.
2. NO PLAN SHALL UTILIZE THE PUMPING OF  
ADDITIONAL GROUND WATER AS A MEANS OF  
MITIGATION,
3. IF THE PROPOSED PLAN EMPLOYS THE  
CURTAILMENT OF GROUND WATER PUMPING AS A  
MEANS OF MEETING THE "DETERMINATION OF  
DEPLETION", SUCH CURTAILMENT MUST CONFORM TO  
IDAHO WATER LAW, THE FOUNDATION OF WHICH IS  
"FIRST IN TIME, FIRST IN RIGHT.