

Dave Tuthill, Adjudication Bureau Chief
Department of Water Resources
1301 N. Orchard Street
P.O. Box 83720
Boise, Idaho 83720-0098

RECEIVED

APR 30 1999

Department of Water Resources

RE: Promised Enclosures and Comments

Dear Mr. Tuthill:

Enclosed please find a copy of the Plan of Operation for the BLRID with the only reference to the storage of natural flow rights high-lighted on the bottom of the second page.

If rotation credit is allowed even with limits, it must be restricted to delivery within the BLRID as the district facilities are used for that storage and the district board cannot contract to deliver rotation credits (storage water) to lands outside the district.

Also enclosed is a copy of a U.S. District Court case dated June 16, 1958 wherein matters concerning the Back Channel are settled (refer to page 2, paragraph 3). Any change to this decision may constitute a direct frontal collateral attack on both the U.C. Decree and this particular decision.

If the Back Channel area was not classed as a flood plain in 1935 or in 1958 and a controlling device was ordered, what is different today?

Trusting in your serious consideration of these points I remain,

Sincerely yours,



Lawrence R. Babcock, Chairman
Big Lost River Water Users Association

Dated this 28th day of April, 1999.

ARTICLE VII.

CONTROL OF DISTRICT'S IRRIGATION SYSTEM
AND DISTRIBUTION OF WATER TO CONSUMERS

Sec. 1. The Mackay Dam and Reservoir, and the control and diversion gates at said Mackay Dam and Reservoir, and all main canals and laterals and all diversion and distribution works owned by the District for the distribution of water, and all storage and natural flow rights owned by Big Lost River Irrigation District, shall be under the direction and supervision of the General Manager, whose duty it shall be to distribute water to the consumers thereof according to their rights under these By-Laws and the laws of the State of Idaho, and under such special rules as may be from time to time made by the Board of Directors in any emergency.

Sec. 2. It shall be the duty of all consumers of water supplied by the District to build and maintain laterals and measuring headgates whereby water is drawn from main canals or laterals of the District.

Sec. 3. All the headgates or measuring devices shall be built and placed in position under the direction of the general manager, and shall be removed and replaced from time to time if considered necessary by the General Manager. The expense of removing and replacing headgates or measuring devices in main canals owned or operated by the District shall be borne by the District. The General Manager shall have authority, in the event that any headgate or measuring device on any lateral of any consumer of water shall not be in proper condition to have water diverted therefrom, either to construct a new headgate or measuring device and the cost thereof shall be charged to the said water consumer, or to refuse to deliver water to said consumer, first serving five days written notice thereof upon said water consumer.

Sec. 4. All measuring devices shall be constructed in accordance with rules of the Department of Reclamation and irrigation practice. Any person desiring to use water upon land owned or controlled by him, must make a written application therefor at least forty-eight hours before such water is to be turned on or turned off. Nothing herein contained shall be construed to mean that more than one inch of water to the acre, measured on an acre foot basis, shall be used by any consumer unless there is a surplus of water in the canals and storage reservoir of the District.

Sec. 5. Any water consumer who has a water right under the Assessment and Apportionment of Benefits under the District's bond issue voted May 18, 1935, and approved and confirmed by the District Court of the Sixth Judicial District of the State of Idaho in and for the County of Custer, on January 6, 1936, and thereafter approved by Reconstruction Finance Corporation, shall have the right to store any

water belonging to him by such storage right or direct flow under said Assessment and Apportionment of Benefits, in the District's Reservoir, but such water consumer shall be required first to give forty-eight hours written notice to the General Manager of the District or to the office of the District of his intention to store said water, and such water consumer shall likewise give forty-eight hours written notice to the General Manager or to the office of the District of his desire again to use water.

Sec. 6. No water consumer shall be entitled to holdover storage water from year to year in the District's Reservoir whereby he may elude water for irrigation purposes.

Sec. 7. The Board of Directors shall have power to reduce the quantity of storage water demanded by any consumer in case of a shortage in the Mackay Reservoir, or by reason of breakage in the banks of canals, headgates or dams, whereupon it shall be the duty of the Board of Directors to apportion the water available pro rata among all consumers.

