



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

June 12, 2013

ROGER TOTTEN
WATERMASTER, WATER DISTRICT NO. 34
PO BOX 53
MACKAY, ID 83251

RE: Mitigation Plan

Dear Roger:

On June 5, 2013, the Idaho Department of Water Resources (IDWR) received a written plan from Water District No. 34 (the District) to provide flow augmentation pursuant to Rule 50 of the Water District No. 34 Water Distribution Rules. IDWR has reviewed the plan (see attachment A) and has determined that the plan is incomplete and lacks sufficient detail to assess the extent of mitigation that would be provided under the plan. Further, additional information to evaluate some components of the plan will likely not result in a determination that the plan provides enough water to fully augment the flow of the river as required by Rule 50. Given that the irrigation season is well underway, and that the District has not submitted an acceptable mitigation plan, IDWR is sending the attached correspondence to those users that have called for mitigation under Rule 50 informing them of their option to seek regulatory relief pursuant to IDAPA 37.03.11, the statewide Rules for Conjunctive Management of Surface and Ground Water Resources (CMRs).

Whether or not a water user chooses to seek relief under the CMRs, the potential will continue to exist for future calls for mitigation under Rule 50, or calls under the CMRs. The District may consider a proactive strategy to reduce that potential or to prepare for such calls. The district should continue its efforts, as described in the mitigation plan, to work with water users to improve measurement of groundwater diversions and continue to support improved accounting. The District and the Junior Groundwater Users might also consider meeting with those that requested mitigation to develop a longer term approach to satisfying their demands and reduce the potential for future calls of this nature.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Nick Miller', is written over a light blue horizontal line.

Nick Miller
Manager, Water Distribution Section

cc:
IDWR Eastern Region
Seth Beal, Chairman, Water District 34 Advisory Committee

ATTACHMENT A – REVIEW OF THE JUNE 4, 2013 MITIGATION PLAN

Amount and Timing of Flow Augmentation

The plan submitted by the District proposes to provide 6,110 acre-feet of natural flow augmentation from various water sources. The plan states that the intent of the flow augmentation is to augment the general supply of natural flow, rather than to augment only the supply to those users that have called for mitigation. The timing and rate of natural flow augmentation is proposed to be at a constant rate to provide 1/3 of the total volume before July 23rd and 2/3 of the volume at a constant rate from July 23rd through October 15th. The amount and timing of flow augmentation proposed in the plan is acceptable.

Sources of Augmentation Water

Four components comprise the submitted plan. Each supply is addressed below.

- 1. Recharge credits.** The plan proposes a mitigation credit of 13% of the average recharge over the last four years (2009 through 2012), or a total of 2,225 acre-feet to be applied against the full 6,110 acre-feet mitigation requirement.

The purpose of the mitigation plan is to augment the flow in the river. Recognizing recharge as a component of the flow augmentation assumes that a portion of the natural flow in the river throughout the season would not have been present absent the recharge efforts. IDWR does not have a method to evaluate the timing and impact of the recharge efforts on the flows in the river, so any credit toward mitigation for groundwater pumping must be based largely on assumptions. Nevertheless, during the development of a mitigation plan in 2005, IDWR had agreed to recognize 13% of the recharge conducted during the same season as applying to the second semester flow augmentation. Additionally, IDWR had agreed to recognize a credit of 13% of fall recharge toward the first semester flow augmentation in the ensuing year, but had declined to recognize multi-year benefits¹. Consistent with that approach, IDWR will recognize up to 13% of recharge that occurred during the Fall of 2012 and Spring of 2013 as a direct credit toward the flow augmentation requirement of the first and second semesters, respectively. Reports submitted to IDWR indicate no recharge occurred in the Fall of 2012 or the Spring of 2013, so IDWR will not recognize recharge as a component of the 2013 flow augmentation.

- 2. Storage allocations.** The plan describes two approaches to using storage water. The first is a proposal on page 3 to purchase storage water from individual patrons and directly augment the flow of the river. However, the amount of water proposed is left blank. The second approach is included in a hand-written addendum by the watermaster proposing a mitigation credit for 14% of the losses incurred in the delivery of storage water. It is unclear from the plan whether the district is proposing the first, the second, or both of these options.

