



State of Idaho

## DEPARTMENT OF WATER RESOURCES

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C.L. "BUTCH" OTTER  
Governor

GARY SPACKMAN  
Director

April 5, 2017

BUTTE COUNTY COMMISSIONERS  
PO BOX 737  
ARCO, ID 83213

RE: Butte County Request to Divert "Additional Flows" for 2017

Dear Commissioners,

Thank you for your letter dated February 27, 2017, in which you request to divert additional flows of water in Water District Nos. 33 and 34 for the 2017 irrigation season. As your letter acknowledges, this last winter's storms deposited abundant snow across the state. As the snow melts, high water could flood some communities and property.

I assume your request for additional diversions means diversion of surface water in addition to the quantities described by existing water right permits, licenses, and decrees. Because the hydrology, water rights, and water administration are different in Basins 33 and 34, my response to your request is, in part, unique to each basin.

### Basin 34 – Big Lost River

In Basin 34, the Idaho Department of Water Resources ("IDWR") issued water right permit nos. 34-7571 and 34-7573 to Water District No. 34 for ground water recharge. Water District No. 34 can divert water for recharge under these water right permits consistent with their elements and limits. In addition, for the 2017 irrigation season, I will allow the diversion and recharge of water in excess of the diversion and volumetric limits of the recharge water rights when the following conditions are met:

- senior surface water rights are satisfied;
- senior surface water rights have been notified by the water district watermaster that excess diversions for recharge will occur;
- all diversions for recharge are measured and reported by the water district watermaster; and
- diversions in excess of the recharge water right elements and limits do not pose a risk to public health and safety.

In addition, Rule 40.06 of the Water District 34 Water Distribution Rules (37.03.12) allows for the diversion of surface water for irrigation in addition to the quantity of surface water

described by a water right when certain conditions are met. IDWR's interpretation of Rule 40.06 is described in detail in a letter from IDWR to the Water District No. 34 watermaster dated July 19, 2011. A copy of the July 19 letter is included with my correspondence for your reference. Surface water right holders can legally divert additional surface water for irrigation in Water District No. 34 pursuant to Rule 40.06.

#### Basin 33 – Little Lost River

In Basin 33, IDWR issued water right permit no. 33-14956 to the Little Lost River Watershed Improvement District ("LLWID") for ground water recharge. The LLWID can divert water for recharge under this water right consistent with the elements and limits of the water right permit. In addition, similar to the administration of recharge water rights in Basin 34, for the 2017 irrigation season, I will allow the diversion and recharge of water in excess of the diversion and volumetric limits of the water right when the conditions bulleted above are met.

In contrast to Basin 34, there are no administrative rules or provisions that allow for the diversion of water in Water District No. 33 in excess of the quantity described in a water right for irrigation use.

#### HB319 – Amendment to Idaho Code § 42-202A Temporary Approval of Water Use

Please be aware that a recent legislative amendment to Idaho Code § 42-202A (House Bill 319) modified the volume limits for certain temporary uses of water in Idaho. Historically, IDWR could approve a temporary use of water for a use "not intended to become an established water right and for a use which will not exceed a total diverted volume of five (5) acre feet." This year, the legislature amended the statute to remove the five (5) acre foot volume limit for three specific uses: (a) for prevention of flood damage; (b) for ground water recharge; and (c) for ground or surface water quality remediation. For any other use the five (5) acre foot limit still applies.

The governor signed House Bill 319 on March 30, 2017, with an emergency clause for immediate implementation. IDWR is currently receiving and processing temporary use applications under the amended statutory guidelines. Butte County, or other appropriate entities, could apply for a temporary use of water under the amended statute to address the need to divert additional flows for the 2017 irrigation season to "abate flooding potential and recharge the aquifer" in Water Districts Nos. 33 and 34.

#### Conclusions

The spring runoff may result in flooding that threatens personal property and the health and safety of the public in Basins 33 and 34. I am not vested the unconditional authority to allow the unrestricted diversion of water you have requested. However, I recognize and have identified a number of existing water rights, water administrative rules, and application processes that may

allow Butte County and other local entities in Basins 33 and 34 to mitigate for flooding and recharge local area aquifers. IDWR staff will work with Water District Nos. 33 and 34, the Big Lost River Irrigation District, the District No. 34 Recharge Committee and others to address your concerns in this year of overabundant water supply.

Respectfully,

A handwritten signature in black ink, appearing to read "Gary Spackman". The signature is fluid and cursive, with the first name "Gary" being more prominent than the last name "Spackman".

Gary Spackman  
Director, Idaho Department of Water Resources

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