

Dec. 14, 2004

RESPONSE TO: Nov. 3, 2004 IDWR Letter RE:  
Mitigation for ground water use pursuant to IDAPA 37.03.12.050  
and surface water management improvement plan for Basin 34

SUBMITTAL OF: 2005 Participants Universal Mitigation Plan (05-PUMP)

Dear IDWR Director:

### **Preface and Introduction**

The proponents of this 2005 Participants Universal Mitigation Plan (05-PUMP) submit the following statement of position.

In response to past and expected future calls from senior surface right holders, IDWR administrative cease and desist orders requiring the curtailment of all ground water diversions which by partial decree are to be administered conjunctively in Basin 34, and at the recent request of IDWR administrators, the proponents of this plan elect to participant in an approved mitigation plan rather than submit to the curtailment of those same ground water diversions during any portion of the 2005 irrigation season.

A series of public meetings have been scheduled in Basin 34 this winter for the purpose of meeting and discussing potential mitigation and water improvement management plans relating to issues that exist in Water District 34. It is our intent to assist and help these efforts be productive, and produce a viable improvement plan(s) for the entire water district. With the submittal of this plan we are also requesting a written response from IDWR affirming the approval or denial of this plan in total, or in part. If any portion of this plan is not approved, we ask for a detailed written response as to why those specific provisions are not acceptable. If the plan appears to be incomplete in any manner, we reserve the right to amend and/or modify the plan and re-submit it for consideration.

*written  
response*

We also understand other water users may submit their own versions of potential mitigation plans. We reserve the right to review and comment on any such submitted plan. If IDWR personnel believe any substantive differences in such plans could be resolved by dialogue, we request a presence at those discussions.

If water users of Water District 34 were to ultimately adapt and implement any approved mitigation plan which contain elements or provisions which are adverse to the interests of the proponents of this plan, or if water users were to fail to adapt an approved plan which the proponents of this plan concur with at the annual water district meeting, the proponents of this (05-PUMP) reserve the right to submit alternative plan(s) pursuant to Rule 43 of the Rules for Conjunctive Management of Surface and Ground Water Resources, IDAPA 37, Title 03, Chapter 11.

The components of this (05-PUMP) are based upon the principles, concepts, and values described in 37.03.12-Water Distribution Rules-Water District 34. The focus of this plan will be to protect and augment the natural flows of the Big Lost River with the following described components and mitigation water supplies. To the extent this plan has merit and is approved by the Director of IDWR, we request it be perpetuated into future years. Thus giving water users resolution, stability, and confidence in the future administration and regulation of water resources in Basin 34.

## (05-PUMP) COMPONENTS

1. This plan requires the proper regulation of both surface and ground rights that exist within Water District 34. Special regulatory attention must be given to water rights having a supply from the Big Lost River and common administrative tributaries so as to ensure compliance with the priority doctrine, limiting elements and remarks contained in the SRBA partial decrees, and the curtailment of irrigated acres that are solely irrigated with inferior surface water rights decreed pursuant to Section 42-1426 of the Idaho Code. Ground water right priorities in Basin 34 are generally senior to these inferior surface water right expansion acres. This plan calls for the curtailment of such water supplies being applied to these particular acres until an appropriate mitigation plan for these uses is approved and implemented, or until ground water levels return to more normal historic levels. Also this plan requires the assurance from IDWR administrators and Water District 34 Watermaster that all mitigation water supplies are used only on lands that are entitled to such benefits.

*gw expansion  
acres*

2. Proponents of this plan recognize there may be a continuing need for the use of temporary transfers pursuant to the emergency drought declarations that may be declared for Butte and Custer counties. However, such transfers must not result in the expansions or enlargement of "combined or stacked" water rights, especially when such transfers involve the senior surface water rights calling for the curtailment of, or mitigation from, junior ground water rights.

3. Correct and accessible accounting records within the water district (i.e. determining and verifying the availability of natural flow supplies and priority calls by properly recognizing river inflows, losing/gaining river reaches, and excess river losses charged against storage allocations conveyed to the lower reaches of the river system). See 1991 Ralston Report p.6-7.

