

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

IN THE MATTER OF THE
ADMINISTRATION AND ACCOUNTING
OF THE PRACTICE OF ROTATING
NATURAL FLOW WATER RIGHTS INTO
MACKAY RESERVOIR FOR STORAGE

**AMENDED FINAL ORDER
REGARDING INSTRUCTIONS TO
WATER DISTRICT 34 WATERMASTER**

SUMMARY OF CHANGE

This order amends the *Second Amended Interlocutory Order Regarding Instructions to Water District 34 Watermaster*, issued on March 15, 2023, by (1) moving the deadline to submit notices of intent to rotate water to the watermaster from May 1 to April 15; (2) requiring documentation of certain activities to be in writing and upon forms provided by the Idaho Department of Water Resources (“Department”); and (3) removing the requirement for Big Lost River Irrigation District (“BLRID”) to submit a written report daily to the watermaster documenting delivery requests. This order is also being issued as a final order to resolve the ongoing contested case involving these instructions.¹

BACKGROUND

The practice of rotating natural flow water rights whose source is the Big Lost River into storage (sometimes referred to as “rotation into storage” or “rotation for credit”) in Water District 34 (“WD34”) has been scrutinized by the Department in recent years for two reasons: (1) some water users in WD34 have voiced concerns that the practice is being implemented in a manner inconsistent with the *Order of Partial Decree for General Provisions in Administrative Basin 34* (“General Provisions”), *In re SRBA Case No. 39576*, Subcase No. 91-00005-34 (Twin Falls County District Court Idaho May 9, 2001),² authorizing the practice; and (2) the Department has undertaken a multi-year effort to modernize, update, and augment the computerized accounting programs and practices for WD34, including accommodating the practice of rotation for credit.

Proper implementation of rotation for credit requires close coordination between WD34 and BLRID. In the past, the administration and implementation of rotation for credit was disorganized and poorly documented. As a result, rotation for credit has not always been

¹ The original *Final Order Regarding Instructions to Water District 34 Watermaster* (“Original Final Order”) was issued on July 18, 2016. Shortly thereafter, a petition for reconsideration and request for hearing was filed by Nelson Mackay Ranch. The Director granted the request for hearing on August 18, 2018, and since that time, the Department and the parties to the contested case have been working on revised instructions. The Original Final Order did not become final, and this order amends and replaces the Original Final Order.

² On July 7, 2004, the Snake River Basin Adjudication District Court issued an *Order Amending Partial Decree for General Provisions in Administrative Basin 34 to Include General Provision 7 on Connected Sources*. The amended order did not modify the general provision related to the practice of rotation credits.

administered in conformance with the conditions described in the General Provisions or the Idaho Department of Water Resources Water Distribution Rules – Water District 34 (“WD34 Rules”). To ensure conformance with the General Provisions and WD34 Rules it is necessary to issue detailed instructions regarding the implementation of rotation for credit.

APPLICABLE PROVISIONS OF LAW

The practice of rotation for credit in WD34 is authorized by the General Provisions and WD34 Rules.³ Provision 3 of the General Provisions states in pertinent part:

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.
- 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.

Rule 40.02 of the WD34 Rules states in pertinent part:

Water rights that do not include storage as a purpose of use may not be stored. Water rights whose source is Big Lost River with their point of diversion below the Mackay Dam may, however, be rotated for credit when such practice improves the efficiency of water use as contemplated by the Big Lost River Irrigation District’s plan of operation subject to the following conditions:

³ The General Provisions govern in the event there is a conflict between the General Provisions and WD34 Rules.

