

**2000 Supplemental Director's Report for Basin-Wide Issues 5-34
Pursuant to SRBA Order dated January 27, 2000**

**IN RE SRBA
Twin Falls County Civil Case No. 39576
Subcase No. 91-00005-34**

**Prepared by the Idaho Department of Water Resources
Karl J. Dreher, Director
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INTRODUCTION

The Director of the Idaho Department of Water Resources ("IDWR") submits this Supplemental Director's Report regarding Basin-Wide Issues 5-34 (Conjunctive Management General Provisions), in response to the *Order Requiring Supplemental Report ("706 Report") from IDWR on Certain Issues in Basin-Wide Issues 5-34; I.R.E. 703, 705, 706, I.C. Section 42-1412(4)* issued by the SRBA Court on January 27, 2000.

I. OVERVIEW OF BASIN 34

a. Boundaries of Basin 34

Basin 34 is approximately 1,400 square miles in area and includes portions of Custer, Butte, Bonneville, and Jefferson Counties in eastern Idaho. Basin 34 is comprised primarily of the Big Lost River drainage, but includes other small surface drainages to the southwest of the Big Lost River drainage, as well as the Idaho National Engineering and Environmental Laboratory ("INEEL") reservation to the east of the Big Lost River drainage. The basin is bounded by the mountains of the Big Lost Range to the northeast, by the Boulder Mountains to the northwest, and the Pioneer Mountains to the southwest. Tributaries of the Big Lost River flow from these mountains toward the river, which flows in a generally southeasterly direction past the town of Arco. The Big Lost River then flows in a generally northeasterly direction, before the water sinks and becomes part of the supply of the Snake River Plain Aquifer. A storage reservoir, Mackay Reservoir, is located on the Big Lost River in the northwestern part of the basin. The boundaries of Basin 34 are illustrated in Figure 1. Figures 2 and 3 serve to additionally illustrate locations within the basin.

b. Summary of Basin Hydrology

As described in Crosthwaite, et al. (1970), precipitation falling on the land surface provides the source of water for the Big Lost River and its tributaries. Precipitation at lower elevations (less than about 6,200 ft), such as associated with Chilly-Barton Flats, Mackay, Grouse, and Arco, is relatively low, varying from about 6 to 18 inches annually, with more than 50 percent of the annual precipitation occurring in the spring and summer. Precipitation increases rapidly with increasing elevation to about 34 inches annually, largely in the form of snow. Precipitation fluctuates widely from year to year, and water shortages occur frequently. Water supply is deficient enough that droughts occur frequently. However, during wet years, much of the surface flow leaves the basin without being diverted and beneficially used.

The main part of the Big Lost River valley is comprised of unconsolidated alluvial deposits that extend upstream to the heads of the tributary streams. Thus a distinctive characteristic of the Big Lost River drainage is the large interchange of water from surface streams into ground water and from ground water into surface streams. At moderate and low flows, all the surface water flow in the mainstem of the Big Lost River

disappears and becomes ground water at the Chilly Sinks. Large quantities of water reappear as surface water in the vicinity of Mackay Reservoir, disappear again at the Darlington Sinks, reappear near Moore, and again disappear downstream from Arco, becoming ground water beneath the Snake River Plain. Most of the surface water tributaries also fail to maintain surface water flows that consistently reach the mainstem of the Big Lost River.

Ground water and surface water are so closely related in the basin that neither can generally be considered as a separate source of supply. Throughout much of the Big Lost River valley, ground water levels are less than 50 feet below land surface. Near the Big Lost River, ground water levels are commonly less than 10 feet below land surface. However, following a series of dry years, water levels are typically 10 to 60 feet lower.

c. Development of Water Use

Development in the basin is primarily agricultural, except for municipal uses in several towns including Mackay, Moore, and Arco, and industrial use at INEEL located in the southeast end of the basin. Substantial surface water development first occurred in the 1880s, primarily for irrigation of lands along the thread of the river and its tributaries. Limited surface water storage was developed in the 1910s with the construction of Mackay Dam and Reservoir. The facility was constructed to supply water to irrigate new lands, extending the boundaries of the irrigated areas. However, the reservoir can store only about 20 percent of the average annual discharge of the Big Lost River. Substantial ground water development began in the 1950s and 1960s. Ground water has been used as a primary source for irrigation and to supplement surface water and storage water supplies for previously irrigated areas, including lands located away from the surface sources. Presently the irrigated acreage in the basin totals approximately 67,000 acres, with the irrigated areas above Mackay Reservoir used primarily for livestock and the areas below Mackay Reservoir used primarily for crop production.

d. Need for General Provisions

Because of the geology of the Big Lost River valley, the complex interrelationship between surface water and unconfined ground water, and the widely fluctuating water supply conditions, specific general provisions are warranted for the basin. Without such provisions, use of water would have been severely restricted to ensure that water was available to fill senior water rights, whether or not that water could have been beneficially used. Such an outcome would conflict with an important policy of Idaho law as stated by the Idaho Supreme Court the policy of the state is to secure "the maximum use and benefit of its water resources." *Nettleton v. Higginson*, 98 Idaho 87, 91, 558 P.2d 1048, 1052 (1977). Alternatively, without appropriate general provisions, conflicts between holders of water rights having various priority dates would constantly occur. Holders of senior priority water rights would call for delivery of water against holders of junior priority water rights who would claim that the delivery calls were futile. Because

amounts and timing of precipitation and snow melt in the basin cannot be forecast with an accuracy suitable to distribute water between water rights, water right administration without general provisions would mean frequently curtailing use of various junior priority water rights during changing precipitation and snow melt to determine whether such curtailment would result in water becoming available to fill senior water rights. Water administration on such a trial-and-error basis hardly constitutes “efficient administration of the water rights” as currently required in decreeing water rights in the SRBA by Idaho Code § 42-1412(6).

As early as 1923, in the lawsuit, *Utah Construction Co. v. Abbott*, Equity No. 222 (D.E. Id. 1923), herein referred to as the "UC Decree", the Federal District Court recognized the need for provisions to define and provide for the administration of water rights in the Big Lost River basin, given its hydrologic complexities. In about 1936, a second lawsuit was prosecuted by the Big Lost River Irrigation District (“BLRID”) and its individual members concerning the purchase of the Mackay Dam from the Utah Construction Company. *In the Matter of the Big Lost River Irrigation District*, (Idaho 6th Jud. Dist. 1936), herein referred to as “1936 Order.” The 1936 Order confirmed the BLRID’s “plan of operations” that described how water was to be administered between storage water and natural flow. The general provisions currently recommended by IDWR are based substantially on the UC Decree and the “plan of operations” confirmed by the 1936 Order. Changes in the wording of the provisions from the UC Decree have been recommended by IDWR only for the sake of clarity to reduce the potential for future conflict. IDWR recommends that the long-standing, historical reliance on the provisions of the UC Decree and the “plan of operations” by holders of water rights and IDWR be preserved in the SRBA decree. IDWR also concludes that administration of water rights in Basin 34 cannot be accomplished efficiently without these provisions.

e. Procedural History of the Basin 34 General Provision Recommendations in the SRBA.

IDWR first recommended general provisions for Basin 34 on June 18, 1992. Amendments to those general provisions were recommended on December 18, 1995. On December 21, 1995, the SRBA District Court designated Basin-Wide Issue 5. By Order dated April 26, 1996, the SRBA District Court determined that the general provisions were not necessary to define or efficiently administer water rights. This decision was appealed and the Supreme Court reversed the decision of the SRBA District Court concerning season of use and remanded the remaining general provisions for evidentiary hearings. *A&B Irrigation District v. Idaho Conservation League* 131 Idaho 411, 414, 958 P.2d 568, 571 (1998).

