

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.

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 that are adverse to the interests of the proponents of this plan, or if water users were to fail to adapt an approved plan that 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.
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.)

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.

- 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.

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

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