- a. Rotation for credit must be approved by the director as provided by these rules.
- b. Rotation for credit must be pursuant to the Big Lost River Irrigation District's approved plan of operation.
- c. Any water credited under such a rotation, if not used in the same irrigation season in which it is credited, shall become storage water of the Big Lost River Irrigation District.
- d. Rotation for credit cannot occur prior to the need for irrigation water on the land, as determined pursuant to these rules, in any year.
 - i. Natural flow must be available at the river headgate point of diversion for the water right requesting rotation credit.
 - ii. The water user must have operable delivery and use facilities and an actual need for the water on the land in the year rotation is sought.
 - iii. If natural flow cannot be delivered to a point of diversion at the beginning of the irrigation season and the watermaster determines rotation credit is needed to make possible the delivery of water rights being called for, and there is room in Mackay Reservoir for rotation credit, the watermaster may rotate natural flow rights, which would not otherwise be deliverable to their point of diversion, for credit of up to a combined total of three thousand five hundred (3,500) AF to be released from the reservoir under the control of the watermaster to make natural flow rights deliverable to their point of diversion. The watermaster may use storage water to assist the delivery of natural flow water rights at the beginning of the irrigation season when requested to do so by the storage holder.
- e. Water rotated for credit may only be used on the land to which the water right being rotated is appurtenant (water rotated for credit may not be marketed) except under the provisions of Section 42-222A, Idaho Code.
- f. If the reservoir fills after rotation has begun in any year, (or would have filled except for flood operations) and the natural flow is sufficient to allow diversion of water by 1905 or junior water rights while the reservoir is full, all rotation credits accrued at that time are lost and all water in Mackay Reservoir at that time becomes storage water of the Big Lost River Irrigation District for reallocation. For purposes of this rule Mackay Reservoir will be considered full when the elevation of the water in the reservoir reaches or exceeds a four (4) day average of six thousand sixty-six and twelve one hundredths (6,066.12) feet MSL (spillway crest). Rotation for credit stops at the time Mackay Reservoir fills, and while it remains full, but if the natural flow does not increase sufficiently to allow 1905 or junior water rights to divert after the reservoir fills the rotation credit in the reservoir shall remain the credit of the water user(s) who accrued the rotation credit.
- g. Water rights being rotated must be identified to the watermaster as being rotated into Mackay Reservoir. Water rights identified as such will have the Mackay

Reservoir as the temporary point of diversion during the time rotation is occurring.

- h. The rate of diversion for a water right being rotated for credit combined with other water rights for the same place of use being diverted at the same time cannot exceed the combined diversion limit specified in the listing of water rights. This rule does not limit the rate at which rotation credit, once impounded, can be used.

ANALYSIS

The practice of rotation for credit in WD34 is unique in water right administration in Idaho. The practice allows the holder of a natural flow water right whose source is the Big Lost River to cease diverting the water right for direct irrigation purposes and instead store the water in Mackay Reservoir. The water stored in Mackay Reservoir can then be released and delivered at the request of the water right holder for use on the land to which the natural flow water right is appurtenant.

The Mackay Reservoir is owned, maintained, and operated by BLRID for the benefit of its storage space holders. BLRID manages the water that is stored in Mackay Reservoir pursuant to BLRID's storage water rights and also manages the storage added to Mackay Reservoir by rotation into storage. When the water rotated into storage in Mackay Reservoir is released, the water is comingled with natural flow and BLRID storage water in the Big Lost River. This requires administration and accounting by both the watermaster and BLRID. The requirement of joint administration is recognized in the General Provisions and the WD34 Rules, wherein both documents describe an oversight role for the Director, and by extension the watermaster and BLRID. The water rights issued by the SRBA District Court are conclusive as to the nature and extent of the water right. *Final Unified Decree*, at 7, 9, *In re SRBA Case No. 39576* (Twin Falls Cnty. Dist. Ct. Idaho Aug. 26, 2014); *Idaho Ground Water Assoc. v Idaho Dep't of Water Res.*, 160 Idaho 119, 127, 369 P.3d 897, 905 (2016). This includes the General Provisions. *Final Unified Decree*, at 10. BLRID was a party to the adjudication and thus is bound by the decrees and the General Provisions. *See Rangen, Inc. v. Idaho Dep't of Water Res.*, 159 Idaho 798, 806, 367 P.3d 193, 201 (2016) (Rangen is bound by the decrees of the Court). Effective administration of the practice of rotation for credit consistent with the conditions of the General Provisions and WD34 Rules requires close communication and coordinated oversight and accounting by both the watermaster and BLRID. To ensure that water rights are properly administered consistent with the General Provisions and WD34 Rules, the Director must issue an order outlining the proper procedures and steps to account for and administer rotation into storage.

