



State of Idaho

DEPARTMENT OF WATER RESOURCES

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JAMES E. RISCH
Governor

KARL J. DREHER
Director

October 5, 2006

THOMAS C WADDOUPS
4253 ANTELOPE ROAD
MOORE, ID 83255

RE: Letter of July 10, 2006

Mr. Waddoups,

This letter responds to your letter of July 10, 2006 in which you summarized your concerns in six bulleted points. These six points are included and addressed below.

1 "Will the prior appropriation doctrine be applied in District 34 as in District 120 and 130?"

WD34 has adopted administrative rules that address conjunctive administration of ground water and surface water in the district. These rules apply first in WD34 ahead of the conjunctive management rules. The WD 34 rules allow ground water users to provide mitigation to surface water users for depletions in the river caused by ground water pumping. If those users do not provide mitigation water, the conjunctive management rules will then be applied as in WD120 and WD130 on the ESPA. In both cases (WD34 and the ESPA), curtailment of groundwater users by priority is imposed when mitigation is not provided. In both WD34 and on the ESPA, IDWR has issued curtailment notices when it appeared mitigation water would not be provided by the appropriate deadline.

I should note, however, that a recent ruling by Judge Barry Wood of Idaho's Fifth Judicial District has voided IDWR's rules for conjunctive management. That ruling has been appealed, but at this point, the future of conjunctive management is unclear.

2 "Suggestions for oversight of the WD34 Advisory Committee."

The Advisory Committee's (AC) function is to advise the Watermaster and the Director of IDWR in matters pertaining to administration of water in the district. Additionally, the AC may be authorized by the users of the district (through adopted resolutions) to carry out policies and perform other tasks. As such, the AC only has as much authority as the users elect to give it; otherwise it performs a purely advisory function.

IDWR has not suggested that the AC be given more authority. IDWR has recommended that the AC take an active role in developing policies and drafting resolutions that it feels will improve administration of water in the district. However, it is up to the users to adopt these policies and resolutions at the WD34 annual meeting or at a special meeting of water users. The authority of the AC and any power it has must be granted by the water users of WD34, and is therefore effectively under the direct oversight of the water users of WD34.

3. **"Why isn't the Advisory Committee selected on a weighted vote (based on water usage) as required in selecting the water master?"**

Idaho Code 42-605(6) states, "At such meeting the water users may choose an advisory committee to be composed of members selected as may be determined at the meeting, which committee shall serve..." In other words, the AC members may be selected by whatever method the users determine at the meeting. If you feel they should be selected by a weighted vote, you should make a motion to that effect at the meeting or prepare a resolution to be voted on at the meeting.

4. **"How is the recharge committee selected? There was no recharge effort in the Antelope Valley during 2006. This spring a water user requesting to recharge a gravel reach of Antelope Creek was refused by a member of the recharge committee."**

The recharge committee is selected as described in the attached "Plan of Operation Basin 34 Recharge". The recharge committee is responsible for placing calls for recharge water. If the water user you refer to feels aggrieved by the actions of that member of the recharge committee, the water user should attempt to resolve the situation with the remainder of the recharge committee and/or contact the WD34 Advisory Committee as described in the attached Plan of Operations.

5. **"Who provides oversight to the BLRID when their decisions affect water distribution throughout WD34? An example is when responding to the Jensens' call in the spring of 2004 the BLRID refused to allow storage water for mitigation which was listed as the second order of preference for mitigation water under the WD34 Mitigation Plan. There was little or no attempt to require storage water as replacement water as there was in WD120."**

The Big Lost river Irrigation District is an independent organization with it's own bylaws and board of directors. BLRID holds water rights to store and deliver water from the Big Lost River. Both IDWR's and the watermaster's involvement in BLRID affairs is limited to ensuring they store and deliver water in a manner that is consistent with their water rights. IDWR accepted storage water as a source of mitigation water, and the WD34 mitigation plan listed it as a preferred source, but that does not require BLRID to commit storage water for mitigation.

6. **"Is there documented evidence that Bob Duke's management of WD34 is contrary to previous water masters? The complex changes taking place in the administration of surface and groundwater is a challenge to any water master and the IDWR. I believe a transition period to adjust to these changes is more appropriate than a call for Mr. Duke's dismissal. Aren't the real problems facing WD34 the fact that far too many**

Mr. Thomas C. Waddoups

October 5, 2006

Page 3 of 3

wells were granted and the expansion of too many irrigated acres resulting in many water users scrambling for survival?"

The extent to which Mr. Duke's management of WD34 differs from that of previous watermasters is unclear. However, it is clear that users are demanding a higher level of control and accountability by the watermaster. Some practices that were acceptable in the past are no longer adequate. As such, IDWR has chosen to focus efforts on improving the ability of the watermaster to; 1) deliver water in accordance with applicable laws and rules by providing additional instruction and guidance to the watermaster, and; 2) improve documentation of that delivery through better record keeping. These improvements are intended to benefit WD34 as a whole, and to provide Mr. Duke the opportunity to adapt his management of WD34 to the level that is now demanded.