4. The annual average groundwater diversion value of 47,000 AFY, the depletion factor of 13%, and the resulting mitigation burden of 6,110 AFY described in IDAPA 37.03.12 Rule 050 will be recognized and used in all calculations and formulations for the 2005 irrigation season.

5. Costs associated with the acquisition of mitigation burden water supplies (with the exception of managed aquifer recharge supplies) will be allocated proportionately to the participating ground water users based upon their previous year's (2004) actual pumpage. IDWR will provide to the sponsoring entity a summary of those annual pumpages for each individual well owner. Ground water users who desire to participate in this plan will be required to pay their projected proportionate share of assessment costs prior to their enrollment or subscription to the plan. (Either as water district assessment or as participation fees, depending on who the sponsoring entity is.)

*stacked  
of  
cost*

6. Water supplies for the mitigation burden pool will be acquired/rented on a “willing buyer – willing seller” basis in the following preferred priority options by the sponsoring entity of this plan. These options will be pursued and exercised until the entire 6,110 AFY of mitigation burden has been acquired proportionately to the participants pumpage or until those senior surface water rights that are entitled to mitigation supplies are satisfied, whichever is of less expense to the ground water users.

*not consistent*

- a. Managed Aquifer Recharge supplies will be the first preferred option for providing mitigation to whatever extent such supplies are available. Recharge that is conducted by the water district’s recharge committee, in compliance with the plan of operation incorporated into and made part of water rights nos. 34-7571 and 34-7573, will be considered as replacement water supplies for quantities of pumped ground water. If recharge supplies are of great enough quantities, the entire mitigation burden may be satisfied with such supplies. To the extent other supplies are needed to satisfy the mitigation burden, the following options may be pursued in listed preference to the extent they are needed and available.
- b. Storage Allocations\* from water rights nos. 34-00818, 34-00811, 34-00810, 34-10935, 34-00817B, and 34-10873, 34-00012, 34-02507 that are issued to the patrons of the Big Lost River Irrigation District may be acquired by the sponsoring entity(s) at fair market prices and funded by assessment fees. Any such water supplies used for the augmentation of the natural flow will be treated as if it were natural flow and will be distributed and subject to the elements of those benefiting water rights.
- c. Supplies from Natural Flow\* rights held by any Water District 34 water user may be acquired by the sponsoring entity(s) at fair market prices and funded by assessment fees to the extent such water rights provide actual water supplies in their respective priority. The use and exercise of any such right will not be deemed to be a forfeiture or loss of priority when used for mitigation purposes. These supplies are natural flows and will be distributed and subject to the elements of those benefiting water rights.

\*Whenever natural flow rights are used in their natural flow or rotated into credit, and whenever storage water or storage allocations, or any combination of these two supplies are used to “flush” water as described in Rule 40, the entire volume will be credited as a mitigation supply.

- d. If the total mitigation burden supply required has not been satisfied from the above options, Ground Water supplies may be acquired by the sponsoring entity(s) at fair market prices and funded by assessment fees. Ground water supplies may be

introduced directly into the river, canals, or laterals. In every instance, such supplies will be considered as an augmented natural flow supply and distributed and subject to the elements of those benefiting natural flow water rights. Water supplies diverted from any such mitigation well(s) will be authorized pursuant to the descriptive elements of those surface water rights that are receiving benefit from the mitigation supply. No permanent or temporary transfers of water rights will be required. — *not correct*

7. The release or timing patterns of these mitigation supplies (with the exception of recharge supplies) will comply with Rule 50.04. Deviations from these release patterns may be authorized with the approval of the Director of IDWR if such deviations do not increase the mitigation burden on ground water users and/or result in the futile delivery of senior water rights during the regular irrigation season.

*fail to enforce*  
8. The release and diversion of these mitigation supplies (with the exception of recharge supplies) may be suspended by the participants of this plan if IDWR personnel and/or the Watermaster fail to enforce the curtailment of other ground water diversions operated by users who are not participating in an approved mitigation plan, or if IDWR personnel and/or the Watermaster do not properly regulate surface water supplies in compliance with the SRBA partial decrees and administrative rules promulgated by the Director.

