



## State of Idaho

# DEPARTMENT OF WATER RESOURCES

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JAMES E. RISCH  
Governor

KARL J. DREHER  
Director

April 16, 2007

BOB SCHAFER  
WATERMASTER  
WATER DISTRICT No. 34  
PO BOX 53  
MACKAY, ID 83251-0053

### Re: Early Season Irrigation Under IDAPA 37.03.12.040.04

Mr. Schafer:

The Department received your letter dated April 11, 2007 requesting early initiation of the surface water irrigation season as provided for by IDAPA 37.03.12.040.04. A copy of the rule is attached for reference. The rule allows the Director to allow diversions from the Big Lost River as early as April 20, subject to three conditions. Condition (b) states the following:

*b. All surface water rights, regardless of priority, unless subordinated to the water right or class of rights being called for, (now existing or developed subsequent to these rules), existing at the time of diversion that are within their period of use can be satisfied.*

The Department interprets this condition as requiring that all rights being called for that have a season of use that includes the period between April 20 and May 1 must be satisfied and be able to continue to be satisfied if rights from the Big Lost River are allowed to divert prior to May 1. In other words, the Director may not allow diversions from the Big Lost River outside the normal season of use if such diversion will prevent satisfaction of an in season right.

A review of the relevant data reveals that the Big Lost River Irrigation District holds three water rights that allow storage of water from the Big Lost River from January 1 through December 31. These rights have no flow rate limitation, but are limited to storage of 43,851 acre-feet in a single year. As of April 9, 2007, approximately 36,350 acre-feet have been stored under these rights. The Big Lost River Irrigation District may store an additional 7,501 acre-feet under these rights. If an early start to the irrigation season were allowed, the flow available to satisfy these storage rights would diminish. Therefore, your request for initiation of surface water diversions in Water District No. 34 prior to May 1 cannot be granted because condition (b) of IDAPA rule 37.03.12.040.04 is not met.

While the rules prevent early initiation of surface water delivery this year, please note that the irrigation season of use for the majority (451 out of 510) of groundwater rights in Water District No. 34 began on April 1. A substantially smaller number of ground water irrigation rights

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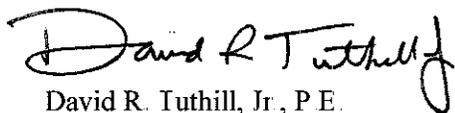
(approx. 47) authorize irrigation beginning on April 15, and approximately nine (9) rights authorize irrigation beginning after April 15. These nine rights bear a condition as follows:

*"THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS EARLY AS APRIL 1, PROVIDED OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED. THE USE OF WATER BEFORE MAY 1 UNDER THIS REMARK IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED EARLY IRRIGATION USE AND A PRIORITY DATE EARLIER THAN THE DATE A PARTIAL DECREE IS ENTERED FOR THIS RIGHT."*

Given the condition and seasons of use described above, all groundwater irrigation rights will be able to divert on April 15. I recognize that not all users have the benefit of groundwater rights, however, emergency drought transfers and water supply bank transactions are available and may provide some relief for those users requesting an early start to the surface water irrigation season.

Please feel free to contact me if you have further questions on this matter.

Sincerely,



David R. Tuthill, Jr., P.E.  
Interim Director  
Idaho Department of Water Resources

cc: IDWR Eastern Region  
Big Lost River Irrigation District, 101 S Main Ave Mackay, ID 83251

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(10-26-94)

a. If an accurate measurement of a ground water diversion can not be accomplished, the water user shall be required to provide, at the water user's expense, an annual determination of the system capacity certified by a qualified engineer licensed in the state of Idaho. The certification shall include the relationship which can be used, under conditions at the time of the certification, to relate the volume of water pumped to the electrical energy used by the pump. (10-26-94)

b. If the certified system capacity exceeds the diversion rate of the water right for the ground water use, the water user shall, at the water user's expense, modify the diversion to limit the system capacity to no more than the diversion rate of the water right and shall have the capacity and power usage of the system, as modified, recertified by a qualified engineer licensed in the state of Idaho. (10-26-94)

c. For purposes of these rules, at all times when water is being diverted from a diversion that is required to have the diversion capacity certified under this rule, the diversion rate will be assumed to be the system capacity. The annual volume of water pumped will be determined by the power consumption records, which the water user must release from the electrical energy provider to the watermaster, and the power usage relationship included with the system capacity certification. (10-26-94)

