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DEPARTMENT OF
WATER RESOURCES

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Attorneys for Nelson Mackay Ranch, LLC et al.

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

**IN THE MATTER OF ROTATION
CREDIT IN WATER DISTRICT 34,
BIG LOST RIVER BASIN**

**BRIEF AND EXCEPTIONS TO
PRELIMINARY ORDER
SUSPENDING ROTATION CREDIT
IN WATER DISTRICT 34**

COMES NOW the Protestants, Nelson Mackay Ranch, LLC, *et al.*, (See list of Water Right Holders attached as Exhibit 1), by and through its attorney, Fritz X. Haemmerle, of Haemmerle Law, P.L.L.C., and hereby files this Brief and Exceptions to the *Preliminary Order Suspending Rotation Credit in Water District 34*, issued by Deputy Director Matt Weaver, dated April 29, 2016 (hereinafter "*Order*").

SUMMARY

The *Order* is not consistent with the General Provisions Decreed for Basin 34 (hereinafter "General Provisions"). The Order inserts additional requirements, which are not mentioned or contained in the General Provisions. See, *Order on Basin-Wide Issue 5, Basin 34, Order on Partial Decree for General Provisions in Administrative Basin 34* ("*BWI 5 Order*"), dated May 9, 2001, attached hereto as Exhibit 2. As such, the

**BRIEF AND EXCEPTIONS TO PRELIMINARY ORDER SUSPENDING ROTATION
CREDIT IN WATER DISTRICT 34 - 1**

Department has exceeded its authority in creating a *de facto* amendment to the Snake River Basin Adjunction (“SRBA”) Decree and General Provisions Decreed for Basin 34. In many other cases, the Department has taken the position that the SRBA Decree is final and should be administered pursuant to the express provisions of the Decree.

This *Order* is contrary to the General Provisions Decreed for Basin 34 and effectively modifies the SRBA Decree regarding those General Provisions and, therefore, should be REVERSED.

SPECIFIC OBJECTIONS

1. Findings of Fact Nos. 1 and 2. The historical detail and date, particularly that data before 2001, is entirely irrelevant to the General Provisions, which were contained in the SRBA Decree, based on Judge Burdick’s *BWI 5 Order*. The rotation credits were decreed in the General Provisions and whatever facts existed before entry of that Order are irrelevant.

2. Findings of Fact No. 3. This finding describes the extent of groundwater pumping in Basin 34 for 2014 and 2015. The rotation credits contained in the General Provisions do not mention the extent of groundwater pumping as being significant to the viability of the General Provisions. Therefore, this finding is irrelevant.

3. Finding of Fact Nos. 6. This finding describes increased groundwater pumping as the reason for depletion of surface water flows in the Big Lost River (“River”). This finding is not relevant to the ability of Decreed water users to utilize rotation credits, as set forth in the General Provisions. Even if groundwater pumping is relevant, the Department can improve surface flows in the River by administering ground water diversions to increase surface water flows. Doubtless, the surface water flows have a better

priority date than the groundwater rights causing the depleted surface water flows in the River.

1. Finding of Fact No. 8. This finding inserts the requirement that “[r]otation credit must be pursuant to the Big Lost River Irrigation District’s approved plan and operation.” This provision is not expressly contained in the General Provisions, which sets forth the rotation credit to be given in Basin 34. The only requirements in the General Provision No. 3 are that the District: (1) consents to the plan; (2) that the practice improves the efficiency of water use; and (3) that the practice is “subject to” conditions a–g of General Provision 3. *BWI 5 Order*, Exh. A, p. 2. None of these provisions requires a “plan” as a condition of approval or rotation credits.¹ To the extent that Rule 40.22 requires a “plan,” that provision cannot be utilized to amend the General Provisions, which are contained in the SRBA Decree.

