

Nick
DD 34 file



State of Idaho

DEPARTMENT OF WATER RESOURCES

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February 6, 2008

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

JAMES RINDFLEISCH MGR
BIG LOST RIVER IRRIGATION DISTRICT
PO BOX 205
MACKAY ID 83251

Re: Rotation into Storage – Your undated letter to Nick Miller

Dear Mr. Rindfleisch:

In a letter you recently wrote to Nick Miller of this office, you asked "what authority the [irrigation district] board has in controlling the rotation credit concept." More specifically, you asked: "Does the Big Lost River Irrigation Board of Directors have the authority to discontinue the use of rotation credit or withdraw from the past implementation or practice of using rotation credit?"

As a preface to the remainder of this letter, the Idaho Department of Water Resources ("Department") does not give legal advice to irrigation districts. The question you posed asks specifically about the authorities of the Big Lost River Irrigation District. Because you are seeking legal advice regarding an irrigation district question, I suggest you consult with counsel for the irrigation district.

Despite the deferral to your legal counsel, the Watermaster of Water District No. 34 must account for natural flow rotated into storage. The Snake River Basin Adjudication Court decreed the following general provision for Basin 34 (Big Lost River) authorizing rotation of some water rights into storage:

3. Water rights from the Big Lost River diverted below Mackay Dam and reservoir may be rotated into storage with the consent of the Big Lost River Irrigation District when such practice improves the efficiency of water use.

In addition to the above language, there are additional subparagraphs within general provision no. 3 that will not be quoted or discussed in this narrative because they are not relevant to your inquiry.

Rule 40.02 of the Water Distribution Rules – Water District 34 states:

Water rights that do not include storage as a purpose of use may not be stored. Water rights whose source is Big Lost River with their point of diversion below the Mackay Dam may however be rotated for credit when such practice improves the efficiency of water use as contemplated by the Big Lost River Irrigation District's Plan of Operation subject to the following conditions:

Several conditions are listed including a condition that rotation must be according to "the Big Lost River Irrigation District's approved Plan of Operation." Rule 40.02 does not discuss the consent of the irrigation district.

The Water Distribution Rules – Water District 34 cannot supplant or replace the general provisions. As a result, the general provision authorizing rotation into storage also requires the consent of the irrigation district. The rules require that rotation into storage occur according to an "approved plan of operation." The Department is uncertain at the present time whether there is an effective plan of operation.

In the past, the Watermaster and the Department have accounted for rotation of natural flow rights into storage, recognizing the general provision authorizing rotation into storage. The Watermaster and the Department should continue to recognize the principle of rotation into storage. Nonetheless, if the irrigation district "discontinue[s] the use of rotation credit or withdraw[s] from the past implementation or practice of using rotation credit," and informs the Watermaster in writing, the irrigation district no longer consents to rotation into storage. Should a water user request that the Watermaster, in his delivery of water rights, rotate natural flow into storage after the consent of the irrigation district is expressly refused, the unwillingness of the irrigation district to accept rotated storage into the Mackay Reservoir and the conflicting desire of the user to rotate a water right into storage creates a dispute between the irrigation district and the requesting water right holder. During the pendency of the dispute, the Watermaster should not recognize the rotation credit in storage. This is consistent with the general principle of water delivery that the Watermaster delivers a natural flow right only when the water diverted under the right can be beneficially used for irrigation. The above explanation does not establish any authority in the irrigation district to refuse to allow rotation into storage, however.

You also asked whether a natural flow right can be rotated into storage when "land that has the water right being rotated is being irrigated with ground water by a pump." General provision no. 3 authorizing rotation into storage and the water distribution rules for Basin 34 do not prohibit rotation of surface water into storage while the place of use described by the water right that is being rotated into storage is being irrigated by ground water. There may be other physical limitations or combined limits of appurtenant water rights that may restrict the rotation into storage while ground water is being diverted.

James Rindfleisch
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As I said at the beginning of this letter, should you have further questions, I would advise that you consult with the irrigation district's attorney.

Respectfully,

A handwritten signature in cursive script, appearing to read "Gary Spackman", with a long horizontal flourish extending to the right.

Gary Spackman

c: Bob Shaffer, Water District 34 Watermaster
Nick Miller
Eastern Region