The call for better management has probably resulted from perceived changes in the water supply in the basin, but the cause for the apparent change in water supply has not, to my knowledge, been fully determined.

I apologize for the delay in responding to your letter. Feel free to contact IDWR if you have any questions.

Sincerely,



Nick Miller
Water Distribution Section

Enclosures: "Plan of Operation Basin 34 Recharge", April 1997

cc:

IDWR Eastern Region, Idaho Falls

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Appendix #1 (part B)

PLAN OF OPERATION BASIN 34 RECHARGE April, 1997

Introduction

This Plan of Operation is intended to implement the recharge effort in Basin 34 to accomplish the objectives of the water users of Water District 34 and the parties to the Settlement Agreement and Stipulation executed herewith. Recharge efforts utilizing water rights nos. 34-07571 and 34-07573 (recharge water rights hereinafter) shall be conducted in accordance with this Plan of Operation. Under this Plan of Operation the recharge water rights are to be used without regard for the relative priority between the two water right filings in a manner to fully and efficiently use the available water supplies and provide benefit throughout the basin.

The objectives of this Plan of Operation are to benefit all lands in the basin from flood water supplies that would otherwise exit the basin by maintaining reasonable river flows from the head of the valley to the Arco gaging station and the controlled diversion of otherwise unappropriated water into selected recharge sites. The expected basin wide project benefits are anticipated to be the following:

- 1) greater usage of flood water supplies.
- 2) flood control/stream bank protection.
- 3) recharge to natural springs and aquifer levels.
- 4) enhancement to fish and wildlife habitat and aesthetic values.
- 5) reduce damage caused by sub-water adjacent to river.
- 6) extended periods of river flows.
- 7) improved conveyance of diverted water supplies.
- 8) aquifer replacement of ground water supplies.
- 9) mitigation for senior surface water rights.
- 10) demonstration of community cooperation.
- 11) reduce or eliminate the need to curtail existing ground water rights.
- 12) maintain ground water levels for domestic wells.
- 13) develop greater understanding of ground and surface water hydrology in the basin.

Permit Terms and Conditions

The following terms and conditions relate to elements of the recharge water rights and are sought to be incorporated into the permits issued by IDWR for the recharge water rights. These terms and conditions remain integral parts of this Plan of Operation whether or not incorporated into the permits by IDWR.

Recharge During the Non-Irrigation Season

For purposes of this Plan of Operation, the non-irrigation season is the period of the year when surface water is not being diverted for irrigation purposes from the source of water sought to be used for recharge. The non-irrigation season, for purposes of this plan, may differ from one portion of the basin to another in any year as well as differing from year to year.

The diversion of water for recharge may begin from tributaries to the Big Lost River during the non-irrigation season at any time that water is available for recharge and diversion facilities are available and capable of diverting and recharging the diverted water. Care must be taken to avoid ice damage to diversion facilities and to avoid flood threats that could result from icing conditions.

No diversion of water from the Big Lost River upstream from Mackay Reservoir can occur which would interfere with filling the storage rights for the reservoir. Diversions for recharge upstream from Mackay Reservoir should only be made after consultation and concurrence by the Directors of the Big Lost River Irrigation District and when diversion facilities are available.

Diversion of water from the Big Lost River downstream from Mackay Reservoir may occur when the conditions of stream flow described herein have been satisfied and diversion facilities are available. During the non-irrigation season water diverted into the irrigation canals and "lost" from seepage from those canals is a viable form of ground water recharge. This recharge benefits both ground water users by raising the level of the aquifer and surface water users by reducing the losses that will occur from the canals when irrigation deliveries begin.

Recharge During the Irrigation Season

For the purpose of this Plan of Operation the irrigation season is the period during each year when surface water is being diverted for irrigation purposes from the source of water sought to be used for recharge. The irrigation season, for purposes of this plan, may differ from one portion of the basin to another in any year as well as differing from year to year.

Recharge during the irrigation season will generally follow the same procedures as recharge during the non-irrigation season. All senior rights being called for must be filled prior to the use of water for recharge. Water rights for purposes other than recharge will not be diverted or delivered solely for purposes of recharge.