Furthermore, the findings in the *Order* indicating that there is no “plan” are erroneous. The *BWI 5 Order* states that the General Provisions were based on “plans” that existed in prior decrees and practices, and that such a “plan” of rotation credits has existed since at least since the *UC Decree* was decided in 1923. The findings supporting the *BWI 5 Order*, and resulting General Provisions for Basin 34, expressly acknowledged that there has always been a “plan” for rotation credits, and that “plan” was adopted in the General Provisions for Basin 34. The *BWI 5 Order* adopting the General Provisions reads:

4. In a prior decree, *Utah Construction Co. v. Abbott, Equity* No. 222 (D.E. 1923), the federal district court acknowledged the need for such provisions to

¹ The Department cites IDAPA 37.03.12.040.02(a-b), as citation for the need of the Big Lost Irrigation District to have a “plan of operation.” This Rule was adopted on October 26, 1994. The *BWI 5 Order* was signed on May 8, 2001. To the extent that the Department wanted a “plan of operation” to be included in the SRBA Decree, it should have included this requirement in its SRBA recommendations for the General Provisions in Basin 34. It did not make this recommendation and the requirements of a “plan of operation” was not included in the SRBA Decree. As such, the requirement of a “general plan” is null and void. The Department cannot superimpose its Rules over the requirements of the SRBA Decree.

provide for the administration of rights in the Big Lost River Basin in light of the attendant hydrologic complexity.

5. **The plan of operations** for the administration of water rights was also confirmed by an order of the State district court. See Findings of Fact and Conclusions of Law, *In the Matter of the Big Lost River Irrigation District* (Idaho Sixth District Judicial District, Custer County, Jan. 25, 1936.

6. **Since 1936 the water has been administered according to this confirmed plan. Water users subject to the administrative plan have relied on the same plan since its inception.**

7. The current recommended Provisions are based sustainably on the *UC Decree* and **the administrative plan confirmed in 1936**. Subsequent modifications to the wording as contained in the current recommendations were negotiated by the parties and confirmed with by IDWR.

8. Subsequent modifications to the recommendations were negotiated by the parties and concurred with by IDWR.

See, *BWI 5 Order*, Review, Finding and Conclusions, Findings 1 through 9, pgs. 4-5.

(Emphasis added).

2. Finding of Fact Nos. 9 through 12. These findings address “plans” which were adopted by the District. The Department cites these plans for their alleged lack of authority for rotation credits. These findings do not cite the *BWI 5 Order*, or all the prior Decrees cited in the *BWI 5 Order*. The *BWI 5 Order* expressly states that the rotation credits are based on a “plan” contained in prior decrees and practices, which plan was carried over into the SRBA Decree. The General Provisions constitute a “plan.” No other “plan” is contemplated in the *BWI 5 Order*. Therefore, whatever “plan” the District has, or does not have, is irrelevant.

3. Finding of Fact Nos. 13 through 18. These findings reflect that a certain amount of water is stored and remains unused at the end of the irrigation season. The *BWI 5 Order* contemplates that some water stored may be unused at the end of the irrigation

season. The *BWI 5 Order* then states that this unused water “shall become storage water of the Big Lost River Irrigation District.” *BWI 5 Order*, paragraph 3(f). To the extent there is carryover, no part of the *BWI 5 Order* states that this fact gives the Department authority to suspend rotation credits and the provisions the General Provision Decreed for Basin 34. Instead, the unused storage water becomes storage water owned by the District.

4. Finding of Fact No. 19. This finding reflects that the practice of rotation credits causes diminished flows in water “below the reservoir to fill natural flow priority water rights.” Again, this finding is not relevant to suspend the practice of rotation credits. Obviously, rotating water into storage causes diminishment of river flows below the dam. This goes without saying. This fact was clearly known to the Department when it recommended the General Provisions for Basin 34.

5. Conclusions of Law Nos. 1 through 5. The Department is suspending rotation credits because some water users have positive accounts at the end of the irrigation seasons and that some stored water remains unused at the end of the irrigation seasons. The Department alleges that this practice leads to the “inefficient use” of water. The fact that some users have positive accounts and some water is left stored at the end of the season is contemplated and provided for in General Provision No. 3.