**04. Access to Diversion Works.** Water users shall provide the water district staff continual access to all diversion works, measuring devices and control structures, except ground water diversions for small domestic and stock water uses (10-26-94)

**05. Diversions Which May Be Exempt.** Diversions below the Chilly Bridge and above the Mackay Reservoir that divert water from the Big Lost River, whose place of use is within the flood plain of the Big Lost River as determined by the director, may be exempt from the requirement for measuring devices and control works with the approval of the director. Flow rates through exempt diversions will be estimated by the watermaster for accounting purposes by assuming the recorded flow rate of the water right is being diverted. (10-26-94)

**06. Good Cause for Exemption.** The director may exempt water users from the requirement to install measuring devices and or control works for good cause shown. Good cause will include diversions which can not be measured or controlled due to flooding conditions at the diversion for a significant portion of the year when water is available for diversion so as to render a measuring device or control works impractical (10-26-94)

**07. Measuring Devices and Control Works -- Water Conveyance Entities.** Irrigation districts, canal companies and other water conveyance entities diverting from any natural channel through which natural flow is being carried shall install and maintain measuring devices and control works of a type acceptable to the director at their point(s) of diversion. Measuring devices and control works thus installed and maintained will replace the requirement of individual measuring devices and control works at these locations for each water user (10-26-94)

**036. -- 039. (RESERVED).**

**040. ALLOCATION OF NATURAL FLOW (RULE 40).**

**01. Administration of Surface Water Rights.** Administration of surface water rights is based upon the list of water rights approved for interim administration by the court or as subsequently decreed by the court in the SRBA. Water not diverted or rotated for credit is available for the next in time water right. Natural flow rights are delivered to the point of diversion with no conveyance loss assessment. A natural flow water right delivered through a lateral or canal of a water conveyance entity shall be assessed the conveyance loss for the canal through which the water right is delivered. (10-26-94)

a. All natural flow will be allocated based upon a four (4) day moving average of the natural flow computed by the watermaster. (10-26-94)

b. All water deliveries must be called for by the water user at least forty-eight (48) hours in advance of the actual water delivery. Water which can be delivered by the watermaster in less than forty-eight (48) hours may be used by the water user. (10-26-94)

c. The water user must notify the watermaster of the water users intent to use water as required by Rule Subsection 040.05 (10-26-94)

**02. Rotation Credit** 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: (10-26-94)

a. Rotation for credit must be approved by the director as provided by these rules (10-26-94)

b. Rotation for credit must be pursuant to the Big Lost River Irrigation District's approved plan of operation. (10-26-94)

c. Any water credited under such a rotation, if not used in the same irrigation season in which it is credited, shall become storage water of the Big Lost River Irrigation District at the end of the irrigation season. (10-26-94)

d. Rotation for credit cannot occur prior to the need for irrigation water on the land, as determined pursuant to these rules, in any year. (10-26-94)

i. Natural flow must be available at the river headgate point of diversion for the water right requesting rotation credit (10-26-94)

ii. The water user must have operable delivery and use facilities and an actual need for the water on the land in the year rotation is sought. (10-26-94)

iii. If natural flow can not be delivered to a point of diversion at the beginning of the irrigation season and the watermaster determines rotation credit is needed to make possible the delivery of water rights being called for, and there is room in Mackay Reservoir for rotation credit, the watermaster may rotate natural flow rights, which would not otherwise be deliverable to their point of diversion, for credit of up to a combined total of three thousand five hundred (3,500) AF to be released from the reservoir under the control of the watermaster to make natural flow rights deliverable to their point of diversion. The watermaster may use storage water to assist the delivery of natural flow water rights at the beginning of the irrigation season when requested to do so by the storage holder. (10-26-94)

e. Water rotated for credit may only be used on the land to which the water right being rotated is appurtenant (water rotated for credit may not be marketed) except under the provisions of Section 42-222A, Idaho Code. (10-26-94)