After remand, the SRBA District Court ordered IDWR to file a Supplemental Director's Report concerning the General Provisions. On June 24, 1999, IDWR filed its *Supplemental Director's Report, Reporting Area 1, IDWR Basin 34, Regarding Revisions of the Following: Period of Use (For Irrigation Water Uses), Conjunctive Management General Provisions* (“Supplemental Director’s Report”). The deadline for objections to the Supplemental Director's Report was July 30, 1999. Several objections

were filed and on October 20, 1999, the SRBA District Court held a scheduling conference to discuss the issues raised in the objections. As a result of that scheduling conference, the SRBA District Court entered an *Order Setting Deadline for Filing More Definite Statement* on November 10, 1999. The deadline for filing a more definite statement was December 20, 1999.

On January 13, 2000, the SRBA District Court held a status conference. Based on that status conference, the SRBA District Court entered on January 27, 2000, an *Order Requiring Supplemental Report ("706 Report") from IDWR on Certain Issues in Basin-Wide Issues 5-34; I.R.E. 703, 705, 706, I.C. § 42-1412(4)*. This order is hereinafter referenced as the January 27th Order. The January 27th Order required IDWR to submit a supplemental report providing the bases of the recommendations for the general provisions in Basin-Wide Issues 5-34. In the January 27th Order, the SRBA District Court set forth several questions for IDWR to answer regarding proposed general provisions 1, 2, 3, 4, 5, and 6. With respect to general provision 7, the conjunctive management general provision, the SRBA District Court has previously ordered that this issue is no longer part of Basin-Wide Issues 5-34. This report constitutes IDWR's answers to the questions framed by the Court.

II. REVIEW OF BASES FOR RECOMMENDED GENERAL PROVISIONS

IDWR submits the following information in response to the January 27th Order. The responses are organized in the same format as the January 27th Order, with requests for information from the January 27th Order set forth below as subsection headings and responses immediately following each subsection heading.

a. "The Identity of Each Person Who, on Behalf of IDWR, Participated in the Preparation of the Subject Proposed General Provision and a Description of the Extent and Significance of that Person's Participation."

The following employees of IDWR participated in the preparation of the recommended general provisions:

- Carter Fritschle,
Water Right Supervisor, Adjudication Bureau, State Office, Boise
- Ernest Carlsen,
Supervisor, Eastern Region, Adjudication Bureau, Idaho Falls
- Donald Shaff,
Section Manager, Technical Support Section, Adjudication Bureau, State Office, Boise

- David Tuthill,
Bureau Chief, Adjudication Bureau, State Office, Boise
- Norm Young,
Administrator, Water Management Division, State Office, Boise
- Karl Dreher,
Director, State Office, Boise

The above individuals participated in the discussion, drafting or review of the general provisions recommended for Basin 34. Each individual contributed his individual knowledge of the hydrology, water use, and water administration in Basin 34. As the preparation of the general provisions for Basin 34 was a group effort, it is not possible to list which individual contributed which particular wording in the recommendation. Generally, Carter Fritschle and Ernest Carlsen have specific knowledge of the historical delivery of water in Basin 34, the investigation of specific claims, the hydrology of Basin 34, water management, and are familiar with the UC Decree. David Tuthill and Donald Shaff have specific knowledge of the preparation and final review of Basin 34 claim recommendations, as well as a general understanding of historical water delivery, management, and prior UC Decree. Karl Dreher and Norm Young have a general understanding of historical water delivery, management, and the general provisions of the UC Decree in Basin 34.

b. “The Identity of Each Person Whom IDWR May Have Testify Regarding the Subject Proposed General Provision.”

If called upon by the SRBA District Court or parties, IDWR will designate witnesses from the above list to testify on the Basin 34 general provisions. However, depending on the issues to be heard during hearings, IDWR may designate additional witnesses to testify if requested by the SRBA District Court or the parties. Witnesses can include those on the above list, or depending on the issues that may be raised, may include other IDWR personnel, including the watermaster for Water District 34.

c. “All Factual, Legal, or Other Bases IDWR Has or Will Rely Upon for Any Opinion it Holds that the Proposed General Provision, Alone or in Combination with Other Proposed Provisions, is Necessary to Define, Clarify, or Administer Water Rights in Basin 34.”

The unique and pertinent geologic and hydrologic characteristics, along with the associated causative factors, in Basin 34 require general provisions to define water rights and provide for the efficient administration of water rights. Water supply in the basin is highly variable from year to year and within the year, although there is an overall pattern of highest flows in the late spring and lowest flows in the late summer and fall. There is a high degree of interaction between ground and surface water. Spring snowmelt and rainfall recharge both the ground water and the streams. In some areas, the ground water within the Big Lost River basin recharges the stream (the

stream “rises”), while in other areas, the stream recharges the ground water (the stream “sinks”). At times during most years, the river is dry in some reaches; for instance, at times the river is dry from Chilly Sinks to Mackay Reservoir and from the Moore diversion to the Arco diversion. Many tributary streams do not reach the Big Lost River as surface flow at all times during most years. The recharge pattern varies from year to year and within the year as the level of the water table changes. The basin contributes a substantial flow of ground water to the Snake River Plain Aquifer.

Idaho Code § 42-1412(6) provides the basis for general provisions. It states in part that “the decree shall also contain an express statement that this partial decree is subject to general provisions necessary for the definition of the right, or for the efficient administration of the water rights.” The Idaho Supreme Court further explained the application of the statute:

[A] general provision shall be included in a water right decree if such general provision is “necessary” to define or efficiently administer water rights. Whether a general provision is “necessary” depends upon the specific general provision at issue and involves a question of fact, (defining the proposed general provision and the circumstances of its application), and a question of law (determining whether the general provision facilitates the definition or efficient administration of a water right in a decree). A general provision is necessary if it is required to define the water right being decreed or to efficiently administer water rights in a water right decree.

A&B Irrigation Dist., 131 Idaho at 414, 958 P.2d at 571.

The issuance and long-standing, historical reliance on the provisions of the UC Decree and the “plan of operations” by water right holders provide IDWR the basis for the proposed general provisions. In 1923, the Federal District Court ordered specific provisions in the UC Decree concerning the administration of water in Basin 34, as well as decreeing individual water rights. The general provisions that IDWR recommended in its 1999 Supplemental Director’s Report are substantially the same as provisions in the UC Decree.

The “plan of operations” confirmed by the 1936 Order described how water was to be administered between storage water and natural flow. IDWR’s understanding is that as a result of the “plan of operation,” the concept of rotation into storage was developed and implemented by the water users in Basin 34. IDWR based its recommendation for general provision number 3, which continues rotation into storage, upon the historical practice existing in the basin as authorized by the 1936 Order.

IDWR concludes the general provisions are necessary to define the water rights and for the efficient administration of the water rights because of the unique and complex hydrologic conditions in Basin 34. The legal and factual bases are described in further detail in response to other questions.

d. “The Identity of Each Document or Exhibit, Including Summaries of Other Evidence, that IDWR May Present at Trial.”

If the SRBA District Court or parties call IDWR employees as witnesses at trial, IDWR will have available the documents listed in Part VI of this report. Most of these documents are available via the Internet as described in Part VI.

e. Omitted in the Court Order

f. “Specify the Legal and/or Hydrological Reason(s) for Recommending the General Provision.”

This question is substantially similar to the question set forth in Subsection II. c. As stated previously, IDWR bases its recommended general provisions for Basin 34 on the hydrologic complexity and uniqueness of the basin, Idaho Code § 42-1412(6), which provides that the decree shall contain general provisions that are “necessary” for the definition of the water right, or for the efficient administration thereof; and the long-standing, historical reliance by water rights holders and IDWR on provisions of the UC Decree and “plan of operations.” See *a/so* subsections II. g, II. h, II. i, and III. b. below.

g. “Specify How the General Provision Defines the Water Right and/or Provides for the Efficient Administration of the Water Right.”