First, “[w]ater 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.” *BWI 5 Order*, Exh. A, p. 2. Presumably, if it is not used, then the water cannot be stored. Whether or not particular users have positive credits is best resolved by administering the Decree as stated, rather than suspending the Decree’s provisions because of a lack of administration.

Second, even if there is a positive balance, the unused water becomes storage water of the District at the end of the irrigation season. This water can be used by the District during the next irrigation season to boost flows in the River. Presumably, the water is diverted from the reservoir and into the river where it becomes water subject to appropriation by water right holders.

Either way, the fact that users have positive accounts is contemplated by the General Provisions, and the remedy is that the excess stored water becomes the District's water. There is no remedy in the Decree to suspend rotation simply because there is a positive balance of water.

Third, a determination that the rotation credits do not promote efficiency is directly contrary to the very nature of a General Provision. Based on the recommendations of the Department in the SRBA, the General Provisions for Basin 34 were Ordered and Decreed under the *BWI 5 Order*. General Provisions are provided as “necessary for the definitions of the rights **or for the efficient administration of the water rights.**” I.C. § 42-1412(6), see *A&B Irrigation District v. Idaho Conservation League*, 958 P.2d 568, 131 Idaho 411 (1997). (Emphasis added). The General Provisions for Basin 34 were inserted into the Decree because the Court and Department took the position that the terms were necessary for the “efficient administration” of the rights.

The Department, under its *Order*, is now taking the position that the administration of the water rights under the General Provision for Basin 34, including rotation credits, does not “improve the efficiency of water use.” By taking this position, the Department is back-sliding on the very same General Provision it recommended for Basin 34.

Again, General Provisions are included in a Decree if they either are “necessary” for the definition of the right or lead to the “efficient administration of water rights.” By decreeing the General Provisions involving rotation credits, there has been a judicial determination that rotation credits do, in fact, lead to the “efficient” use of water rights in Basin 34. The Department cannot now suspend the rotation credit provision based on some non-judicial finding that the rotation credits now lead to the inefficient use of water.

Finally, the overall theme of the Conclusions suggests that there was never a “plan” for rotation credits. Again, referring to the findings contained in the *BWI 5 Order*, this conclusion is abjectly false. As previously set forth herein, there was a “confirmed plan” of rotation credits going back to the *UC Decree*. The Court specifically concluded that “[s]ince 1936 the water has been administered according to this **confirmed plan**. Water users subject to the administrative plan have relied on the same place since its inception.” *BWI Order*, p. 5. The Court went on to find that “[s]ubsequent modifications to the wording as contained in the current recommendations were negotiated and confirmed by IDWR.” *Id.* The “plan” was then recommended and negotiated in the SRBA. If there are any deficiencies in the “plan,” these deficiencies should have been realized before the Department made its recommendations in the General Provisions in Basin 34. The General Provisions are now in the Decree for Basin 34, and the Department is now obligated to follow them. *See e.g., In re Distribution of Water Rights Nos. 36-02551 & 36-07694 (Rangen, Inc.)*, 42772, Supreme Court of Idaho (February 29, 2016).

6. The Order. The Order suspends the practice of rotation credits indefinitely and provides that

The Department may consider approving the practice of rotation credit in any subsequent year if the Big Lost River Irrigation District annually

consents to the practice in writing and develops a plan of operation for rotation credit that improves the efficiency of water use.

Order, p. 8. There are a number of problems with this *Order*.

First, as indicated in these Objections, General Provision No. 3 does not require the District to have a “plan.” The General Provisions are the “plan.”

Second, the District is not required to “annually” consent to utilization of the General Provisions. There is no “annual” requirement contained in General Provision 3.

Third, compliance under the *Order* is nearly impossible to achieve. The *Order* states that the Department may reconsider if the District improves the “efficiency” of water use. Under this *Order*, the term “efficiency” is not defined, other than to state that rotation of water decreases efficiency because it allegedly makes less water available for appropriation in the River. Presumably, any rotation would decrease “efficiency,” as defined by the Department. Accordingly, the Department has either set the bar at a level which is impossible to achieve, or they have not sufficiently defined the term “efficient” in a way which gives any notice of how to comply with the *Order*. The lack of any notice deprives these Objectors of their due process rights. The Decree creates property rights with the Objectors. The *Order* deprives the Objectors of their property rights set forth in the Decree.

