



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

August 24, 2004

GRANITE TRUST ORGANIZATION
C/O LAWRENCE BABCOCK TRUSTEE
PO BOX 66
MOORE ID 83255

Re: Distribution of Water to Water Right Nos. 34-372 A, 34-372B, and 34-690B;
Big Lost Curtailment 2004

Dear Mr. Babcock:

On August 2, 2004, you petitioned the Idaho Department of Water Resources (IDWR) for reconsideration and requested a hearing in response to an Order for Distribution of Water, issued on July 12, 2004, and reissued as Amended Order, Order to Show Cause, and Notice of Status Conference by the Director of IDWR on July 23, 2004. The order required mitigation for depletions to the Big Lost River caused by ground water diversions or, alternatively, cessation of ground water pumping. IDWR mailed you a copy of the orders.

An enclosure included with the copies of the orders mailed to you stated the following:

Any party may file a petition for reconsideration of this final order within fourteen (14) days of the service date of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law.

See Idaho Code § 67-5247; IDAPA 37.01.01.740.02.a. I've included another copy of the enclosure. The enclosed document describes other remedies available to you.

The amended order was issued July 23, 2004. You timely petitioned for reconsideration. The deadline for the Director of IDWR to address your petition for reconsideration is August 24, 2004. The Director will not rule directly on your petition for reconsideration. On August 25, 2004, your petition for reconsideration will be denied by operation of law.

However, your request for hearing creates a contested case before IDWR. At the hearing, IDWR will record testimony from sworn witnesses and will consider documentary evidence submitted as exhibits. At present, IDWR has received five requests for hearing: the law firm of Rigby, Thatcher, Andrus, Rigby & Moeller, on behalf of the "Water District 34 Groundwater Users and Water Right Holders;" Bruce Blackmer; Ryan & Ruth Genae McAfee, Tony Alosi;

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and Granite Trust Organization, Lawrence Babcock, Trustee. Other requests or petitions for intervention may be forthcoming.

Please submit to me by September 10, 2004, dates you are unavailable in November 2004. I will schedule a hearing based on your submittal. At the same time, please suggest schedules for discovery, exchange of information, and prehearing motions.

As an alternative to a hearing, I have committed to the water users of Water District No. 34 that I will meet with them at least once a month at their request. If you think there is a more informal method of presenting your information, I will consider your suggestions for a less structured forum. You should also suggest how your request for hearing should be addressed if informal presentation is preferred.

Even though a contested case is pending and a hearing will be held, you must participate in a mitigation plan or your ground water diversion will be immediately curtailed. A copy of this letter is being sent to the watermaster to keep him informed.

If you have any questions about any of the matters I've discussed above, please call me at (208)-327-7900.

Sincerely,



Gary Spackman

2 Enclosures

cc: IDWR Eastern Region
Bob Duke, Watermaster, Water District No. 34

**EXPLANATORY INFORMATION
TO ACCOMPANY A
FINAL ORDER**

(Required by Rule of Procedure 740.02)

The accompanying order is a "Final Order" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

- (1) If the presiding officer is the agency head, the presiding officer shall issue a final order.
- (2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.
- (3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.
- (4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the issuance of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.
- (5) Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:
 - (a) the petition for reconsideration is disposed of; or
 - (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.
- (6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.
- (7) A non-party shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

(8) The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(4) Idaho Code.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days a) of the service date of the final order, b) of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.



State of Idaho

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August 23, 2004

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

NORMAN K SOWARDS
C/O JOHN A ROSHOLT
BARKER ROSHOLT & SIMPSON
113 MAIN AVE WEST STE 303
TWIN FALLS ID 83301

Re: Distribution of Water to Water Right Nos. 34-372A, 34-372B, and 34-690B;
Big Lost Curtailment 2004

Gentlemen:

On July 22, 2004, you petitioned the Idaho Department of Water Resources (IDWR) for reconsideration of an Order for Distribution of Water, issued on July 12, 2004, and reissued as Amended Order, Order to Show Cause, and Notice of Status Conference by the Director of IDWR on July 23, 2004. The order required mitigation for depletions to the Big Lost River caused by ground water diversions or, alternatively, cessation of ground water pumping. IDWR mailed you a copy of the orders.

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See Idaho Code § 67-5247; IDAPA 37.01.01.740.02.a. I've included another copy of the enclosure. The document describes other remedies available to you.

The second order issued July 23, 2004 was preceded by your petition for reconsideration. As a result, IDWR will consider your petition for reconsideration to have been re-filed on July 26, 2004. The deadline for the Director of IDWR to address your petition for reconsideration was August 17, 2004. Because the Director did not dispose of the petition in writing, your petition for reconsideration is "considered denied by operation of law."

John, as I read your petition, I felt that there was no need to reconsider a determination of how long Sowards water would be available to him absent pumping of ground water because Sowards did not petition for delivery call as required by the conjunctive management rules.

August 23, 2004

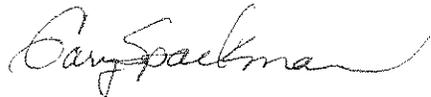
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Several water users affected by the orders requested a hearing as provided by Idaho Code § 42-1701A. IDWR is corresponding with the requestors asking for suggestions about a hearing schedule.

Because the pending motion for reconsideration was deemed denied on August 17, 2004, you may request a hearing on or before September 1, 2004. Upon receiving your request, IDWR will include you as a party to the already pending contested case. If you miss the deadline, you may petition to intervene in the contested case. Rule 350 through 355 of IDWR's Rules of Procedure describe the filing of petitions to intervene. I've enclosed a copy of the rules for your reference.

If you have any questions about any of the matters I've discussed above, please call me at (208)-327-7900.

Sincerely,

A handwritten signature in cursive script that reads "Gary Spackman". The signature is written in black ink and is positioned above the printed name.

Gary Spackman

Enclosure

cc: IDWR - Eastern Region

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