General Provision 1 - “Definitions.” This general provision is necessary to provide definitions of terms that are used in the other general provisions. It is necessary for the definition and efficient administration of the water rights by establishing:

- The location of measuring points
- The configuration of Mackay Reservoir under full conditions
- The location where the Back Channel separates from the main channel
- The area covered by IDWR’s Administrative Basin 34
- The water rights to which the general provisions apply

See also subsection II. i, III. b, and III. c below.

General Provision 2 - “2-B Gage and Stock Watering during Non-irrigation Season.” General provision 2 defines and provides for efficient administration of the water rights by specifying when water can be diverted to storage in Mackay Reservoir in preference to earlier in time rights for non-irrigation uses. The general provision further defines that a release of 50 cubic feet per second (cfs) is necessary and sufficient at all times to provide adequate water for domestic and stockwatering uses downstream of Mackay Dam.

The general provision defines the relationship between the storage rights and the domestic and stockwater rights. It provides for efficient administration of the water rights by assuring that water needed for irrigation the next season is available for

storage. It further provides for efficient administration by defining an appropriate flow for domestic and stockwater uses without requiring a continual review and revision of the flow released from the dam, as would be required if the release were adjusted to meet changing demands for beneficial use and futile call issues associated with the sink areas downstream from the dam.

General Provision 3 - "Rotation Into Storage." This general provision describes the diversion into storage under water rights for natural flow. In Basin 34, rotation into storage consists of allowing the holder of a natural flow water right to cease diverting and using all or part of the water right for direct irrigation purposes and instead, receive a storage credit in Mackay Reservoir for the volume of water that is not diverted under the right for direct irrigation uses. The water credited to storage can then be released and used at the request of the water right holder for use on the land to which the natural flow water right is appurtenant.

This is different from the common practice of rotating individually held water rights among water users on a lateral or canal. The latter type of rotation provides for the distribution of irrigation water between water users. Rotation generally occurs when the water users divert the available water supply from a common source pool. For a certain number of hours or days, the water users in a rotation agreement shut off their use while another user in the rotation beneficially uses all the water pooled in the agreement. Each user receives a larger head of water with which to irrigate their respective lands. Rotation allows a single water user to irrigate more efficiently using a larger head of water for a shorter period of time. The practice of pooling water between water users, while different from the practice in the Big Lost River valley of rotating water into storage, commonly referred to as "rotation credits," has a similar effect of conserving water and encouraging the maximum benefit from the water.

Rotation into storage in Mackay Reservoir allows BLIRD to manage water supplies as if it owns both the natural flow and stored water by delivering water to an individual irrigator and accounting for the total delivery to the irrigator. Under this procedure, the watermaster determines the natural flow available under the priority of each individual water right at the river headgate. BLRID then accounts for the water available to each irrigator using a credit and debit system. Credits are accumulated based upon the irrigator's share of the water stored in Mackay Reservoir under the BLRID rights and from natural flow available under the individual irrigator's water rights. Debits are charged as the accumulated water is subsequently released from storage and diverted by the water user.

The general provision governing rotation into storage is necessary to define water rights by recognizing the long-standing, historical reliance by water right holders on the "plan of operations." The BLRID and Water District 34 have developed and implemented procedures to efficiently account for delivery of natural flow and stored water under this historical reliance on the "plan of operations." The general provision is also necessary for efficient administration because (1) the ownership pattern of water rights, water diversions and delivery facilities, and (2) the role of the BLRID, are unique.

The irrigators own the natural flow water rights appurtenant to their lands. The BLRID owns and controls the water stored in Mackay Reservoir under the rights claimed by the BLRID and has a duty to deliver these waters to its members. The BLRID also owns, controls, and maintains the diversion and distribution system used by the irrigators. To determine the rate of diversion and use of only natural flow by an individual water user, the Water District 34 watermaster would have to go beyond his statutory authority by traveling down the canal or lateral to measure the rate of diversion at the irrigator's turnout from the BLRID canal.

IDWR has extensively reviewed BLRID's historical reliance on the "plan of operations" in implementing rotation into storage, which has been utilized in Basin 34 for more than 60 years. If rotation into storage is not continued, IDWR, Water District 34, BLRID, and the water right holders will have to attempt to develop and implement new procedures that may not be as well adapted to efficient water use as those that have been relied upon for the past 60 years. The process of developing and implementing new procedures would not likely be completed without significant controversy and disruption.

General Provision 4 - "Back Channel." This general provision provides for both the definition of water rights and the efficient administration of the rights by setting forth flows to be provided in the Back Channel. The general provision provides for efficient administration of the water rights diverted from the Back Channel and the mainstem of the Big Lost River by defining the rate of flow to be maintained in the Back Channel. Because of the large delivery loss rates experienced in both channels and the rapid changes in river flows, it is not practical or efficient to require the watermaster to precisely match the flow in the Back Channel to the amount of water needed to satisfy rights calling for water. Such administration would require continuous trial-and-error adjustment of diversions from both channels, and would not necessarily improve the accuracy of water distribution. The recommended general provision provides for efficient administration while recognizing that both the mainstem of the Big Lost River and the Back Channel are tributary, directly or indirectly, to Mackay Reservoir. Sub-items (a) through (d) parallel provisions specified in the UC Decree in a manner that can be efficiently administered by IDWR through the watermaster.

General Provision 5 - "Separate Streams." A general provision of this form has been recommended by IDWR for all basins in the SRBA. This general provision serves to identify water rights that have been administered separately from other surface water rights in Basin 34. This provision is necessary for the efficient administration by continuing the delineation of the streams and associated water rights to be administered separately, consistent with the provisions of the UC Decree. The general provision is necessary to define the source of water for the water rights to be administered separately and the legal relationship of that source to the rest of the basin. It provides for efficient administration of the water rights by allowing water rights from the sources administered separately to be exercised without having to demonstrate that a call from the holder of a senior priority water right is futile.

General Provision 6 - “Howell Gage-Connected/Non-Connected River.”

General provision 6 is necessary for efficient administration of the water rights in the basin by clarifying how a provision from the UC Decree is to be implemented. This general provision describes separate administration upstream from Mackay Reservoir depending on the flow of the river at the Howell Gage. It provides for efficient administration of the water rights by defining whether the flow conditions constitute a futile call, thereby making it unnecessary for the watermaster to make a determination on a trial-and-error basis each time a delivery call is made.

One hydrologic characteristic of the Big Lost River Basin is that the peak runoff (highest river flow) usually occurs in late spring or early summer, well after the beginning of the irrigation season. The river is typically hydraulically disconnected at the beginning of the irrigation season, then connected for a period of time near the middle of the irrigation season, and then disconnected again for the balance of the irrigation season. This general provision provides a methodology that IDWR and the watermaster can use for the efficient administration of water rights in the Big Lost River basin in lieu of attempting to determine whether a particular call for delivery to a water right is futile. Such determinations would be inefficient for administration purposes. See also the response to Subsection II. i.

h. “Specify Whether the Efficient Administration of Water Rights Includes IDWR’s Statutory Duty to Protect Senior Rights and Encourages the Full and Optimum Use of the Water Resource.”