If the Department is set on depriving the Objectors their rights, then they must inform the Objectors of what is required to regain their rights. With respect to the enactment of laws, the Idaho Supreme Court has stated:

It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he

may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application... The due process clause of the fourteenth amendment to the Constitution of the United States requires that a city ordinance must be definite and certain in its statement of prohibited conduct to enable a person of ordinary intelligence who reads the ordinance to understand what activity is proscribed and govern his actions accordingly. The Constitution of the State of Idaho also requires that city ordinances demonstrate a definiteness and certainty sufficient to permit a person to conform his conduct thereto.

State v. Bitt, 118 Idaho 584, 585, 798 P.2d 43 (1990). In depriving the Objectors of their rights under the SRBA Decree, at the very least, the Department must explain precisely what type of “plan” is necessary to “improve the efficiency of water use.” Without such a definition, the Objectors and District are subject to *ad hoc* arbitrary and discriminatory enforcement of the rotation credit provisions contained in the SRBA Decree.

Fourth, the permissive use of the word “may” gives the Department discretion to continue to suspend rotation credits, even if the District and users increase the “efficient” use of water. The permissive part of the Order is entirely inconsistent with the Department's authority to modify the SRBA Decree, and General Provision No. 3.

SUBSTANTIAL INJURY

The General Provisions set forth how the Objectors may use their water rights, which constitute real property rights. *Follett v. Taylor*, 77 Idaho 416, 294 P.2d 1088 (1956); Idaho Const., art 15, § 4. The *Order* negates the Objectors' rights to use the rotation credits, when such right to rotation credits were included in the General Provisions for Basin 34.

The *Order* deprives the Objectors of their rights under the Decree.

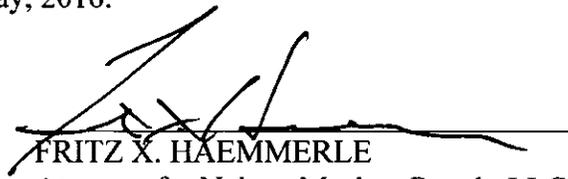
REQUEST FOR HEARING

To the extent the Objectors have not had a hearing on this matter, they request a hearing.

CONCLUSION

For all these reasons, the Order is null and void. The Preliminary Order should be REVERSED.

DATED this 12 day of May, 2016.

A handwritten signature in black ink, appearing to read 'Fritz X. Haemmerle', is written over a horizontal line.

FRITZ X. HAEMMERLE
Attorney for Nelson Mackay Ranch, LLC, et al.

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 12 day of May, 2016, he caused a true and correct copy of the foregoing document to be served upon the following by the method indicated:

Original: Gary Spackman, Director Idaho Water Center Idaho Department of Water Resources 322 East Front Street P.O. Box 83720 Boise, ID 83720-0098 deborah.gibson@idwr.idaho.gov	Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Federal Express <input checked="" type="checkbox"/> E-Mail <input checked="" type="checkbox"/>
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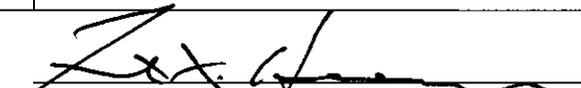

Fritz X. Haemmerle

EXHIBIT 1

Mojanet J and Deborah D Broadie
3317 W 3700 N
Moore, ID 83255
Water Rights: 34-10219, 34-13629,
34-13630, 34-13635 and 34-13636

Harry J and Beverly Crawford
Route 1, Box 8
Darlington, ID 83231
Water Rights: 34-224E, 34-856E,
34-856H and 34-10448

Notch Butte Farms LLC
c/o John Lezamiz
PO Box 486
Jerome, ID 83338
Water Rights: 34-459 and 34-12365