Sec. 8. All users of decreed water storing the same in the Mackay Reservoir, shall be charged with their proportion of evaporation losses in such Reservoir.

Sec. 9. No obstructions shall be placed in any of the canals or diversion works of the District without the consent of the Board of Directors in writing. No water wheels for generation of power or elevation of water shall be placed in any of the canals of the District except upon the written consent of the Board of Directors, and the payment of an annual fee therefor, such fee to be in such amount as the Board of Directors shall deem fit and proper.

Sec. 10. Consumers of water must not interfere with gates or measuring devices after the same have been set by the watermaster, or ditch rider.

Sec. 11. The number of headgates necessary for the irrigation of any tract of land may be determined by the Board of Directors, and no unnecessary headgates shall be maintained or operated.

Sec. 12. The banks of canals or laterals must not be cut or trampled by livestock. Fences across the banks of canals or laterals must be constructed with proper gate-ways on the banks to be traveled by the watermaster and ditch rider. Fences across canals shall be so constructed as to be above water and so that drift will not collect against them.

Sec. 13. Wasting of water will not be permitted.

ARTICLE VIII.

FISCAL YEAR.

Sec. 1. The Fiscal year shall begin January 1st and shall end December 31st of each year.

ARTICLE IX.

BUDGET ESTIMATES.

Sec. 1. It shall be the duty of the Board of Directors at its regular meeting in February of each year to ascertain and determine the amount of money necessary for the transaction and conduct of the District's business and the payment of the outstanding maturing obligations and for such other purposes as may have been specially and lawfully authorized, all as may be required for the twelve months' period commencing on the first day of May of each year.

ARTICLE X.

TOLLS, ASSESSMENTS AND MAINTENANCE CHARGES.

Sec. 1. The toll system has been definitely adopted by the District. For the purpose of defraying the expenses of the care, maintenance, operation, management and repair of the canals, dams, reservoirs, diversion works and other property of the District, and for the payment of the salaries of officers and employees of the District, the Board of Directors shall have the right to levy and collect a toll charge for the payment of such expenses, either in whole or in part. The Board shall meet on its regular meeting date on or before the first Tuesday of March of each year, beginning with the year 1937, levy and fix such toll charges, which toll charges may be either in whole or in part of the total amount required for such expenses.

Sec. 2. The Board of Directors, in its order fixing or levying such tolls each year shall fix the date or dates on or before which the same must be paid, and shall require the same payable in advance of the delivery of any water during the year for which the same are fixed, and may make provision for the collection thereof and the keeping of a toll book by the District Treasurer.

Sec. 3. If water assessments or toll charges are not paid by July 1 of each year, the Board of Directors shall have the right to redistribute and pro rate the amount of storage water represented by such unpaid water assessments and toll charges among the consumers within the District entitled to water from said District.

Sec. 4. No owner or user of decreed water will be permitted to store water in the District's Reservoir until such time as all assessments of every kind and character due said District against said decreed water and against the land to which said decreed water is appurtenant, have been paid.

Sec. 5. No water shall be delivered to any consumer until all current as well as all past due assessments, tolls and bond interest and sinking fund charges have been paid.

ARTICLE XI.

SEAL.

Sec. 1. The Corporate seal of this District shall have engraved thereon the full name of the District and the name of the State.

Sec. 2. The corporate seal of this District shall always remain in the custody of the Secretary.

ARTICLE XII.

ALTERATION OF BY-LAWS.

Sec. 1. These By-Laws may be altered, amended, or repealed at any regular meeting of the Board of Directors.

ARTICLE XIII.

POSSESSION OF BY-LAWS.

Sec. 1. These By-Laws shall always remain in the possession of the Secretary of the District and kept in the office of the District.

C E R T I F I C A T E

We, the undersigned, the duly elected, qualified and acting Board of Directors of Big Lost River Irrigation District, hereby certify that the foregoing By-Laws consisting of XIII Articles, have been duly adopted as the By-Laws of said Big Lost River Irrigation District at a due and legal meeting of said Board held this 27th day of February, 1937, in the office of the Board, at Mackay, Custer County, Idaho.