As recognized by the Supreme Court of Idaho the policy of the state is to secure “the maximum use and benefit of its water resources.” *Nettleton*, 98 Idaho at 91, 558 P.2d at 1052. Idaho Code § 42-1412(6) provides for general provisions to be included in the decree provided that such provisions are “necessary for the definition of the rights or for the efficient administration of the water rights.” Thus, securing the maximum use and benefit of the water through efficiency and priority of right is required when recommending general provisions. Through its recommendations for general provisions in Basin 34, IDWR has provided for the maximum use and benefit of the water resources of the Big Lost River basin while protecting the priority of water rights in accordance with the long-standing provisions of the UC Decree.

i. “Specify How the General Provision Will Affect the Distribution of Effected Water Rights.”

General Provision 1 - “Definitions.” General provisions 1a and 1b define the locations of two gaging stations essential for determining the availability of water for delivery to water rights from the Big Lost River. General provision 1c defines what constitutes a “full” reservoir behind Mackay Dam at the time of commencement of the SRBA. This is necessary for IDWR and the watermaster to determine whether water that has been rotated into storage under general provision 3e should be treated as storage water of the BLRID. General provision 1d is necessary to define the location and nature of the Back Channel of the river, which separates from the mainstem of the

Big Lost River, and is used for the delivery of some of the water rights. General provision 1e defines the boundaries of Administrative Basin 34 for IDWR and the watermaster. General provision 1f defines the water rights that the watermaster is to deliver. Since IDWR and the watermaster for Water District 34 are charged with the administration and distribution of the water rights in Basin 34, these general provisions are necessary for clarity and efficient administration of the water.

General Provision 2 - “2-B Gage and Stockwater during Non-Irrigation Season.” This general provision defines the BLRID’s storage rights, water right numbers 34-00012 and 34-10873, in relation to non-irrigation season calls. Many water rights with priority dates senior to BLRID’s water rights were recommended for domestic and stockwater uses having periods of use that extend beyond the normal end of the irrigation season or begin before the normal start of the irrigation season. IDWR and the watermaster need this general provision to administer water rights during these time periods.

Long-standing, historical reliance on the provisions of the UC Decree has limited releases needed to satisfy water rights senior to BLRID’s junior storage rights to increase storage in Mackay Reservoir. This general provision provides for a minimum release of water at the rate of 50 cfs as measured at the 2-B Gage. The release of 50 cfs is used to satisfy the senior water rights for domestic and stockwater uses that are diverted below the 2-B Gage during the non-irrigation season. This general provision also results in providing water for recharge of ground water down gradient from Mackay Reservoir and water to maintain fish habitat below Mackay Dam. The general provision is needed to maintain historical distribution to water rights under the UC Decree.

General Provision 3 - “Rotation Into Storage.” This general provision defines the conditions that must be met in order for a right to be rotated into storage. The general provision allows the holder of a natural flow water right to exercise flexibility in delivery, through temporary storage of water in Mackay Reservoir, to increase the efficiency of use of water. The larger rates of flow taken for shorter time periods increase delivery and application efficiencies. This can have the effect of reducing the water available to the holders of junior water rights that would otherwise divert and use the water, if the earlier priority rights were not using the water. However, without rotation into storage, the holder of the senior priority water right would need to divert continuously, so it is not certain that more water would be available for junior priority water rights.

Rotation into storage has been occurring under "plan of operations" recognized by the District Court since 1936. While the use of water under rotation into storage may at times potentially reduce the water available to junior priority rights, the effect may not constitute legal injury. See also subsection II. g.

General Provision 4 - “Back Channel.” This general provision sets a limit on the amount of water to be maintained in the Back Channel for the delivery of water to rights with points of diversion from the Back Channel. The water rights affected by this

general provision are primarily those water rights with points of diversion on the Back Channel and those water rights with points of diversion on the mainstem of the Big Lost River between the point where the Back Channel separates from the mainstem and Mackay Reservoir.

The Back Channel is the smaller of the two channels, and the amounts and conditions described in this general provision are the same amounts and conditions described in the UC Decree. The prescribed flow in the Back Channel is necessary to allow for the diversion of water rights from the Back Channel. Without these flows, numerous diversions would have to be constructed in the Back Channel to maintain sufficient head at individual diversions. The general provision also requires diverters of water rights from the Back Channel to construct a facility to measure the flow of water in the Back Channel, suitable to IDWR. Under the general provision, holders of water rights from the Back Channel could not divert any flow from the Back Channel in excess of water rights having deliverable priority dates.

General Provision 5 - "Separate Streams." This general provision allows for the separate administration of rights from certain sources considered to be separate sources. Without this general provision, the holders of water rights from the sources deemed to be separate under the provisions of the UC Decree would have to demonstrate a delivery call is futile each time a call from a senior water right holder was placed on the river system. Without treating such tributary streams as separate sources, the delivery of water would be based on the availability of water in the overall system at an isolated point in time rather than on the availability of water in particular tributary streams. The sources that are identified in this recommended general provision for separate administration are the same sources set forth in the UC Decree as streams that are to be administered separately. Pursuant to current USGS maps, Beda Creek is now known and referred to in the general provisions as Bady Creek, and Vance Creek is now known and referred to as Elkhorn Creek. Also, three streams (Hamilton Creek, Corral Creek, and Pete Creek) listed as separate sources in the UC Decree are not identified in IDWR's recommend general provision because the water rights from these sources that were decreed in the UC Decree were either recommended in the SRBA as disallowed or with a change in source because of accomplished transfer. Because the streams identified as separate sources rarely reach the Big Lost River as surface flow except during flood conditions, the water available for earlier priority rights diverting from the Big Lost River is not significantly affected.

General Provision 6 - "Howell Gage-Connected/Non-Connected River." General provision 6 defines the conditions that must exist for the surface water rights diverted upstream from Mackay Reservoir to be considered separate for the purpose of administration from the rights diverted at Mackay Dam and points downstream from Mackay Reservoir. The water rights that are diverted from sources identified as "separate streams" are not subject to this general provision. Without this general provision, there would have to be a determination of whether a particular delivery call is futile each time a call is placed on the river system. In most instances, the

determination of whether a call is futile or not would require shutting off junior appropriator(s) and waiting for a sufficient amount of time to pass (usually several days) to see if a sufficient amount of water becomes available at the senior appropriator's point of diversion. A sufficient amount of water means a flow rate that can be diverted and put to beneficial use by the senior appropriator. Because of the nature of the Big Lost River Basin, there are many areas commonly referred to as sinks, where attempts to convey water results in losses that can be several orders of magnitude greater than the quantity of water sought to be delivered. The process of determining whether a particular delivery call is futile would be inefficient and could waste water that would otherwise be available to the junior water right holder. The result is the junior appropriator(s) would be deprived of water, which could have been beneficially used. The general provision recommended by IDWR would provide certainty of administration for all holders of water rights in the basin.

j. "Specify Why IDWR Chose the Particular Wording that was Used for Describing the General Provision."

IDWR spent several years investigating Basin 34 issues. During this time period, IDWR met with water users in Basin 34 to confirm reliance on the UC Decree and the "plan of operations" confirmed in the 1936 Order for the administration of water rights in the basin. In preparation for the 1999 Supplemental Director's report, IDWR conducted two public information meetings, one on March 31, 1999, and another on April 22, 1999, to discuss water administration issues and receive input from water users and the public.

The particular wording for the recommended general provisions was adopted in response to suggestions by water users in Basin 34 to facilitate resolution of various concerns. The particular wording adopted for the general provisions as recommended was also developed based on the provisions in the UC Decree and the "plan of operations."

IDWR intends that the general provisions decreed by the SRBA District Court will provide clear and unambiguous language for water administration in Basin 34 by IDWR and the watermaster and clearly define the water rights in the basin.