Magee Family Trust
c/o Fran Magee
PO Box 55
Mackay, ID 83251
Water Rights: 34-14343

Nelson Mackay Ranch LLC
c/o Randy Nelson and G David Nelson
PO Box 360
Mackay, ID 83251
Water Rights: 34-10532 and 34-637E

Byron Pehrson
Lana Pehrson
Terri Pehrson
Loy Pehrson
3624 W 3700 N
Darlington, ID 83255
Water Rights: 34-191, 34-28G,
34-131B and 34-132B

Peggy and Randy D Pehrson
3754 W 4050 N
Moore, ID 83255
Water Rights: 34-727B, 34-733,
34-10236, 34-10238, 34-10933,
34-10950, 34-10236, 34-10238

Jennie M and Orville E Smith
Route 1, Box 52
Darlington, ID 83231
Water Rights: 34-317A and 34-331

Wight Enterprises LLC
c/o Gary Wight
3798 W 4050 N
Moore, ID 83255
Water Rights: 34-181, 34-688
34-689A and 34-10740

EXHIBIT 2

II.
SCOPE OF BASIN-WIDE ISSUE 5-34

Basin-Wide Issue 5-34 is the collective designation for the issues raised in the objections and responses to IDWR's recommended General Provisions for Basin 34. IDWR recommended six general provisions necessary to define, clarify or administer water rights in Basin 34. These recommended provisions are identified for reference as:

General Provision	1	"Definitions"
General Provision	2	"2-B Gauge and Stockwatering During Non-irrigation Season"
General Provision	3	"Rotation with Storage"
General Provision	4	"Back Channel"
General Provision	5	"Separate Streams"
General Provision	6	"Howell Gauge – Connected and Unconnected River"

The issue of "Conjunctive Management" was consolidated with Basin-Wide Issue 5, which involves recommended conjunctive management provisions for the entire SRBA and is not part of this Order. The procedural history regarding the realignment and re-designation of issues is fully set forth in this Court's March 15, 2001, *Order on Order to Show Cause Hearing Enforcing Settlement Agreement; and Order Staying Discovery and Trial Schedule*.

III.
SETTLEMENT OF ISSUES

On June 19, 2000, pursuant to a mandatory settlement conference ordered by the Court, the parties entered into a stipulation regarding recommended General Provision 5 "Separate Streams." On June 23, 2000, the Court entered an Order accepting the stipulation as final resolution of the matter. *Order Re: Stipulations for Basin 34 General Provision No. 5 (Separate Streams)*, subcase 91-00005-34 (June 23, 2000). On February 13, 2001, also pursuant to a mandatory settlement conference, the parties entered into an agreement regarding the remaining recommended General Provisions. Following a hearing on an Order to Show Cause, the Court issued an Order binding the parties to the agreement reached. *See Order on Order to Show Cause Hearing Enforcing Settlement Agreement; and Order Staying Discovery and Trial Schedule* (Mar. 15, 2001).

**IV.
REVIEW AND ACCEPTANCE OF AGREEMENT BY THE COURT**

A. ROLE OF COURT.

Although the agreement reached by the parties represents final settlement of all pending issues, the Court is still charged with the duty of reviewing the contents of the agreement to ensure compliance with the law. In other words, the Court is not required to “rubberstamp” either the recommendations contained in the director’s report or any agreement reached by the parties to the extent they are contrary to law. *State v. United States*, 128 Idaho 246, 258-59, 912 P.2d 614, 626-27 (1995). The Court’s role however, is somewhat limited because a trial was not conducted on the merits and the Court is not required by statute to conduct an evidentiary hearing in order to accept a stipulation as final resolution. *Memorandum Decision and Order on Challenge*, subcases 36-00061, *et al.* (Sept. 27, 1999) (“*Morris*”) at 17. Thus, the Court’s review is limited to the existing record.