Respectfully submitted,  
(05-PUMP) Proponents

Copies to:

Don Burtonshaw  
LaNora Barrett  
JoAnn Wood  
Ray Rigby  
Kent Foster

Dec. 14, 2004

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A series of public meetings have been scheduled in Basin 34 this winter for the purpose of meeting and discussing potential mitigation and water improvement management plans relating to issues that exist in Water District 34. It is our intent to assist and help these efforts be productive, and produce a viable improvement plan(s) for the entire water district. With the submittal of this plan we are also requesting a written response from IDWR affirming the approval or denial of this plan in total, or in part. If any portion of this plan is not approved, we ask for a detailed written response as to why those specific provisions are not acceptable. If the plan appears to be incomplete in any manner, we reserve the right to amend and/or modify the plan and re-submit it for consideration.

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If water users of Water District 34 were to ultimately adapt and implement any approved mitigation plan which contain elements or provisions which are adverse to the interests of the proponents of this plan, or if water users were to fail to adapt an approved plan which the proponents of this plan concur with at the annual water district meeting, the proponents of this (05-PUMP) reserve the right to submit alternative plan(s) pursuant to Rule 43 of the Rules for Conjunctive Management of Surface and Ground Water Resources, IDAPA 37, Title 03, Chapter 11.

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## **(05-PUMP) COMPONENTS**

1. This plan requires the proper regulation of both surface and ground rights that exist within Water District 34. Special regulatory attention must be given to water rights having a supply from the Big Lost River and common administrative tributaries so as to ensure compliance with the priority doctrine, limiting elements and remarks contained in the SRBA partial decrees, and the curtailment of irrigated acres that are solely irrigated with inferior surface water rights decreed pursuant to Section 42-1426 of the Idaho Code. Ground water right priorities in Basin 34 are generally senior to these inferior surface water right expansion acres. This plan calls for the curtailment of such water supplies being applied to these particular acres until an appropriate mitigation plan for these uses is approved and implemented, or until ground water levels return to more normal historic levels. Also this plan requires the assurance from IDWR administrators and Water District 34 Watermaster that all mitigation water supplies are used only on lands that are entitled to such benefits.
2. Proponents of this plan recognize there may be a continuing need for the use of temporary transfers pursuant to the emergency drought declarations that may be declared for Butte and Custer counties. However, such transfers must not result in the expansions or enlargement of “combined or stacked” water rights, especially when such transfers involve the senior surface water rights calling for the curtailment of, or mitigation from, junior ground water rights.
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6. Water supplies for the mitigation burden pool will be acquired/rented on a “willing buyer – willing seller” basis in the following preferred priority options by the sponsoring entity of this plan. These options will be pursued and exercised until the entire 6,110 AFY of mitigation burden has been acquired proportionately to the participants pumpage or until those senior surface water rights that are entitled to mitigation supplies are satisfied, whichever is of less expense to the ground water users.

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7. The release or timing patterns of these mitigation supplies (with the exception of recharge supplies) will comply with Rule 50.04. Deviations from these release patterns may be authorized with the approval of the Director of IDWR if such deviations do not increase the mitigation burden on ground water users and/or result in the futile delivery of senior water rights during the regular irrigation season.

8. The release and diversion of these mitigation supplies (with the exception of recharge supplies) may be suspended by the participants of this plan if IDWR personnel and/or the Watermaster fail to enforce the curtailment of other ground water diversions operated by users who are not participating in an approved mitigation plan, or if IDWR personnel and/or the Watermaster do not properly regulate surface water supplies in compliance with the SRBA partial decrees and administrative rules promulgated by the Director.

Respectfully submitted,  
(05-PUMP) Proponents

Copies to:

Don Burtonshaw  
LaNora Barrett  
JoAnn Wood  
Ray Rigby  
Kent Foster



January 7, 2005

Mr. Gary Spackman  
Water Allocations Bureau Chief  
Idaho Department of Water Resources  
PO Box 83720  
Boise, ID 83720-0098

Via E-Mail

Re: Draft Mitigation Plan for Basin 34 Water Users

Dear Gary:

Attached is a draft Mitigation Plan prepared for the Basin 34 Water Users pursuant to Rule 50 of the Water District 34 Water Distribution Rules (IDAPA 37.03.12). I have been asked to submit this on behalf of Loy Pehrson and the organization known as the Basin 34 Water Users.