III. OPTIONAL RESPONSES

In the January 27th Order, the SRBA District Court outlined several issues to which IDWR has the option to respond. Although much has been discussed in Sections I and II above, IDWR has chosen to provide answers to the optional issues as set forth below. Because of the wording of the optional questions, the answers may include additional detail not previously discussed. It is IDWR's intent that the answers below be incorporated into the applicable answers above.

- a. **For Each of the Subject Proposed General Provisions, a Statement of the Legal and Factual History Pertaining to Why the Provision is Necessary.”**

See Subsections II. g and i above and Subsections III. b and c below.

- b. **“A Discussion of Why Administration Cannot Occur According to Law if the Subject Proposed General Provision is not Included in a Final Decree in the SRBA.”**

This misstates the legal effect of administration of water with respect to general provisions. General provisions can be included if they provide for the efficient administration of water rights or are needed to define water rights. A general provision does not have to make administration possible, just efficient.

General Provision No. 1 – “Definitions.” General provisions 1a and 1b define the points at which flows in the Big Lost River are to be measured. Because the river gains or loses water in its various reaches, the apparent amount of water for distribution is dependent upon the location of the measurement. If these points are not defined, measurement of flows could be contentious, with the water users seeking to influence the location of the measurement to their particular advantage. Therefore, without a definitive location for these measurements, administration of the water rights would likely become inconsistent over time.

General provision 1c defines the full level of Mackay Reservoir at the time of commencement of the SRBA. This provides a means for preventing the artificial manipulation of the spillway level, thereby providing certainty to the holder of the storage right and to the holders of the rights that could be affected by a change in storage.

General provision 1d defines the location where the Back Channel separates from the mainstem of the Big Lost River. Because of the tendency for braided river channels to meander over time, this general provision clarifies the location of the Back Channel as it existed at the time the water rights were determined in the SRBA.

General provisions 1e and 1f define and clarify the jurisdiction of IDWR and the watermaster, and define those water rights subject to administration under the general provisions. Without these general provisions, there would be opportunities to delay and disrupt administration of water rights, thereby affecting the efficient distribution of water to those having the legal right to use it.

General Provision 2 - “2-B Gage and Stockwater during Non-Irrigation Season.” This general provision protects the BLRID’s right to store water during the non-irrigation season, as well as provides for a supply of water in the Big Lost River below the 2-B Gage for domestic and stockwater purposes during the non-irrigation season. Without this general provision, there would likely be continual disagreement

regarding the amount of water that could be beneficially used for those domestic and stockwater rights, thus impacting releases for wintertime use from Mackay Reservoir. See also Subsections II. g and i above.

General Provision 3 - “Rotation into Storage.” This general provision allows for storing a natural flow water right in Mackay Reservoir when it is not being delivered to a water right holder.

General Provision 4 - “Back Channel.” This general provision defines the flow of water to be maintained in the Back Channel. The Back Channel conveys water to several points of diversion at which insufficient flows would be likely without this general provision. Normal distribution of water often includes the ability of a water right holder to direct water in excess of the water right into a channel so that a sufficient quantity and head is available at the point of diversion. This general provision defines how water flow is to be regulated between the location where the Back Channel separates from the mainstem of the Big Lost River and Mackay Reservoir. General provision 4 is necessary for the efficient administration of the water rights, because without this general provision, disagreement over the amount of flow that should be maintained in the Back Channel would likely occur.

General Provision 5 - “Separate Streams.” General provision 5 provides for some streams to be administered separately from the rest of the Big Lost River basin. Without this general provision, the holders of water rights from the streams that have been identified for separate administration since the UC Decree was entered would bear the burden of proving that a delivery call against their water rights is futile every time a delivery call is made anywhere within the Big Lost River basin. Administration without this provision would not be timely for the water right holders and would be inefficient.

General Provision 6 - “Howell Gage-Connected/Non-Connected River.” General provision 6 defines the conditions that must exist for the surface water rights diverted upstream from Mackay Reservoir to be administered separately from the surface water rights diverted at Mackay Dam and points downstream from Mackay Reservoir. Without this general provision, the holders of water rights diverted upstream from Mackay Reservoir would bear the burden of proving that a call on their water rights is futile every time there is a call by holders of water rights anywhere downstream on the Big Lost River. Administration without this provision would not be timely for the water users and would be inefficient.

c. “A Discussion of Whether, and to What Extent, Any of the Subject Proposed General Provisions are Based on Historical Customs and Practices in Basin 34.”

General Provision No. 1 – “Definitions.” As previously described, general provisions 1a and 1b are historical locations identified in the UC Decree and relied upon since 1923. These locations appear to be unchanged from where they were when the

decree was entered. These locations are the same measuring points used historically to determine the available natural flow to fill the water rights from the Big Lost River system, as well as the conditions that allow for the separate administration of the water rights on the Big Lost River system above Mackay Reservoir. General provision 1c is based on the physical configuration for Mackay Reservoir at the commencement of the SRBA. General provision 1d is the historical location identified in the UC Decree where the Back Channel separates from the mainstem of the Big Lost River. This location is believed to be unchanged from the location identified in the UC Decree when the decree was entered. General provision 1e is a designation that has been used in IDWR administrative orders for more than 30 years and defines the area known as the Big Lost River Basin. General provision 1f clarifies those water rights decreed in the SRBA and replaces archaic terms commonly used in the Big Lost River Basin. Water rights within the basin are currently referred to as “decreed rights, storage rights, permitted rights, licensed rights or grandfather rights.”

General Provision 2 - “2-B Gage and Stockwater during Non-Irrigation Season.” As previously described, this general provision continues the historical reliance on provisions in the UC Decree that allow for filling the reservoir during the non-irrigation season. The UC Decree also specifies the release of water from Mackay Reservoir at the minimum rate of 50 cfs as measured at the 2-B Gage. IDWR recommends adding the clarification that wintertime domestic and stockwater rights can be diverted from the 50 cfs flow downstream from the 2-B Gage. This clarification is in accord with historical practice as described by local water users and watermaster records. It is necessary to avoid argument over whether the 50 cfs must be left undiverted to provide fish habitat and recharge to ground water tapped by domestic wells below Mackay.

General Provision 3 - “Rotation into Storage.” As previously described, general provision 3 defines rotating natural flow rights into storage in Mackay Reservoir for use at a later time. Rotation into storage can occur when there is sufficient water in the system to allow diversion of the water right, but the water right is not diverted and used at the time and at the described place of use of the right. Rotation into storage has historically occurred in reliance on the 1936 Order “plan for operation” adopted by the BLIRD when BLIRD purchased Mackay Dam and Reservoir from the Utah Construction Company. Additional language recommended by IDWR to assure that use of water under the natural flow right is not enlarged, thereby injuring other water rights.

General Provision 4 - “Back Channel.” As previously described, general provision 4 defines the regulation of flow in the Back Channel. This general provision is based on historical reliance on a provision in the UC Decree. IDWR has recommended the provision to provide flexibility of where water is to be measured. See also Subsection III. b above.

General Provision 5 - “Separate Streams.” As previously described, this general provision defines the streams that were identified for separate administration in the UC Decree.

General Provision 6 - “Howell Gage-Connected/Non-Connected River.” As previously described, general provision 6 defines the conditions that must exist in order for the water rights diverted above Mackay Reservoir to be considered separate for the purposes of administration from the water rights diverted at Mackay Dam and points downstream from Mackay Dam. This provision was set forth in the UC Decree, with the exception of language recommended by IDWR to clarify the meaning of “rising stage of the Big Lost River” and “falling stage of the river.” The addition of the phrase “at any time for three consecutive days” ensures a rising stage or falling stage of the river is actually occurring. Historically, there have been abnormal climatic events that have resulted in an instantaneous reading of 750 cfs at the Howell Gage when a hydrologic connection of the surface water above the reservoir with the reservoir did not occur.

d. “Statement of the Law Under Which IDWR Believes the Court has Authority to Decree Any Proposed Provisions Based on Such Historical Customs and Practices.”