Witness our hands and seals this 27th day of February, 1937.

(SEAL)

/s/ J. T. Quist

/s/ Roy C. Pearson

/s/ Charles Warren

BOARD OF DIRECTORS
BIG LOST RIVER IRRIGATION DISTRICT

I, the undersigned, the duly appointed, qualified and acting Secretary of Big Lost River Irrigation District, Butte and Custer Counties, Idaho, hereby certify that the foregoing By-Laws, consisting of XIII Articles, have been duly adopted as the By-Laws of said Big Lost River Irrigation District on February 27, 1937.

Witness my hand and the seal of said District this 27th day of February, 1937.

(SEAL)

/s/ Roy C. Pearson
Secretary, Big Lost River
Irrigation District

B Y - L A W S

OF

BIG LOST RIVER IRRIGATION DISTRICT

Butte and Custer Counties, Idaho

ARTICLE I.

NAME, BOUNDARIES AND DIVISIONS.

Sec. 1. The name of this District is BIG LOST RIVER IRRIGATION DISTRICT.

Sec. 2. The boundaries of this District are as shown in the official map thereof and as described in the order of the Board of County Commissioners of Butte County, Idaho, of date July 3, 1920, both of which are on file in the County records of said County, and also in the files and records of said District, reference to which is hereby made for a more complete description thereof.

Sec. 3. The District is divided into three divisions, the boundaries of which have been fixed as provided by law, and are as follows:-

Division No. 1.

All that part of the District from the lower end thereof South and East of Arco, Butte County, Idaho, up Big Lost River to what is known as the Hy Jensen Lane, except the right of way of the Oregon Short Line Railroad and certain other excluded lands.

Division No. 2.

All that part of the District from the Hy Jensen Lane up Big Lost River to what is known as the Burnett or Beck Lane, except right of way of Oregon Short Line Railroad and certain other excluded lands.

Division No. 3.

All that part of the District from the Burnett or Beck Lane up Big Lost River to what is known as the Mackay Dam and Upper Cedar Creek, except right of way of the Oregon Short Line Railroad and certain other excluded lands.

ARTICLE II.

DISTRICT OFFICE

Sec. 1. The office of the Board shall be located at Mackay, Custer County, Idaho.

ARTICLE III.

BOARD OF DIRECTORS.

Sec. 1. The Board of Directors shall consist of three members, and elected from each division of the District and they shall have the qualifications and exercise the powers conferred upon them by law.

Sec. 2. The Board of Directors shall meet on the first Tuesday of January following their election and organize as a Board, elect a President from their number and appoint a Secretary and Treasurer and such other officers and employees as they may deem necessary, who shall hold office during the pleasure of the Board and perform such duties as shall be imposed upon them by law. The Office of Secretary and Treasurer and that of any other officer may be combined in one person, at the discretion of the Board.

Sec. 3. The Board of Directors shall have power to appoint such agents, or officers, or employees as may be required and prescribe their duties and fix their salaries. The Board of Directors shall have such powers as are enumerated in Section 48-304 of the Idaho Code Annotated, 1932, and any acts amendatory thereof, and any and all powers which the Statutes of Idaho provide for an Irrigation District.

Sec. 4. The Board of Directors shall hold a regular monthly meeting in their office on the first Tuesday of every month and such special meetings as may be required for the proper transaction of business.

Sec. 5. All special meetings of the Board of Directors shall be ordered by the President or a majority of the Board. The order must be entered of record, and the Secretary must give each member not joining in the order five days' notice of such special meeting. The order must specify the business to be transacted at such special meeting and none other than that specified shall be transacted; provided that all members of the Board are present at a meeting, the same shall be deemed a regular meeting and any lawful business may be transacted. All meetings of the Board must be public and a majority shall constitute a quorum for the transaction of business. On questions requiring a vote, there should be a quorum of at least a majority of all members of the Board. All records of the Board shall be open to the inspection of any elector during business hours.

Sec. 6. The members of the Board of Directors shall each receive the sum of \$5.00 per day for each day spent attending the meetings of the Board, or while engaged in official business under order of the Board, and actual and necessary expenses. Such actual and necessary expenses shall include all traveling and hotel expenses necessary to be incurred by any Director when absent from his residence in the performance of the duties of his office.

