

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

IN THE MATTER OF ROTATION)	ORDER GRANTING BIG
CREDIT IN WATER DISTRICT 34,)	LOST RIVER IRRIGATION
BIG LOST RIVER BASIN)	DISTRICT'S PETITION TO
)	INTERVENE

BACKGROUND

On April 29, 2016, the Idaho Department of Water Resources ("Department") issued a *Preliminary Order Suspending Rotation Credit in Water District 34* ("Preliminary Order") in the above-captioned matter.¹

On May 17, 2016, in accordance with Idaho Code § 42-1701A(3), the Director of the Department ("Director") issued an *Order Granting Requests for Hearing; Notice of Pre-Hearing and Hearing* scheduling a pre-hearing conference on May 26, 2016, and a hearing on June 22-23, 2016.

On May 20, 2016, the Big Lost River Irrigation District ("BLRID") timely filed *BLRID's Petition to Intervene* ("Petition"), pursuant to Rules 350 through 354 of the Department's Rules of Procedure (IDAPA 37.01.01.350-354). *Petition* at 1.

On May 31, 2016, the Director issued an *Amended Notice of Hearing; Order Authorizing Discovery; Scheduling Order* ("Scheduling Order") amending the hearing date to June 28-29, 2016; authorizing discovery; and adopting a schedule including a June 6, 2016, deadline for water users to submit a notice of intent to participate and for BLRID to "supplement its Petition by submitting to the Department a document stating whether BLRID supports or challenges the Preliminary Order." *Scheduling Order* at 2. On June 3, 2016, BLRID submitted a *Supplement to BLRID's Petition to Intervene, Response to Scheduling Order and Notice of Intent to Participate* ("Supplement").

¹ The Preliminary Order issued April 29, 2016, can be found on the Department's website at: <http://www.idwr.idaho.gov/legal-actions/administrative-actions/WD34-rotation-credit.html>.

ANALYSIS

Rule of Procedure 353 states:

If a timely-filed petition to intervene shows direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues, the presiding officer will grant intervention, subject to reasonable conditions, unless the applicant's interest is adequately represented by existing parties. If it appears that an intervenor has no direct or substantial interest in the proceeding, the presiding officer may dismiss the intervenor from the proceeding.

IDAPA 37.01.01.353.

As stated above, BLRID timely filed its Petition on May 20, 2016. BLRID asserts that, while it "does not own natural flow water rights that are rotated into storage at Mackay Reservoir," BLRID owns storage rights "stored in Mackay Reservoir, and the manner in which natural flow rights are delivered can materially affect the delivery of storage rights and accounting for the delivery of natural flow and storage rights." *Petition* at 1. BLRID also asserts that it "is the only irrigation district located on the Big Lost River and has a direct and substantial interest in the outcome of this proceeding." *Id.* In its Supplement, BLRID reiterates that it "does not own natural flow rights that are rotated into storage at Mackay Reservoir" and, therefore, does not take "an official position supporting or challenging the Preliminary Order." *Supplement* at 1. BLRID asserts, however, that it has a "direct and substantial interest in the proceeding" because it "is responsible for accounting for natural flow rights rotated into storage at Mackay Reservoir and is responsible for accounting for the release of storage rights and natural flow rights rotated into storage from Mackay Reservoir." *Id.*

The Director concludes that BLRID has a direct and substantial interest in this matter and that its intervention will not unduly broaden the issues. The Director further concludes that BLRID's interest is not adequately represented by existing parties.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that BLRID's Petition is GRANTED.

Dated this 13th day of June 2016.


GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of June 2016, I served a true and correct copy of the foregoing document on the following by the method indicated below:

Fritz X. Haemmerle Haemmerle Law, PLLC P.O. Box 1800 Hailey, Idaho 83333	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
W. Kent Fletcher Fletcher Law Offices P.O. Box 248 Burley, Idaho 83318	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Marshal Todd Perkes 2790 N 3325 W Moore, Idaho 83255	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Melvin Marx Hintze, PE Darla Ann Hintze 4372 W. Houston Road Mackay, Idaho 83251	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
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