Idaho Code § 42-1412(6) provides in part that “[t]he decree shall also contain an express statement that the partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights.” In 1995, the Idaho Supreme Court held that, “it is within the constitutional authority of the Court to include in its decrees ‘such general provisions necessary for the definition of the rights or for the efficient administration of the water rights.’” *Higginson v. United States*, 128 Idaho 246, 262, 912 P.2d 614 630 (1995) quoting I.C. § 42-1412(6) (1994).

Three years later, the Court more specifically addressed when it is appropriate to include a general provision in a decree. In *State v. Nelson*, 131 Idaho 12, 15, 951 P.2d 943, 946 (1998), the Court stated, “[a] general provision is to be included in a decree if it is necessary to define or efficiently administer water rights.” In another case decided that same year, the Court explained that:

[A] general provision should be included in a water right decree if such general provision is “necessary” to define or efficiently administer water rights. Whether a general provision is “necessary” depends upon the specific general provision at issue and involves a question of fact, (defining the proposed general provision and the circumstances of its application), and a question of law, (determining whether the general provision facilitates the definition or efficient administration of water rights in a decree).

A & B Irrigation, 131 Idaho at 414, 958 P.2d at 571 (1998).

The legislature specifically found that “it is in the public interest to provide a mechanism to decree previously undefined elements of existing water rights based upon conditions existing on the date of commencement of the adjudication provided the claimant is not exceeding any previously determined and recorded element of the

decreed or licensed water right.” I.C. § 42-1427(1)(b). In evaluating whether the general provisions recommended by IDWR are appropriate, the effect that the general provisions will have on the future administration of water rights must be considered. Hence, historical reliance on prior decrees and orders must be taken into account when defining existing water rights, especially when most of a river basin’s water distribution system would be rendered void if such decrees and orders are not considered.

When recommending the general provisions in Basin 34, IDWR based its recommendations primarily on findings and conclusions issued in the UC Decree and the “plan of operations.” In the 1936 Order, District Court held that “the basic rules and regulations governing the use and distribution of water upon lands within said district, whereby the apportionment and distribution of benefits were had and made upon the lands in said district...were just and equitable, and were regularly and legally done....” *In The Matter of the Big Lost River Irrigation District, Judgment and Decree*, § IX (6th Jud. Dist. 1936). IDWR understands that the concept of “rotation into storage” was part of the BLRID’s “rules and regulations” and “plan of operation” referred to in the 1936 Order and attachments thereto. Also, because the rotation into storage practice has gone unchallenged for the past several decades, and entities have invested time, money, and other resources in reliance upon the continuation of the practice, IDWR believes that its recommended general provisions must respect such historical reliance.

Hence, to meet its charge to efficiently administer water rights, IDWR recommends that the water in Basin 34 be distributed in much the same manner as provided by the UC Decree and the “plan of operations.”

e. “Any Additional, Pertinent Information IDWR May Have Concerning the Propriety of Alternative Provisions Proposed by Parties or Otherwise Identified by IDWR.”

The recommendation for the season of use currently states “at the discretion of the watermaster.” A water right holder objected to this particular wording. The objector seeks to change the wording to “at the discretion of the director.” IDWR concurs with this requested change and proposes that the recommended season of use substitute the word “Director” for “watermaster.”

The following water rights were left off the list of water rights under general provision No. 6 (“Howell Gage, Connected/Non-Connected River”). These water rights should be added to Attachment “B” under the source “Warm Springs Creek.”

- 34-00870
- 34-00871
- 34-00963
- 34-10919
- 34-13564

IV. CONCLUSION

IDWR recommends that the SRBA District Court adopt the general provisions proposed on June 24, 1999 in its *Supplemental Director's Report, Reporting Area 1, IDWR Basin 34, Regarding Revisions of the Following: Period of Use (For Irrigation Water Uses), Conjunctive Management General Provisions* ("Supplemental Director's Report").

For pages 20, 21 and 22, see Figures 1, 2 and 3 in the attached file.

VI. REFERENCES

All documents (except as noted) are available at the IDWR Internet site at <http://www.idwr.state.id.us/info/water/srba/bw5-34/main.htm>

- (1923) Final Decree and Amendments in the case of *Utah Construction Co. v. Abbott*, Equity No. 222, (D.E. Id. 1923)
(Only pages 1-22 available on the Internet site)
- (1935) Minutes of the Big Lost River Irrigation District dated April 1, 1935 incorporating the Proposed Plan of Operations for the Big Lost River Irrigation District, prepared on March 30, 1935 by J. Ray Weber, Big Lost River Irrigation District Engineer.
- (1936) Findings of Fact and Conclusions of Law, *In the Matter of the Big Lost River Irrigation Dist.* (Idaho 6th Jud. Dist. 1936).
- (1936) Judgment and Decree, *In the Matter of the Big Lost River Irrigation Dist.* (Idaho 6th Jud. Dist. 1936).
- (1937) By-laws of Big Lost River Irrigation District dated 27, 1937 signed by JT. Quist, Roy C. Pearson, and Charles Warren.
- (1958) Order, *Utah Construction Co. vs. Abbott*, (D.E. Id. June 16, 1958).
- (1970) *WATER RESOURCES IN THE BIG LOST RIVER BASIN, SOUTH CENTRAL, IDAHO* by E.G. Crosthwaite, C.A. Thomas, and K.L. Dyer. US Dept. of Interior Geological Survey, Water Resources Division. (Only pages 1-12 available on the Internet site)
- (1970) *CONSIDERATIONS FOR WATER USE AND MANAGEMENT IN THE BIG LOST RIVER BASIN, IDAHO; A SUPPLEMENTAL REPORT* by E.G. Crosthwaite, C.A. Thomas, and K.L. Dyer. US Dept. of Interior Geological Survey, Water Resources Division.
- (1990) Final Order, In the Matter of the Administration of the Use of the Surface and Ground Waters of the Big Lost River Basin, Water District 34, issued by Idaho Dept. of Water Resources on August 7, 1990.
- (1991) *GROUND-WATER PUMPING IMPACTS ON SURFACE WATER IRRIGATION DIVERSIONS FROM BIG LOST RIVER* by Gary S. Johnson, Dale R. Ralston, and Leland L. Mink, dated December, 1991. Prepared by Idaho Water Resources Research Institute, University of Idaho, Moscow, Idaho. (Only pages 1-54 available on the Internet site)