I understand you will be meeting with the water users on January 11, 2005 and this group of water users wanted you to have an opportunity to review this draft prior to the meeting. If you have technical questions about the draft, please free to call me at 373-7983 prior to the meeting and I will try to answer those questions for you.

Please excuse the informal communication but we wanted you to have as much time as possible to review this information before the meeting. Thank you in advance for your consideration.

Yours truly,  
/s/  
David B Shaw

Enc.

cc: Basin 34 Water Users

## DRAFT

member is required before the water right(s) for that ground water user is covered under this mitigation plan. The Water Users will keep the Watermaster informed in writing of the members and their water rights covered by this mitigation plan.

The Water Users understanding of the implementation of mitigation through flow augmentation is as illustrated by the following example. The Stored Water Users have committed 6,110 ac-ft of impounded water for mitigation and turned the use of that water over to the Watermaster for mitigation purposes. Mitigation will only occur during the period May 1 through October 15 of any year and then only for water rights from the Big Lost River downstream from Mackay Dam with priority dates of 1905 and earlier. For purposes of this example, assume all 1905 water rights are being filled through June 5. If mitigation has been called for, on June 6 the Watermaster determines there are 132 days remaining in the mitigation period (June 6 through October 15). Rule 50.04.c.i provides  $\frac{1}{3}$  of the mitigation water will be available to augment natural flow for the first half of the augmentation period and the remaining  $\frac{2}{3}$  of the mitigation water will be available to augment natural flow for the second half of the augmentation period. Based upon this example, the first half augmentation rate is:

$$Q = \frac{6,110}{3 \times 66 \times 1.9835} = 15.56 \text{ cfs}$$

That is,  $\frac{1}{3}$  of 6,110 ac-ft delivered in  $\frac{1}{2}$  of 132 days. The second half augmentation rate is twice that of the first half since it is computed as  $\frac{2}{3}$  of 6,110 ac-ft delivered in the second half of the augmentation period or 31.12 cfs.

According to Rule 50.04.c.ii, if a water user calling for mitigation could make use of the computed augmentation amount, the Watermaster will make delivery up to the amount of the water right(s) calling for mitigation or the computed amount of available augmentation, whichever is less.

It is the Water Users expectation and belief that mitigation water will not be used to augment the natural flow of the Big Lost River unless doing so will make water available to a senior surface water user calling for mitigation. If a portion of the mitigation period passes (June 6 through October 15 in the example above) and mitigation water is not required to be released because it would not benefit a water user calling for mitigation, the proportionate amount of impounded water being held for mitigation will be released by the Watermaster for use by the Stored Water Users who committed that impounded water for mitigation purposes. The Water Users expect adjustments in the required amount of mitigation water will be made at reasonable intervals by the Watermaster but in no event will the adjustment period be longer than 15 days.

Impounded water for mitigation is water accumulated in Mackay Reservoir for the Stored Water Users in the same manner as other members of the BLRID. This includes impounded water accumulated by rotation credits for natural flow decreed water rights as recognized in the SRBA Decree and the Rules.

## *DRAFT*

### 2005 Mitigation Plan for the Basin 34 Water Users<sup>1</sup> January 7, 2005

This mitigation plan is proposed pursuant to Rule 50 of the Water District 34 Water Distribution Rules (IDAPA 37.03.12) for those junior ground water users whose ground water rights are administered conjunctively as part of the Big Lost River and tributaries. These rules provide that junior ground water users can continue to divert ground water when mitigation is provided to senior water rights pursuant to Rule 50.04. This plan is intended to meet the requirements of Rule 50.04 by providing 6,110 ac-ft of water to the Watermaster to augment the natural flow of the Big Lost River.

The Basin 34 Water Users (Water Users) understand the purpose of mitigation is to augment the natural flow of the Big Lost River downstream from Mackay Dam. Mitigation does not guarantee any particular water right will receive a full water supply in any year.

The Water Users propose to use impounded water stored in Mackay Reservoir as the source of mitigation water to be turned over to the Watermaster. This impounded water will be delivered by the Watermaster to augment the flow of the Big Lost River below Mackay Dam, which does not violate the limitation of stored water use outside the Big Lost River Irrigation District boundary. Water Users who are members of the Big Lost River Irrigation District and have access to impounded water may join the group, the Stored Water Users, and make available the impounded water in Mackay Reservoir required for mitigation. Stored Water Users members may be any water user with access to stored water in Mackay Reservoir that wishes to participate in this mitigation plan.