Regarding the first approach, if the purpose of the flow augmentation is to augment the natural flow generally, rather than provide a direct benefit to those calling for water, then it is difficult to understand how storage water placed in the river to augment the natural flow

¹ If IDWR were to recognize average recharge efforts, then one could argue it should be consistent and also use average groundwater usage over the same period, which for the last four years was $(30,414+33,936+28,667+35,723)/4 = 32,185$ 24-hr cfs @ 13% = 4,184 24-hr cfs or about 8,300 AF. So, if IDWR recognized 2,225 AF of recharge credit, the mitigation burden would still be 6,075 AF.

could be limited to delivery only within the boundaries of the irrigation district. If the Big Lost River Irrigation District is unable or unwilling to sell a portion of its storage water to be used generally as natural flow, then storage water as a source for mitigation may be best exercised as a component of an alternative mitigation plan, rather than as a source for natural flow augmentation under a District-sponsored plan.

Regarding the second approach, it is difficult to understand how the losses experienced by the delivery of storage water could be thought to augment the natural flow. In the example given in the plan, the irrigation district releases 62.58 cfs of storage water and loses 8.76 cfs between the dam and the points of rediversion, so the patrons are delivered 53.82 cfs. If we assume that the demand of the patrons is 53.82 cfs, and it takes 8.76 cfs of loss to supply the demand, then nothing is being provided to augment the natural flow.

Given the above discussion, IDWR cannot recognize any amount of natural flow augmentation from storage allocations pursuant to the submitted plan.

- 3. Use of natural flow water rights.** The plan states that “Each water right proposed to be used for augmentation purposes is described in a separate attachment to this plan in an Acquisition of Mitigation Water Supplies Form” and that the form contains water right descriptions, maps, and “the required applicable criteria for transfer review.” While the plan states it contains information sufficient for IDWR to evaluate the proposal, the plan does not contain such a form or a map or water right description. The hand-written addendum to the plan lists a number of surface water rights with a comment that some amount of ground will be idled.

IDWR will recognize a credit toward natural flow augmentation for idling acres normally and recently irrigated under natural flow water rights as that practice increases the amount of natural flow available to users by a quantifiable amount. However, it is unclear from the plan whether this was what was proposed, as much of the land appurtenant to the rights listed is also served by other natural flow rights not listed, or groundwater rights, or storage water. Some amount of the proposed natural flow water rights could likely be approved for flow augmentation credit, but the plan did not have the detail necessary to determine the amount of credit. Even if the rights are fully recognized at 3.5 acre-feet per acre, they would constitute no more than 10% of the mitigation requirement.

- 4. Use of groundwater rights.** The plan states that “Each water right proposed to be used for augmentation purposes is described in a separate attachment to this plan in an Acquisition of Mitigation Water Supplies Form.” While the plan states it contains information sufficient for IDWR to evaluate the proposal, the plan does not contain such a form or a map or water right description. The hand-written addendum to the plan lists a number of ground water rights with a comment that some amount of ground will be idled and the groundwater rights “would be transferred to 34-2330B and 34-7052”. It is unclear from this description what wells the rights will be transferred to, since 34-2330B lists seven points of diversion and is involved, as is 34-7052, in an active Water Supply Bank Rental. Furthermore, it appears that each of the groundwater rights offered to be used to supply mitigation are appurtenant to ground that has not been irrigated (with neither surface or groundwater) for a number of years, so their use to mitigate for the effects of continued groundwater pumping elsewhere in the valley is specious.



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Re: Mitigation Request for 2013

Dear Water User:

On May 13, 2013, the Watermaster of Water District No. 34 sent IDWR correspondence committing to provide flow augmentation pursuant to your April 15, 2013 request. On June 5, 2013, the Idaho Department of Water Resources (IDWR) received a written plan to provide flow augmentation pursuant to the Water District No. 34 Distribution Rules – Rule 50. IDWR has reviewed the plan and has determined that the proposed flow augmentation plan is not acceptable.

The purpose of this letter is to formally advise you that Water District No. 34 has not developed an acceptable flow augmentation plan or mitigation plan as of this date and to outline a process to continue to seek relief. The Water District 34 Water Distribution Rules provide some options for mitigation by holders of junior ground water rights when a mitigation request is made, but the rules do not require that junior ground water rights be curtailed if the water district or junior priority ground water users do not provide mitigation. However, the statewide Rules for Conjunctive Management of Surface and Ground Water Resources (IDAPA 37.03.11 or the CMRs) provide a process in which the holders of senior surface water rights may initiate a delivery call against the holders of junior groundwater rights.

If you choose to file a delivery call under the CMRs and the Director of IDWR finds that you are suffering material injury due to diversion of junior groundwater rights, then some or all of the junior groundwater rights would be required to provide mitigation or face curtailment.

Please contact me directly at (208) 287-4956 if you have questions concerning this matter.

Respectfully,

Nick Miller
 Manager, Water Distribution Section

Cc: Roger Totten, Watermaster, Water District 34
 IDWR Eastern Region
 Seth Beal, Chairman, Water District 34 Advisory Committee