B. APPLICABLE LAW.

1. Evidentiary Value of Director’s Report and/or Agreement of the Parties.

Idaho Code § 42-1411(4) provides that the filing of the director’s report shall “constitute prima facie evidence of the nature and extent of the water rights . . .” I.C. § 42-1411(4) (2000). Additionally, as applied to settlement agreements, IDWR’s role in the SRBA “is an independent expert and technical assistant [who] assure[s] that claims to water rights acquired under state law are accurately reported . . .” I.C. § 42-1401B(1) (1996). Therefore, when IDWR’s representative signs a *Standard Form 5* or otherwise signs off on an agreement and states that its contents are true, IDWR’s concurrence provides evidentiary value on which the Court is entitled to rely. *Morris* at 14.

2. Legal Authority and the Basis for General Provisions.

Idaho Code § 42-1411 provides that the director of IDWR shall prepare a report on the water system. “The director may include such general provisions in the director’s report, as the director deems appropriate and proper, to define and administer all water rights.” I.C. § 42-1411 (2000). “The 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.” I.C. § 42-1412(6). In *A & B Irrigation District v. Idaho Conservation League*, 131 Idaho 411, 958 P.2d 568 (1998), the Idaho Supreme Court stated:

A general provision is a provision that is included in a water right decree regarding the administration of water rights that applies generally to water rights, is not an element of the water right, or is necessary for the efficient administration of the water rights decreed. A general provision is an administrative provision that generally applies to water rights but it need not apply to every water right.

Id. at 421, 958 P.2d at 578 (citations omitted).

Historical practices of administration of water rights can be the basis for a general provision. In *State v. Idaho Conservation League*, 131 Idaho 329, 945 P.2d 1108 (1998), the Idaho Supreme Court held that a general provision based on historical administrative practices could be necessary for the efficient administration of a water right “because it avoids controversy among the water rights holders by clearly notifying them of the mechanism [of administration].” *Id.* at 334-35, 955 P.2d at 1113-14.

C. REVIEW, FINDINGS AND CONCLUSION.

1. IDWR filed a *Supplemental Director’s Report* which recommended general provisions necessary to define water rights and for the necessary administration of irrigation water rights in IDWR’s administrative Basin 34. *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 Provision (Supplemental Director’s Report)* (June 24, 1999), which recommended general provisions necessary for the efficient administration of water in Basin 34.

2. Pursuant to order of the Court, IDWR subsequently filed an expert’s report to the Court in accordance with I.R.E. 706 in the form of a *Supplemental Director’s Report for Basin-Wide Issue 5-34 Regarding Period of Use Explanation* (Sept. 11, 2000) (“706 Report”). See *Order Consolidating Irrigation Period of Use Provision Issue for Basin 34 with Basin-Wide Issues Unique to Basin 34; and Order Requesting Explanatory Supplemental Director’s Report (“706 Report”), I.R.E. 703, 705, 706, I.C. § 42-1412(4)*, subcase no. 91-00005-34 (Aug. 28, 2000). In the *706 Report*, IDWR explained the basis for the recommended General Provisions and responded to questions raised by the objecting and responding parties and the Court.

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.
 - g. When the river is connected as specified in General Provision No. 6, while a right is rotated into storage, it is subordinate to all rights diverted above Mackay Reservoir with a priority date earlier than October 1, 1936.
4. The Back Channel is a natural channel of the river that has been historically regulated to a maximum of 200 cubic feet per second to provide irrigation water. This provision 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 450 cubic feet per second at any time for three consecutive days until the end of the irrigation season.
- c. For purposes of determining the amount of water being supplied to Mackay Reservoir from curtailment of diversions upstream from the reservoir, measurements will be made on the Big Lost River at the Pense Bridge located in the T 8 N, R 23 E, S 30, SW $\frac{1}{4}$ NE $\frac{1}{4}$, and on the Donahue Bridge on Parsons Creek located in the T 8 N, R 22 E, S 24, SW $\frac{1}{4}$ SE $\frac{1}{4}$. These measurements will be used by the Watermaster to make futile call determinations.

SEE ATTACHMENT B

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