Requirements and Guidelines for Recharge

Diversions of water for recharge shall be limited so as to not de-water (dry up) stream channels or increase the extent of de-watered stream channels at the time of the recharge diversion. Many tributaries to the Big Lost River and the Big Lost River itself do not have wetted channels for the entire length of the stream channel during portions of the year and during periods of drought. Among the purposes of this recharge plan is to retain water within the basin that would otherwise leave the basin downstream from the Arco gage as "flood flows." While retaining the water as high in the basin as possible may produce some benefit by extending the time the water may remain in the basin that added benefit does not off-set the value of recharging in the immediate vicinity of the stream channel itself to help maintain the integrity of the stream channel. The water supply required for maintaining wetted stream channels is self limiting since, as the ground water is recharged in the vicinity of the stream channel, smaller amounts of water will be required to maintain the stream and larger amounts of water will be available for diversion for other purposes. Additionally, the diversion of water for recharge from tributaries to the Big Lost River should not increase the amount of dry channel that exists for that tributary.

For the Big Lost River itself downstream from Mackay Dam, diversion for recharge downstream from Mackay Dam will not occur unless the flow at the Arco gage is 60 cfs or more, measured as a three consecutive day average. The 60 cfs at the Arco gage is for purposes of this Plan of Operation only and is not and cannot be construed as a minimum flow or minimum flow water right under any theory of law.

In the event of a brief but intense weather event which is anticipated to produce flood flows for a period of three days or less, the Recharge Committee may call for and the Watermaster may deliver water for recharge purposes even if the flows at the Arco gage are below 60 cfs so long as the flow at the 2-B Gage is 300 cfs, or more, in excess of the non-recharge water deliveries occurring from the Big Lost River downstream from Mackay Dam.

Delivery of Water for Recharge

Delivery of water pursuant to the recharge water rights under this Plan of Operation is limited to the use of water for recharge purposes only and is subject to all prior water rights including, but not limited to, irrigation, stock water and storage. The Watermaster may, however, deliver water for recharge prior to the filling of all storage rights when the owner(s) of the stored water concurs that the reasonably anticipated runoff is sufficient to fill all storage rights and provide water for recharge.

Recharge Locations

The place of use for recharge under this Plan of Operation shall be within the following described area:

Twp 04N Rge 23E, 24E & 26E B.M.
Twp 05N Rge 24E, 25E & 26E B.M.
Twp 06N Rge 24E, 25E & 26E B.M.
Twp 07N Rge 23E, 24E, 25E & 26E B.M.
Twp 08N Rge 21E, 22E & 23E B.M.
Twp 09N Rge 21E & 22E B.M.

Recharge locations within the above described places of use shall include all locations at which recharge has been undertaken in 1995-96, including, but not limited to, Antelope Creek through the UC Canal, and Alder and Pass Creeks through private ditches, Parsons Creek, Spring Creek, Skelton Slew, and the Nielsen, Chilly, Longhurst, Ingram, Howell, Kent, Bartlett Bitton, Anderson, Thalman Hunter, Bradshaw, Burnett, Beck, Darlington, Sharp, Swager, McGowan, Vaught & Harris, 3 & 1, Moore, B&J, Sutter, Arco, Eastside and UC canals and ditches and turnouts from those canals and ditches into a number of private ditches, gravel pits and sinks.

As permits, the recharge water rights shall also show, but are not limited to, places of use for potential recharge locations including the Darlington bypass, the Lower Burnett Ditch, Congden Springs area, and the Leslie gravel pit. In addition, the Recharge Committee may identify other sites and facilities which can be used for recharge of ground water within the Big Lost River basin.

Excess Ground Water

In the event ground water levels become too high while recharge is occurring, the Recharge Committee will consult with the Director of the Department of Water Resources to determine if or where recharge can continue at that time in Basin 34. This consultation will occur within 24 hours of any notification that ground water levels are too high as a result of recharge. The Recharge Committee may, in its own discretion, request the Watermaster to alter recharge diversions to avoid adding additional recharge water to areas where the ground water has become too high. The Director of the Department of Water Resources may, in his sole discretion, instruct the Watermaster to alter recharge diversions to avoid adding additional recharge water to areas where the ground water has become too high. If the Watermaster or the Director of the Department of Water Resources becomes aware of any imminent flood danger caused by recharge diversions the Watermaster may take such action as is reasonable and necessary to avoid or reduce any flooding caused by recharge diversions.

Other Terms and Conditions

The following terms and conditions are not anticipated to be included by IDWR in the recharge water permits themselves, but nevertheless are integral parts of this Plan of Operation and the recharge effort undertaken pursuant to the Plan of Operation.

Control of recharge water rights

The recharge water rights shall be held and exercised by Water District 34 and are subject to the control of the Watermaster of Water District 34 (Watermaster hereinafter) for water distribution purposes pursuant to the Water Distribution Rules for Water District 34, the terms and conditions of this Plan of Operation, and all applicable laws and regulations. The Watermaster shall be guided and informed by the Recharge Committee, as set forth herein, regarding the control of the recharge water rights.

