

10 May, 2016

To: Mr. MAT WEAVER

Deputy Director

State of Idaho Department of Water Resources (IDWR)

322 East Front Street

Boise, Idaho 83702

RECEIVED

MAY 11 2016

DEPARTMENT OF  
WATER RESOURCES

CC: Mr. Tim Luke

CC: MS. Sarah Shaul

1. Re: May 2, 2016 Cover Letter from Mr. Tim Luke, Water Compliance Bureau addressing "Preliminary Order suspending Rotation Credit in Water District 34, Big Lost River."
  - a. Attachment to Letter from Mr. Tim Luke: **"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) – PRELIMINARY ORDER SUSPENDING ROTATION CREDIT IN WATER DISTRICT 34"**, Dated this 29<sup>th</sup> day of April 2016, Signed by Mr. MAT WEAVER, Deputy Director
  - b. Attachment to Letter from Mr. Tim Luke and PRELIMINARY ORDER SUSPENDING ROTATION CREDIT IN WATER DISTRICT 34, a 2<sup>nd</sup> Attachment to Letter from Mr. Tim Luke, **"A CERTIFICATE OF SERVICE"** of "Documents served", Dated on the 2<sup>nd</sup> day of May 2016, Signed by Ms. Sarah Shaul, Technical Records Specialist, Idaho Department of Water Resources

This is a letter regarding the IDWR May 2, 2016, Preliminary Order suspending **Rotation Credit** – Water District 34, Big Lost River Basin.

2. Re: Petition for Reconsideration Exception and Denial of Preliminary Order pursuant to Rule of Procedure 730.02.

Dear Mr. Luke:

We have become aware that the Idaho Department of Water Resources has set forth a Preliminary Order dated May 2, 2016. The intent of the Preliminary Order was to suspend Rotation Credit in Water District 34, of the Big Lost River Basin. This Preliminary Order suspends the practice of Rotation Credit in Water District 34 for the 2016 Irrigation Season and indefinitely thereafter.

As water users and holders of significant Water Rights in the Big Lost River Valley, this is of grave concern to us.

First, we must tell you that we have never been properly served with the documents announcing this erroneous action. It appears that the list of property holders and water rights users in the Big Lost River Valley is incomplete, erroneous, includes people who are deceased, and in general is ineffective to correctly notifying stakeholders pursuant to the requirements of Idaho Law.

Second, of concern to us is the fact that propounding this preliminary order has never properly followed the terms and conditions of the Idaho Administrative Procedures Act. To our knowledge no proper hearing, agenda, or announcement was ever made of the intent of the IDWR to take this drastic action. Therefore the very existence of this Preliminary Order appears to violate Idaho Law.

Third, the practice of Rotation Credit in Water District 34 has been successfully used since 1935. Several documents clearly establish the legal precedent upon which this practice is based.

This unique practice was first established on April 01 of 1935 in the Plan of Operations for the Big Lost River Irrigation District by and through the Department of Reclamation for the State of Idaho establishing **Rotation Credit** as a contractual requirement of the Big Lost River Irrigation District and for the benefit of users within that District. Therefore, legal precedent since at least 1935 has allowed Rotation Credit and a system to legally function in Water District 34 with the knowledge and legal acceptance of IDWR and its predecessor organizations.

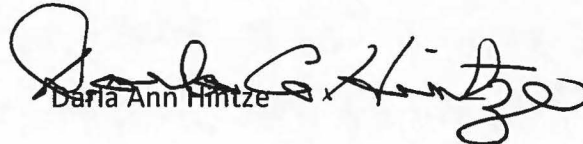
Finally, this important system was reaffirmed by the Idaho Supreme Court in the Case of State v Nelson (951 P.2d 943 (Idaho 1998) 131 Idaho 12) and through the Snake River Basin Adjudication (SRBA) and referenced in the Idaho Law Review, Ann Y. Vonde et al., *Understanding the Snake River Basin Adjudication*, 52 IDAHO L. REV. 53 (2016). Both this case brought before the Idaho Supreme Court and the SRBA held that the General Provisions from the Big Lost River Decrees were not necessary for the definition or administration of recommended water rights. In other words, the proposed preliminary order set forth by IDWR has no legal basis in which to impose suspension of Rotation Credit. Both the Idaho Supreme Court and the Snake River Basin Adjudication (SRBA) have firmly established an exception for Basin 34 in the use of this practice. Therefore IDWR cannot legally suspend Rotation Credits in this District.

While responding to the preliminary order dated May 02, 2016 is challenging since it has never properly been served on us nor on numerous other property owners in District 34. This letter will serve as a formal **PETITION FOR RECONSIDERATION** of the preliminary order. We do not, by responding to this preliminary order in anyway indicate that it was properly propounded nor is it a valid legal action on behalf of IDWR.

Please be advised, that Water Rights in the Big Lost River Valley have long been the lifeblood of agriculture for our community. Further, water rights attached to our property are of significant financial, historic, and personal value and are a part of our land. Any attempt by IDWR to suspend the practice of Rotation Credit in the Big Lost River Valley will be met with significant opposition and appropriate legal action should that become necessary.

Sincerely,

  
Melvin Marx Hintze

  
Darla Ann Hintze

4372 W Houston Rd.

Mackay, Idaho 83251

Telephone Numbers: 208-588-2270, 208-589-2270 Cel, 208-339-2270 Cel

Email: marxhintze@hintze.net