f. If the reservoir fills after rotation has begun in any year, (or would have filled except for flood operations) and the natural flow is sufficient to allow diversion of water by 1905 or junior water rights while the reservoir is full, all rotation credits accrued at that time are lost and all water in Mackay Reservoir at that time becomes storage water of the Big Lost River Irrigation District for reallocation. For purposes of this rule Mackay Reservoir will be considered full when the elevation of the water in the reservoir reaches or exceeds a four (4) day average of six thousand sixty-six and twelve one hundredths (6,066.12) feet MSL (spillway crest). Rotation for credit stops at the time Mackay Reservoir fills, and while it remains full, but if the natural flow does not increase sufficiently to allow 1905 or junior water rights to divert after the reservoir fills the rotation credit in the reservoir shall remain the credit of the water user(s) who accrued the rotation credit (10-26-94)

g. Water rights being rotated must be identified to the watermaster as being rotated into Mackay Reservoir. Water rights identified as such will have the Mackay Reservoir as the temporary point of diversion during the time rotation is occurring. (10-26-94)

h. The rate of diversion for a water right being rotated for credit combined with other water rights for the same place of use being diverted at the same time cannot exceed the combined diversion limit specified in the listing of water rights. This rule does not limit the rate at which rotation credit, once impounded, can be used. (10-26-94)

**03. Assessment of Evaporation and Conveyance Losses to Impounded Water** (10-26-94)

a. Evaporation losses from Mackay Reservoir shall be estimated daily by the watermaster by applying correlated evapotranspiration data from the Aberdeen hydromet station to the Mackay Reservoir and shall be assessed to all impounded water. (10-26-94)

b. Conveyance losses in the natural channel shall be proportioned by the watermaster between natural flow and impounded water. The proportioning shall be done on a river reach basis. Impounded water flowing through a river reach that does not have a conveyance loss will not be assessed a loss for that reach. Impounded water flowing through any river reach that does have a conveyance loss will be assessed the proportionate share of the loss for each losing reach through which the impounded water flows. To avoid an iterative accounting procedure, impounded water conveyance loss from the previous day shall be assessed on the current day. (10-26-94)

i. An exception is made for impounded water delivered through the Beck and Evan diversion located in the SW1/4SE1/4SW1/4, Section 11, Township 6 North, Range 25 East, B.M. Conveyance loss for this impounded water will be assessed the conveyance loss of the Leslie reach, if any, and the additional conveyance loss to the Beck and Evan diversion but not the conveyance loss of the entire Moore reach. (10-26-94)

**04. Initiation and Duration of Surface Water Allocation for Irrigation** Any time after May 1 an irrigation water user can make a delivery call on the natural flow if the water user can make beneficial use of the water for irrigation. If sufficient natural flow exists to deliver the called for water right in a useable amount to the water users place of use, the watermaster shall deliver the right. In addition, the director may allow the diversion of rights or portions of rights for irrigation use from the Big Lost River as early as April 20 and as late as October 31, and from surface water tributaries to the Big Lost River either before or after the period of use for irrigation described in the water right where: (10-26-94)

a. The water so diverted is applied to a beneficial use resulting in an immediate benefit to growing plants or is necessary to allow performance of an agricultural practice generally accepted in the community, as determined by the director. (10-26-94)

b. All surface water rights, regardless of priority, unless subordinated to the water right or class of rights being called for, (now existing or developed subsequent to these rules), existing at the time of diversion that are within their period of use can be satisfied (10-26-94)

c. The diversion and use of the water does not conflict with the public interest as determined by the director. (10-26-94)

**05. Notice to Initiate Delivery.** Water users must initiate delivery of their water right(s) by notifying the watermaster that they are ready to put water to beneficial use (10-26-94)

**06. Diversion of Additional Flows** The director may allow the diversion of surface water in addition to the quantity of surface water described in a water right for irrigation use to be diverted for irrigation of the described place of use where: (10-26-94)

a. The waters so diverted are applied to a beneficial use, as determined by the director. (10-26-94)

b. All surface water rights, regardless of priority, unless subordinated to the water right or class of water rights being called for, (now existing or developed subsequent to these rules), existing at the time of diversion that are within their period of use can be satisfied (10-26-94)

c. The diversion and use of the water does not conflict with the public interest as determined by the director. (10-26-94)

d. Additional flows diverted pursuant to Rule 040 06 are natural flows and will not be assessed as impounded water. (10-26-94)