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RECEIVED

MAR 29 2007  
DEPARTMENT OF  
WATER RESOURCES

March 27, 2007

Dear Nick:

Enclosed is a Mitigation Plan for the 2007 Irrigation Season for Water District 34. This plan is a current version of the 2005 Mitigation Plan in which the only changes made are dates and the amount of recharge in 2005&2006 which if could be used would more than cover the 6110AF required for mitigation. The recharge program has made a big difference in the in the area below Leslie in the last 2 years and will hopefully be heavily considered in future mitigation plans

Sincerely;

*Bob Shaffer*

Bob Shaffer  
Watermaster  
Water District 34

## 2007 Consolidated Basin-Wide Mitigation plan (1) for Basin 34 Water Users

1<sup>st</sup> Revised -February 23, 2005

2<sup>nd</sup> Revision-March 26, 2007

2007 DRAFT

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 those requirements by providing 6,110 ac-ft \*(2) of water to augment the natural flow of the Big Lost River below the Mackay Dam.

Mitigation does not guarantee any particular water right will receive a full water supply in any year. Water users understand the administration of this plan will be implemented by the Watermaster of Water District 34 under the supervision of the Director of IDWR. Water users also understand all mitigation supplies provided for within this plan must be made available to senior water right holders as river augmentation prior to a futile call determination as described in Rule 20.04, and mitigation supplies are not required to be provided for when water can not be delivered due to a futile call (except as provided for at the commencement of the irrigation season as described in Rule 40.02).

Basin 34 Water Users propose to use various water supplies such as replacement credits from managed aquifer recharge, storage allocation from the Mackay Reservoir\*(3), natural flow and impounded natural flow rotation credits, and or ground water pumpage as mitigation supplies as described and allowed for in Rule 50.04.c.iii. Each of these supplies (with the exception of managed recharge) does not currently have a descriptive beneficial use element as "mitigation". However, each proposed water supply to be used as river augmentation does have "irrigation" listed as A beneficial use. The use of these proposed water supplies for "mitigation" purposes is incidental, and the primary beneficial use will remain as "irrigation". Approval of this proposed consolidated basin-wide mitigation plan by the Director will constitute formal IDWR approval for such supplies to be used as "mitigation/irrigation". Once this plan is approved, any supply used to augment the flows of the Big Lost River will be treated as natural flow for regulatory and conveyance purposes.

If the Director approves this plan it will be made available to all water users in Waterbasin 34 upon the notification of a formal call for Mitigation. Participating water users who wish to receive the protective benefits of this mitigation plan will be allowed to continue the diverting of their Ground water rights

\*(1) This mitigation plan is a consolidation of the Basin 34 Water Users Plan dated January 7, 2005 and the Participants Universal Mitigation Plan dated December 14, 2005 and recent updated versions of these two plans. This consolidated plan is prepared under the direction of this group for the benefit of their respective members but with the objective of making the consolidated plan acceptable and accessible to all ground water users whose rights are conjunctively managed in the basin.

\*(2) Water users within Basin 34 understand the Director of IDWR is willing to accept a mitigation supply of 6,110 ac-ft for the 2007 irrigation season if such a supply were incorporated into a single basin-wide plan that is available for participation in by all ground water users in general. Water users also understand individual mitigation plan(s) may be proposed offering supplies of water based upon their actual 2006 pumpage quantities. These individual mitigation supplies will be subtracted from the 6,110 ac-ft proposed in this consolidated plan.

\*(3) At the time of this submission, it is understood the Board of Directors of the Big Lost River Irrigation District have unanimously voted to prevent and not allow the use of storage water supplies held by the irrigation district to be used as mitigation by any water user within basin.

Water users who do not wish to participate in this consolidated plan may "opt-out" by giving written notice to IDWR of their intent as allowed for in Rule 50.04 c. Each ground water user who chooses to be covered under this plan will pay a nominal administrative assessment fee (\$20.00) to the water district to cover the administration of the mitigation plan. Ground water users will have the option of pledging their own mitigation water supplies directly to the Water District and/or participating in the "willing buyer-willing seller" mitigation acquisition pool to the extent needed to satisfy their respective individual mitigation burden. These acquisition assessment revenues will then be used and integrated into the annual water district budget for the purpose of acquiring water supplies on a "willing buyer-willing seller" basis, and at fair market prices negotiated by the parties.

The "Total Mitigation Burden" is defined as the total amount of water (6,110 ac-ft) all basin ground water users are cumulatively required to provide as river augmentation for mitigation purposes. The "Individual Mitigation Burden" is defined as that portion of this total mitigation burden each ground water user is responsible for, which is based on the individual ground water users proportionate share of the 2006 year actual pumpage\*(4).