Delivery of recharge water shall be made to benefit the Big Lost River basin as a whole. As weather and water conditions change in the Big Lost River basin and as new recharge sites are developed, the Recharge Committee shall be guided by the goal to fully and efficiently use the available water supplies to provide benefit throughout the basin in the spirit of community cooperation and consensus.

Recharge Committee

Calls for delivery of recharge water will be made only by the Recharge Committee under the conditions and guidelines set forth herein. Calls for and delivery of recharge water will be according to this Plan of Operation and other applicable laws and regulations. Calls for delivery of recharge water by the Recharge Committee will be consistent with the intent of the water users of Water District 34 to provide benefits throughout the basin.

The Recharge Committee will have principal responsibility for selecting recharge sites and locations, dates for recharge efforts in any particular year, and for working with other entities (BLRID, BLM, land owners, etc.) to obtain the necessary permits and authorizations for use of recharge sites. The Recharge Committee may make recommendations to Water District 34 and the Watermaster about appropriate arrangements for obtaining authorization for use of recharge sites. The Recharge Committee is urged to seek technical assistance, as required, from local, state, or federal natural resource agencies.

Since current irrigation diversion and delivery facilities may not have enough capacity to meet irrigation demands and divert water for recharge the Recharge Committee should begin immediately to identify recharge sites and provide facilities that can be used for recharge during the irrigation season. Possible recharge sites, in addition to existing irrigation canals, are abandoned irrigation canals, gravel pits and other as yet unidentified sites. Sites and facilities that can be used to divert and recharge "flood flows" that normally occur after the beginning of the irrigation season are essential to a successful recharge effort. The Recharge Committee should have identified additional recharge sites and have in place facilities at sites in addition to those identified above prior to submittal of proof of beneficial use to IDWR.

Members of the Recharge Committee will be appointed, and may be removed for good cause established by any interested party, by the Water District 34 Advisory Committee, with the input of the parties to the Settlement Agreement and Stipulation and the Watermaster. The Recharge Committee shall consist of twelve (12) members as follows:

- (a) five (5) members who are surface water users of Water District 34, one (1) of whom shall be selected from each of the following areas:
 - (i) above Mackay Reservoir,
 - (ii) Big Lost River from Mackay Reservoir to above the Moore Diversion,
 - (iii) Big Lost River from Moore Diversion to above the Arco Diversion,
 - (iv) Big Lost River from Arco Diversion and downstream, and
 - (v) from the Antelope Creek drainage.
- (b) four (4) members who are ground water users of Water District 34, one (1) of whom shall be selected from each geographic area generally described by items (a)(i) through (a)(iv) above.
- (c) a member position available to be selected from a list of names provided by the Cities of Butte City, Arco, Moore and Mackay in a manner agreed to by the cities.
- (d) a member who is a resident of two (2) years or more or a land owner in the Big Lost River basin, but not a water user of Water District 34, to be selected from a list of names suggested by others having an interest in the basin who are not water users of Water District 34.
- (e) the Watermaster.

The Advisory Committee shall act promptly upon a complaint by any interested party that one or more members of the Recharge Committee should be removed for good cause. Good cause for removal of a committee member includes, but is not limited to, failure to diligently attend to the duties of the Recharge Committee, and failure to act in accordance with the goals or terms and conditions of this Plan of Operation.

Monitoring, Evaluation, and Accounting for Recharge

Recharge diversions will be accounted for by the Watermaster on an annual basis in a report to be submitted to the Recharge Committee and the Director of the Department of Water Resources. Only those flows diverted under the authority of the recharge water rights are to be accounted for as recharge. Canal seepage that occurs during the normal delivery of water pursuant to non-recharge water rights will not be counted as recharge.

Monitoring and study of the effects of recharge is a desirable part of this Plan or Operation. The Recharge Committee is encouraged to undertake a study, including monitoring and evaluation, to evaluate the effect of ground water recharge in the basin. The Recharge Committee is encouraged to seek the assistance and cooperation of local, state and federal agencies to complete the study.

Recharge and Mitigation

It is beyond the scope of this Plan of Operation to propose a specific mitigation plan that utilizes the recharge that will occur under this plan. Nothing in this plan, however, prevents any ground water user from proposing a mitigation plan to the Director of the Idaho Department of Water Resources, pursuant to Rule 50.04.c.iii or Rule 50.04.e of the Water Distribution Rules - Water District 34, IDAPA 37 Title 03 Chapter 12.

Costs

Water District 34 will be responsible for all costs associated with the recharge effort pursuant to this Plan of Operation including reimbursement of the application fees and other reasonable costs as provided by Resolution No. 3-3-1997 of the water users of Water District 34 dated March 3, 1997, and recharge facilities development and maintenance. Water District 34 may seek to defray these costs by seeking contributions from the beneficiaries of the recharge effort or by other means.