Water Users who wish to receive the benefit of mitigation to allow the use of their ground water rights will contract with the Stored Water Users for the value of the mitigation water needed. Each member of the Water Users seeking mitigation for one or more ground water rights will determine the amount of ground water diverted under each of their ground water right(s) the prior year. The Water Users will allocate to each member seeking mitigation the fraction of the total mitigation requirement for each water right at the same fraction as the diversion last year for that water right to the total ground water diversion by conjunctively administered water rights for the last year as determined by the Watermaster. The Water Users can make adjustments to the allocation of mitigation requirement for good cause to ensure equity among its members and with the Stored Water Users. The Stored Water Users and the Water Users will jointly set the contract cost to the Water Users members for the members' ground water rights covered by the mitigation water in this plan. Full payment by the Water User

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<sup>1</sup> Basin 34 Water Users is a group of water users in Basin 34 that have organized themselves to more efficiently address conjunctive management and other water distribution and use issues in the Big Lost River basin. This plan is prepared under the direction of this group for the benefit of the members of the group but with the objective of making the plan acceptable and accessible to all ground water users whose rights are conjunctively managed in the basin.

January 7, 2005

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Water Allocations Bureau Chief  
Idaho Department of Water Resources  
PO Box 83720  
Boise, ID 83720-0098

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Enc.

cc: Basin 34 Water Users

## DRAFT

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The Water Users understanding of the implementation of mitigation through flow augmentation is as illustrated by the following example. The Stored Water Users have committed 6,110 ac-ft of impounded water for mitigation and turned the use of that water over to the Watermaster for mitigation purposes. Mitigation will only occur during the period May 1 through October 15 of any year and then only for water rights from the Big Lost River downstream from Mackay Dam with priority dates of 1905 and earlier. For purposes of this example, assume all 1905 water rights are being filled through June 5. If mitigation has been called for, on June 6 the Watermaster determines there are 132 days remaining in the mitigation period (June 6 through October 15). Rule 50.04.c.i provides  $\frac{1}{3}$  of the mitigation water will be available to augment natural flow for the first half of the augmentation period and the remaining  $\frac{2}{3}$  of the mitigation water will be available to augment natural flow for the second half of the augmentation period. Based upon this example, the first half augmentation rate is:

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## *DRAFT*

River flush water as contemplated by Rule 40.02.d.iii will also be considered recharge for mitigation purposes if the flush water is provided from the 6,110 ac-ft of impounded mitigation water or if the water used for the river flush is paid for by the Stored Water Users. All river flush water not delivered to field headgates for the first three (3) days after releasing the flush from Mackay Dam will be considered recharge mitigation and will reduce the 6,110 ac-ft mitigation obligation on an acre-foot for acre-foot basis applicable to the augmentation component for the first half of the mitigation period.

The Water Users understand acceptance of this mitigation plan includes distribution of the mitigation water by the Watermaster as illustrated in the example above, except, any river flush credited to mitigation will be deducted from the first half of the mitigation period water supply requirement. The Watermaster will also recognize above the Mackay Reservoir Water Users contributions of water for mitigation from decreed water rights and will credit that contribution to the block of 6,110 ac-ft of impounded water for mitigation. This plan does not preclude individual ground water users or other groups of ground water users from offering their own mitigation plans. The mitigation requirement of 6,110 ac-ft for this plan will be reduced by the amount of mitigation water provided in all other approved mitigation plans combined.

The Water Users expect IDWR and the Watermaster to administer ground water rights such that those conjunctively administered water rights not covered by this mitigation plan or covered by another approved mitigation plan shall not be allowed to divert during the remainder of the 2005 irrigation season after a call for mitigation is placed in the basin.

A more complete plan for crediting managed recharge for mitigation purposes may be developed after this plan for 2005 is completed. Water conditions at the present time make it unlikely managed recharge will occur this year and additional time to develop the recharge portion of the plan will improve the quality and expected success of the plan. If it appears managed recharge, other than the river flush, will occur in 2005, a 2005 recharge mitigation plan will be prepared focused on the 2005 conditions.