Mitigation water supplies used for reducing the total mitigation burden can be done in the following manner:

1 ) Recharge -Managed Aquifer Recharge supplies will be the first preferred option for providing mitigation to whatever extent such supplies are available. Recharge 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 credit supplies for quantities of pumped ground water. Managed recharge supplies will be credited towards mitigation at a rate equal to the depletion factor described in Rule 50.04 c or higher as may be determined by future studies. Additionally, future studies may indicate managed aquifer recharge supplies should be credited towards the total mitigation burden of subsequent years. When recharge supplies\* (5) are of great enough quantities, the entire mitigation burden could be satisfied with such supplies. Recharge for 2006 was 63,472 AF and using the depletion factor of 13% is 8251 AF which is more than the requirement for 2007 of 6110AF. ( 13% of Recharge for 2005 was 3728 AF )

2 ) CREP -Irrigated lands within Basin 34 may have an opportunity to be enrolled in CREP. Although the emphasis of this program appears to be on reducing ground water withdrawals, some of these same lands may also be associated with surface water rights. At the time of submitting this plan, the details of this CREP program regarding water rights has not been fully determined and disseminated to the public. Water users reserve any and all rights to benefit from this program.

3 ) Donated Water -Water users in the Big Lost River drainage may elect to donate their water supplies (i.e. storage allocations, natural flow and/or rotation credits) towards mitigation burdens. When such water supplies are donated, they will be used to reduce the total mitigation burden rather than any particular individual mitigation burden. All donated water supplies will be subjected to an approved IDWR transfer before mitigation credits can be acquired.

Any mitigation supplies collected from the sources described above will be subtracted from the total mitigation burden, resulting in a reduction of the individual(s) mitigation burden. The remaining mitigation burden will be provided from individual ground water users proportionately as described hereafter. Individual ground water users will be required to contact the water district and declare how they intend to satisfy their portion of the remaining mitigation burden.

\* (4) Upon IDWR administrators preparing a preliminary summary of 2006 pumpage from individual well records. This document, or a final version of this summary, will be used for determining individuals proportionate mitigation requirements. Ground water users may substitute actual in-line water flow meter readings that are certified by licensed engineers or verified by local deputy water masters.

\* (5) During the years of 1995 to 1999 managed recharge in Basin 34 ranged from 33,766 ac-ft to 89,319 ac-ft as reported to IDWR during the developing stage of the two recharge water rights permits.

Individual ground water users may pledge water supplies owned by themselves or may purchase other water supplies to be used to satisfy their individual mitigation burden. Additionally, the Watermaster will be authorized pursuant to Rule 50.04 d. to acquire mitigation supplies from water right holders who wish to rent lease their natural flow surface water, rotation credit water, or storage allocations to create an acquisition pool. Any ground water user who wishes to purchase mitigation water from the acquisition pool, to satisfy their individual mitigation burden as outlined above, may buy such water supplies acquired by the Watermaster to the extent those water supplies are available.

Ground water users may satisfy their individual mitigation burden in the following manner:

1 ) Natural Flow Water -Natural flow rights diverted from the Big Lost River and/or rotation credits from natural flow water rights pledged by any water user or acquired by the water district may be used for mitigation to the extent such water rights provide actual water supplies in their respective priorities. If the natural flow water right is used for mitigation purposes (in part or in its entirety during the irrigation season) the ground water user must complete a transfer application and demonstrate to the satisfaction of IDWR they will forgo a beneficial use of that contributed water supply. The use and exercise of any such water right will not be deemed to be a forfeiture or loss of priority when used for mitigation purposes.

Natural flow water supplies from tributaries to the Big Lost River may also be used for mitigation. Some tributaries may not come into direct contact with the river but can be introduced directly into canals or laterals. When mitigation water is provided in this manner the Watermaster will reduce diversions from the Big Lost River into that canal or lateral by the same measured amount of mitigation water the tributary water right provides. Thus, tributary water can augment the Big Lost River without physically being delivered to the river.

Natural flow water supplies upstream from the Mackay Reservoir may also be used for mitigation if such supplies actually reach the reservoir. These natural flow rights will be commingled with other natural flow rights, rotation credits, and storage water supplies used to augment the flows of the Big Lost River below the Mackay Reservoir.

2.) Stored Water -Storage Allocations from water rights nos. 34-00818, 34-00811, 34-00810, 34-10935, 34-00817B, and 34-10873, 34-00012 34-02507 are normally issued to the patrons of the Big Lost River Irrigation District and may be pledged by individual(s) and/or acquired by the water district after a temporary transfer has been approved by IDWR. The Watermaster will communicate this information to the Big Lost River Irrigation District so they can properly note the change in use and charge/ credit the appropriate water user's account. Presently, the BLRID board of directors has unanimously voted not to allow any storage water to be used for mitigation. Water users reserve the right to pursue any legal action they deem necessary to remedy this board action.

3 ) Ground Water -Ground water supplies may be used for mitigation. No new water rights will be allowed for the use of operating wells that supply mitigation water. Ground water rights (in part or in total) may be accumulated and transferred for the operation of mitigation wells. Ground water supplies may be introduced directly into the Big Lost River or by exchange from canal and laterals as provided for in Rule 50.04 c.iii. These ground water supplies will be measured and treated similarly as other tributary and river augmenting supplies when establishing constant release flow rates as described hereinafter.