- (1992) IDWR DIRECTOR'S REPORT PART 1 FOR BASIN 34 GENERAL PROVISIONS dated May 27, 1992.
- (1994) IDWR DISTRIBUTION RULES - WATER DISTRICT 34 (10-26-94)
- (1995) IDWR AMENDED DIRECTOR'S REPORT PART 1 FOR REPORTING AREA 1 (BASIN 34) prepared December 15, 1995.
- (1996) BRIEF IN OPPOSITION TO GENERAL PROVISIONS (Case No. 91-00005B), filed by G. David Nelson and San Felipe Ranches.
- (1998) Idaho Supreme Court Opinion No. 42, A&B Irrigation District vs. Idaho Conservation League. (A& B Irrigation District v. Idaho Conservation League, 131 Idaho 411 (1998))
(Scanned from Idaho Supreme Court Report)
- (1999) March 31, 1999 Public Meeting in Arco, Idaho regarding Season of Use and Conjunctive Management Recommendations in Basin 34; Meeting notice, presentation slides, and attendance sheet.
- (1999) Comment letters received on IDWR's proposed General Provisions for Basin 34 submitted after the March meeting from:
- Don A. Aikele (4/12/99)
 - Lawrence R. Babcock, Chairman (4/6/99)
Big Lost River Water Users Association
 - Alvin W. Crawford (4/15/99)
 - Dick & Lorraine Kerruish (4/16/99)
- (1999) April 22, 1999 Public Meeting in Mackay, Idaho regarding Season of Use and Conjunctive Management Recommendations in Basin 34; Meeting notice, presentation slides, and attendance sheet.
- (1999) April 28, 1999 Letter from Lawrence Babcock providing 1937 and 1958 Documents supporting Big Lost River Irrigation District Plan of Operation.
- (1999) Notice of Filing Supplemental Reports for Reporting Area 1 (IDWR Basin 34) dated June 23, 1999. Regarding Revision of the Following:
- Period of Use (For Irrigation Water Uses)
 - Conjunctive Management General Provisions
- (2000) ORDER REQUIRING SUPPLEMENTAL REPORT ("706 REPORT") FROM IDWR ON CERTAIN ISSUES IN BASIN-WIDE ISSUES 5-34; I.R.E. 703, 705, 706, I.C. § 42-1412(4) dated January 27, 2000.

The director recommends that the following general provisions be included in the decree determining rights to water from Basin 34.

1. The following definitions apply to these provisions:
 - a. The "Howell gage" is a stream gaging station on the Big Lost River located upstream from Mackay Reservoir in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 30, Township 8 North, Range 21 East, B.M.
 - b. The "2-B gage" is a stream gaging station on the Big Lost River located downstream from Mackay Dam in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 18, Township 7 North, Range 24 East, B.M.
 - c. Mackay Reservoir is "full" when the water surface elevation of the reservoir is at the spillway crest as it was configured on November 19, 1987.
 - d. The "Back Channel" separates from the main channel of the Big Lost River in the NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 5, Township 8 North, Range 22 East, B.M.
 - e. "Basin 34" refers to IDWR Administrative Basin 34 as it is described in the Amended Director's Report Part 1 for Reporting Area 1 (Basin 34) dated December 15, 1995.
 - f. As used in these provisions the term "water rights" refers to water rights as decreed in the case In Re SRBA, Fifth Judicial District Court Case No. 39576.
2. During the time period from November 1 of each year to the beginning of the subsequent irrigation season (the "non-irrigation period"), all or a portion of the water of the Big Lost River flowing into Mackay Reservoir may be diverted for storage under water right nos. 34-00012 and 34-10873 so long as the natural flow in the Big Lost River at the 2-B gage is not less than fifty cubic feet per second. During the non-irrigation period, all other rights to the water of the Big Lost River are subordinate to right nos. 34-00012 and 34-10873, except that natural flow downstream of Mackay Dam not needed to maintain a natural flow of not less than fifty cubic feet per second at the 2-B gage may be diverted for domestic uses and livestock watering under water rights authorized for these purposes during the non-irrigation period.
3. Water rights from the Big Lost River diverted below Mackay Dam and Reservoir may be rotated into storage with the consent of the Big Lost River Irrigation District when such practice improves the efficiency of water use.

Such rotation is subject to the following conditions and review and approval by the Director of the Idaho Department of Water Resources.

- a. Water may only be rotated into storage if it will be beneficially used at the place of use under the water right during the year in which it is stored.
 - b. Rotation into storage cannot occur prior to the reasonable need for irrigation water.
 - c. Rotation into storage can only occur when the water is otherwise deliverable to the place of use under the water right.
 - d. The diversion rate of water rights being rotated into storage shall be included in the calculation of total combined diversion rate limitations.
 - e. If the reservoir fills after water has been rotated into storage, all water in the reservoir at the time it fills becomes storage water of the Big Lost River Irrigation District.
 - f. Any water stored under such rotation that is not used in the same irrigation season in which it is stored shall become storage water of the Big Lost River Irrigation District at the end of the irrigation season.
4. Holders of water rights with points of diversion on the Back Channel shall control the flow of water into the Back Channel as follows:
- a. When the flow of water at the Howell gage is less than 1,400 cubic feet per second, the flow in the Back Channel shall be kept as near as practicable to 150 cubic feet per second.
 - b. When the flow of water at the Howell gage equals or exceeds 1,400 cubic feet per second, the flow in the Back Channel shall be kept as near as practicable to 200 cubic feet per second unless all surface water rights, including water rights with a junior priority, are satisfied.
 - c. The Director of the Idaho Department of Water Resources shall identify a measuring location on the Back Channel where the holders of water rights from the Back Channel shall construct the necessary facilities to measure the flow in the Back Channel to comply with these conditions.

- d. These provisions shall not be considered to enlarge the amount of water to which appropriators diverting from the Back Channel are entitled.
5. The following surface water rights from the following sources of water in Basin 34 shall be administered separately from all other surface water rights in Basin 34:

SEE ATTACHMENT A

6. The following surface water rights from the Big Lost River and its tributaries upstream of Mackay Reservoir shall be administered separately from all other non-storage, surface water rights from the Big Lost River downstream of Mackay Reservoir during two periods of time as follows:
 - a. From the beginning of the irrigation season until the time on the rising stage of the Big Lost River when the maximum flow at the Howell gage reaches at least 750 cubic feet per second at any time for three consecutive days; and
 - b. After the time on the falling stage of the Big Lost River when the minimum flow recedes to no more than 300 cubic feet per second at any time for three consecutive days until the end of the irrigation season.

SEE ATTACHMENT B

7. All water rights within Basin 34 are from connected sources of water in the Snake River Basin and shall be administered conjunctively.

ATTACHMENT A

WATER SOURCE: BADY CREEK

34-00002
34-02508
34-13565

WATER SOURCE: CEDAR CREEK

34-00834
34-00835
34-00839
34-02303

WATER SOURCE: ELKHORN CREEK

34-00766

WATER SOURCE: GRANT CREEK

34-00769
34-02245

WATER SOURCE: LEHMAN CREEK

34-00472
34-04068

WATER SOURCE: LOWER CEDAR CREEK

34-00146
34-00153
34-00175
34-00543
34-00582
34-00585
34-00586
34-00808
34-00884
34-00885
34-00886
34-10434
34-10435

WATER SOURCE: PINTO CREEK

34-00341

WATER SOURCE: ROCK CREEK

34-00057

34-00058
34-00836
34-04039
34-10585

WATER SOURCE: ROCK SPRINGS CREEK

34-00352

WATER SOURCE: SAGE CREEK

34-00334
34-00335
34-00336

WATER SOURCE: UPPER CEDAR CREEK

34-10538
34-12399

WATER SOURCE: WILLOW CREEK

34-00057
34-00058

ATTACHMENT B

Big Lost River and Tributaries Above Mackay Dam

WATER SOURCE: BARTLETT CREEK

34-00056

WATER SOURCE: BIG LOST RIVER

34-00004	34-00220	34-00561	34-00760
34-00024	34-00221	34-00562	34-00764
34-00025	34-00222	34-00563	34-00767
34-00026	34-00252	34-00566	34-00768A
34-00030	34-00290A	34-00567	34-00768B
34-00048	34-00290B	34-00568	34-00770
34-00054	34-00291A	34-00573A	34-00771
34-00055A	34-00291B	34-00573B	34-00772
34-00055B	34-00292A	34-00583B	34-00774
34-00084A	34-00292B	34-00583C	34-00775
34-00084B	34-00293A	34-00584D	34-00805
34-00097	34-00293B	34-00584F	34-00859A
34-00099	34-00294A	34-00626B	34-00860A
34-00103	34-00294B	34-00627B	34-00867
34-00125A	34-00297A	34-00628B	34-00868
34-00125B	34-00297B	34-00629B	34-10164
34-00139	34-00298A	34-00630B	34-10165
34-00145	34-00324A	34-00693	34-10166
34-00147B	34-00324B	34-00694	34-10227
34-00147C	34-00325A	34-00699A	34-10228
34-00147D	34-00338	34-00699B	34-10229
34-00148B	34-00339	34-00699C	34-10250
34-00148C	34-00340	34-00700A	34-10282
34-00148D	34-00344	34-00700C	34-10557
34-00151	34-00346	34-00701A	34-10558
34-00152	34-00347	34-00701C	34-10563
34-00154	34-00348	34-00702A	34-10567
34-00155	34-00349	34-00702B	34-10568
34-00156	34-00351	34-00702C	34-10587
34-00158	34-00363	34-00734	34-10619
34-00161A	34-00364	34-00735	34-10688
34-00162A	34-00421	34-00742	34-10920
34-00162B	34-00454	34-00743	34-13566
34-00208A	34-00455	34-00755	
34-00208B	34-00456	34-00757	
34-00211	34-00535	34-00758	