ARTICLE IV.

ELECTIONS.

Sec. 1. Elections shall be held in the District as provided by existing law of the State of Idaho and amendments thereto. The person receiving the highest number of votes for any office to be filled at such election shall be declared elected thereto, and shall hold said office for the time prescribed by the laws of the State of Idaho, and until his successor is elected and qualified.

Sec. 2. Within ten days after receiving certificates of election as provided by law, the officer so elected shall take and subscribe an official oath and file the same in the office of the Board of Directors and execute an official bond in the form prescribed by law in the sum of not less than \$500.00, nor more than \$5000.00, for the faithful performance of his duties as such officer, the amount of such bond to be determined and approved by the Judge of the Probate Court of Butte County, Idaho, and recorded in the office of the County recorder of said County and filed in the office of the Board of Directors.

Sec. 3. Any other officers or employees of the District shall furnish bonds at the discretion of the Board and if required by it and in such an amount as the Board may determine.

ARTICLE V.

OFFICERS, THEIR DUTIES AND COMPENSATION.

Sec. 1. The officers of the District shall consist of a President, Secretary and Treasurer. The President shall be chosen by the Directors from among themselves. The Secretary and Treasurer shall be appointed by the Board of Directors and they shall serve during the pleasure of the Board of Directors.

Sec. 2. The President of the Board of Directors shall preside at all meetings of the Board of Directors and shall sign, as president, all instruments in writing which have first been approved by the said Board of Directors. He shall call meetings of the Board of Directors whenever he deems it necessary, or when requested so to do by any other member of the Board.

Sec. 3. It shall be the duty of the Secretary to keep accurate records of the business transacted by the Board of Directors at their meetings. He shall countersign all the warrants drawn upon the Treasurer of the District, and he shall keep proper account books, and discharge such other duties as pertain to his office and as shall be prescribed by the Board of Directors and the laws of the State of Idaho.

Sec. 4. It shall be the further duty of the Secretary to give notice at the time prescribed by law of all elections held within the District, and of all meetings of the Board of Directors which are held to correct assessments, and shall give all other notices that may be required by the statutes of Idaho.

Sec. 5. The Treasurer shall on his appointment execute and file with the Secretary an official bond in a lawfully qualified Surety Company in such amount as may be fixed by the Board of Directors of the District, which shall not be less than \$5000.00, and he shall thereafter from time to time execute and file such further bonds as may be required by said Board in amounts fixed by it, which amounts shall be of at least fifty per cent of the maximum amount of money in the Treasurer's hands at any one time.

Sec. 6. It shall be the duty of the Treasurer to safely keep all moneys belonging to the District, making a deposit thereof in such Bank or Banks as may from time to time be directed by the Board of Directors. The Treasurer shall disburse moneys belonging to the District under direct authority of the Board of Directors.

Sec. 7. The Treasurer is hereby required to be in attendance at the time and place specified by the Board of Directors and as provided by law, to receive assessments and tolls, which must be paid in lawful money of the United States or by labor or services performed as may be authorized by said Board. The Treasurer must mark the date of payment of any assessments in the assessment book at the proper place, giving a receipt to the person paying, specifying the amount of the assessment, and if delinquent, the amount of costs and penalties thereon.

ARTICLE VI.

GENERAL MANAGER

Sec. 1. It shall be the duty of the Board of Directors to appoint a General Manager of the District.

Sec. 2. It shall be the duty of the General Manager of the District to take an oath of office and file the same with the Board, to take charge of all property belonging to the District, rendering an account thereof to the Board of Directors from time to time as required; to make returns to the Board of all persons employed by the District and a statement of all expenditures accompanying the same, with the necessary vouchers, and he shall make such reports to the Board as may be from time to time required. The General Manager shall not, however, have the power to sign notes or contracts for the district; neither shall he have power to incur any indebtedness unless authorized by the Board of Directors. He shall have general charge of the distribution of water furnished by the District to consumers, and also general charge of the canals and laterals belonging to the District, and the care and maintenance of the same.