Any water supplies described above, when used for the augmentation of the natural flow of the Big Lost River, will be treated as if it were natural flow and will be distributed and subject to the elements of those benefiting natural flow water rights. All transfers, pledges, acquisitions, and uses of mitigation supplies must be summarized in a supplemental report\*(6) to IDWR by November 15, 2007. This report will be compiled and submitted to IDWR by the Watermaster of Water District 34.

\*(6) This report(s) will include any necessary information required by the Director of IDWR (i.e. source of mitigation supplies, transfer(s), actual uses of mitigation supplies, 2005 ground water pumpage records, etc ).

Release and timing patterns of mitigation supplies will be as follows:

The release and timing patterns of these mitigation supplies will comply with Rule 50.04 as nearly as practicable. Some flexibility in release patterns will be needed to accommodate the actual conditions of river flow, responses to extemporaneous administrative actions, and for the utilization of all the various accepted and acquired mitigation supplies. The intent of this consolidated plan is to provide the entire 6,110 ac-ft of mitigation supplies as river augmentation during the irrigation season when water rights having a 1905 or earlier priority are not satisfied. The following is a description of how that flexibility will be used for that stated purpose

As described by Rule 50.04 one third of the required mitigation supply\*(7)(2,034 ac-ft) will be made available to the Watermaster for purposes of augmenting the natural flows of the Big Lost River during the first half of the irrigation season (May 1 through July 23, or 84 days) at a constant flow release rate. Water supplies\*(8) used to "flush" the river system at the commencement of the irrigation season as described in Rule 40.02 d.iii,g,h, will be considered as mitigation and deducted from the 2,034 ac-ft. The residual balance of the mitigation supply would then be released at a constant release flow rate during the remaining days of the first half season period. If water rights with 1905 and earlier priorities are satisfied during any period of days within this first half of the irrigation season from natural river flows without the use of augmenting supplies, no mitigation supplies will be released for those days. The sum acre-feet of water not released during those days will then be "carried-over" and become part of the second half of the irrigation season's mitigation supply not to exceed a total of 4,067 ac-ft.

Two thirds of the required mitigation supply (4,067 ac-ft) will be made available to the Watermaster for the second half of the irrigation season (July 24 through October 15, or 84 days) for purposes of augmenting the natural flow of the Big Lost River at a constant flow release rate. If water rights with 1905 and earlier priorities are satisfied during any period of days within this second half of the irrigation season from natural flows without the use of augmenting supplies, no mitigation supplies will be released for those days. Once water rights with 1905 or earlier priorities are unable to be satisfied by natural river flows, a calculation of remaining days in the irrigation season will be determined and/or the number of days remaining before the Director were to declare a futile river as described in Rule 20.04 would be determined. Using the fewer number of days from those two calculations, an augmenting constant release flow rate will then be established by dividing the fewer number of days into the 4,067 ac-ft. If it becomes apparent a futile river declaration is likely to occur before the previously calculated date, all remaining mitigation supplies will be released (as nearly as practicable) prior to the actual futile declaration. In every instance of releasing mitigation supplies for the purpose of augmenting river flows, care and flexibility must be exercised to provide for the entire utilization of the 6,110 ac-ft in an efficient and effective manner.

Water users understand acceptance of this mitigation plan requires the distribution of the mitigation water supplies by the Watermaster as illustrated in the above example. The mitigation requirement of 6,110 ac-ft for this plan will be reduced by the amount of mitigation water required from all other mitigation plans combined which are approved by the director. This mitigation plan will commence and be implemented upon the call for mitigation by a valid senior surface right holder and approved

\*(7) This example assumes no managed aquifer charge has occurred during the current year. Managed recharge replacement credits, CREP contributions, donated water, or any other total mitigation burden reduction supply would be subtracted from the 6,110 ac-ft and any remaining balance would then be divided as described.

\*(8) Whenever storage water or storage allocations, and whenever natural flows or rotation credits, or any combinations of these water supplies are used to "flush" the river system as described in Rule 40, the entire volume of water will be credited as a mitigation supply.

by the Director of IDWR. The call for mitigation must be made prior to, or at the time of, the initial delivery call for irrigation water (rotation into credit is considered a delivery call for water) and prior to beginning of the irrigation season "river flush" releases.

Water users within Water District 34 expect IDWR and the Watermaster to administer ground water rights in such a manner that those individuals holding ground water rights that are described by partial decree to be conjunctively administered which are not participating in this consolidated plan or participating in another approved mitigation plan shall not be allowed to divert during the 2005 irrigation season. Water users within Water District 34 also expect IDWR and the Watermaster to properly administer and regulate all surface water rights as described in partial decree and rule.

Basin 34 Water Users reserve the right to modify this plan prior to its approval by the Director. This plan can also be modified after approval is granted by submitting an amended mitigation plan to the Director for approval. While the principles and concepts incorporated into and made part of the mitigation plan may be utilized in future plans, no legal precedent can be asserted or claimed from the implementation of this plan except those expressed in rule or partial decree.

Respectfully submitted,  
Proponents of a single "Consolidated Basin-Wide Mitigation Plan for Basin 34 Water Users"