WATER SOURCE: BIG LOST RIVER, EAST FORK

34-00625

34-00662

WATER SOURCE: BIG LOST RIVER, NORTH FORK

34-00053A

34-00053B

34-00053C

34-00053D

34-00053E

34-13550

WATER SOURCE: BIG LOST RIVER AND PARSONS CREEK

34-00142

34-00564

34-00565

34-00611B

34-00612B

34-00613B

34-00626A

34-00627A

34-00628A

34-00629A

34-00630A

34-00773

34-10553

**WATER SOURCE: BIG LOST RIVER, PARSONS CREEK AND POLE
STACKYARD CREEK**

34-00812

34-00813

34-00815

34-00816

34-00867

WATER SOURCE: BOONE CREEK AND FOX CREEK

34-00529

WATER SOURCE: BRADSHAW SPRINGS

34-00128A

34-10620

WATER SOURCE: DEER CREEK

34-00624

WATER SOURCE: GARDEN CREEK

34-07010

WATER SOURCE: HAMILTON SPRINGS

34-00398

34-00399

34-07034

WATER SOURCE: HOWELL SPRING

34-00337

WATER SOURCE: LONE CEDAR CREEK

34-02144

WATER SOURCE: NAVARRE CREEK

34-00081

34-00820

34-00821

WATER SOURCE: NEWTON CREEK

34-07005

WATER SOURCE: PARSONS CREEK

34-00443
34-00444
34-00445
34-00611A
34-00612A
34-00613A
34-00801
34-00802

WATER SOURCE: PARSONS CREEK AND POLE STACKYARD CREEK

34-10801

WATER SOURCE: POISON SPRING

34-07124

WATER SOURCE: RIDER CREEK

34-04001

WATER SOURCE: SPRING

34-00337
34-04019
34-04137
34-07124
34-10168
34-10251

WATER SOURCE: SPRINGS

34-10635

WATER SOURCE: THOUSAND SPRINGS CREEK

34-04127
34-10167

WATER SOURCE: UNNAMED STREAM

34-04005A
34-04005B

WATER SOURCE: WARM SPRINGS CREEK

34-00123A
34-00123B
34-00124A
34-00124B
34-00236
34-00237
34-00251
34-00353
34-00420
34-00457
34-00458
34-00467
34-00468
34-00469
34-00470A
34-00471
34-00483A
34-00483B
34-00527
34-00528
34-00703A
34-00703B
34-00703C
34-00704A
34-00704B
34-00704C
34-00803
34-00861A
34-00861B
34-00869

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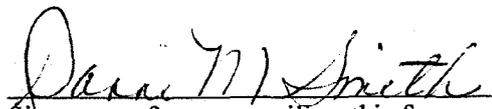
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Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

Clive Strong
Office of the Attorney General
P.O. Box 44449
Boise, ID 83711-4449
Attorney for the State of Idaho

U.S. Dept. of Justice
Environment & Natural Resources Division
General Litigation Section
550 West Fort Street, MSC 033
Boise, ID 83724

Certificate of Mailing for Basin-Wide Issue 5-34
(see attached mailing list)


Signature of person mailing this form

CERTIFICATE OF SERVICE

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DANA L HOFSTETTER
JOSEPHINE P BEEMAN
BEEMAN & HOFSTETTER PC
PO BOX 1427
BOISE ID 83701-1427

ROY E CRAWFORD
BROBECK PHLEGER & HARRISON
ONE MARKET
SAN FRANCISCO CA 94105

JEFFERY J VENTRELLA
SCOTT L CAMPBELL
ELAM & BURKE PA
PO BOX 1539
BOISE ID 83701

US DEPT OF JUSTICE
ENVIRON & NATL' RESOURCES
550 WEST FORT ST MSC 033
BOISE ID 83724

JEFFREY C FEREDAY
MICHAEL C CREAMER
GIVENS PURSLEY LLC
PO BOX 2720
BOISE ID 83701-2720

ALBERT P BARKER
RICHARD B BURLEIGH
HAWLEY TROXEL ENNIS
PO BOX 1617
BOISE ID 83701

WILLIAM R HOLLIFIELD
HOLLIFIELDS & BEVAN
PO BOX 66
TWIN FALLS ID 83303-0066

LAIRD LUCAS
LAND & WATER FUND
OF THE ROCKIES
PO BOX 1612
BOISE ID 83701

JASON MICIAC
ROLIG & PETERSON
PO BOX 2749
TWIN FALLS ID 83303-2749

CHIEF NATURAL RESOURCES
ATTORNEY GENERAL OFFICE
STATE OF IDAHO
PO BOX 4449
BOISE ID 83711-4449

ANGELA DAWN SCHAER
PO BOX 1539
BOISE ID 83701

FRANCIS L SMITH
PO BOX 359
MACKAY ID 83251

JAMES R BENNETTS
PO BOX 36
CHALLIS ID 83226

JOHN K BUTLER
PO BOX 366
TWIN FALLS ID 83303-0366

SETH BEAL
PO BOX 46B
MOORE ID 83255

MATEA & JOHN MCCRAY
3470 COBBLESTONE LN
IDAHO FALLS ID 83404

GREGORY W MOELLER
JERRY R RIGBY
RIGBY THATCHER ANDRUS
PO BOX 250
REXBURG ID 83440-0250

CHARLES L HONSINGER
DANIEL V STEENSON
RINGERT CLARK CHTD
PO BOX 2773
BOISE ID 83701-2773

JOHN A ROSHOLT
NORMAN M SEMANKO
ROSHOLT ROBERTSON & TUCKER
PO BOX 1906
TWIN FALLS ID 83303-1906

YOUNG HARVEY WALKER
RT 1 BOX 200
ARCO ID 83213

MITCHELL D SORENSEN
RT 1 BOX 63C-1
MOORE ID 83255

JAMES P SPECK
SPECK & AANESTAD
PO BOX 987
KETCHUM ID 83340

HERB WHITWORTH JR
WILEY F SMITH
STAR ROUTE
MACKAY ID 83251

PATRICK D BROWN
109 S ADAMS ST
JEROME ID 83338

DOUG ROSENKRANCE
WATERMASTER
RT 1 BOX 24
MACKAY ID 83251

G DAVID NELSON
5688 CHILLY RD
MACKAY ID 83251

LAWARENCE BABCOCK
RT 1 BOX 66
MOORE ID 83255

RON LYDET
PO BOX 521
MOUNTAIN HOME ID 83647

TERRY T UHLING ISB#2581
SHAWN DEL YSURSA ISB#5065
J R SIMPLOT COMPANY
PO BOX 27
BOISE ID 83707