ORDER

IT IS HEREBY ORDERED that the following instructions shall be implemented by the WD34 watermaster in the administration and accounting of rotation for credit. Rotation for credit is only allowed by water users conforming to the requirements detailed in the following instructions.

1. On or before April 15, any water user planning to rotate a natural flow water right into storage in the upcoming irrigation season is required to completely fill out and submit to the watermaster a notice of intent to rotate a natural flow water right into storage. The watermaster shall prepare a standard form for notice of intent to rotate Big Lost River rights into storage (“NOI”).
2. The NOI must contain the following information:
 - A list of all natural flow water rights the water user plans to rotate during the irrigation season;
 - Identification of all surface and ground water rights, excluding BLRID storage rights, with places of use overlapping the place of use described by the water right(s) for which rotation into storage notice is being submitted;
 - A map of the irrigated lands to which the natural flow water rights are appurtenant (maps should be on 8.5” x 11” attachments); and
 - Personal attestation by the water user in writing of their intent to beneficially use the water rotated into storage during the year in which the water is rotated and acknowledgement that rotated water will only be used on the place of use described by the water right.
3. Prior to approving an NOI form, the watermaster shall confirm on an individual water right basis and document in writing on Department forms the following:
 - Whether the diversion rate of the water rights being rotated into storage conforms to all total diversion rate limitations, including diversion rate limitations on overlapping ground water rights; and
 - Whether the water right(s) being rotated overlap with supplemental ground water rights with provisions requiring the user to make full beneficial use of all surface water available to the user for irrigation prior to utilizing supplemental ground water. Supplemental ground water rights with these provisions will be limited according to the supplemental ground water right conditions when overlapping surface water rights are being rotated into storage.
4. A water user must notify the ditch rider each time the user wants to rotate natural flow into storage during the irrigation season. Requests by water users to rotate natural flow into storage must be made 48 hours in advance of the calendar date on which rotation into storage is requested to occur. The ditch rider must submit written documentation of water user requests to rotate natural flow into storage to BLRID, and BLRID must submit written documentation of such requests to the watermaster the same day they are made. The watermaster shall identify and record the water rights and diversion rate to be rotated. The watermaster shall verify the diversion rate into storage and diversion rate of all overlapping water rights appurtenant to the land to verify that combined use rates and volume limitations on both groundwater and surface water use are not exceeded. This analysis shall be in writing and on Department forms. The calendar dates on which

rotation of natural flow into storage is requested to occur cannot predate the date of the water user's request.

5. Prior to approving rotation into storage requests during the irrigation season, the watermaster shall confirm on an individual water right basis and document in writing on Department forms:
 - Whether the water user can beneficially use the rotated water on the land identified on the standard NOI form by the end of the current irrigation season;
 - Whether there is a "reasonable need for irrigation water" on the land identified;
 - Whether the water user has operable diversion, delivery, and application facilities;
 - Whether the water is deliverable to the water right place of use and the irrigated lands identified;
 - Whether the Big Lost River is disconnected as described by the General Provisions, or if connected that the priority date on the river is October 1, 1936, or junior; and
 - That the rotation conforms to all conditions of the General Provisions and the WD34 Rules.
6. After September 1 of each year, the watermaster may only approve rotation into storage requests when an individual water user can demonstrate: a) that the water user's water supply (natural flow plus remaining BLRID storage plus remaining water already rotated into storage) is insufficient for the remainder of the irrigation season, and b) all water already rotated into storage and any additional rotation storage can be beneficially used by the end of the irrigation season. The watermaster shall evaluate whether the water user satisfies these criteria and shall document the watermaster's analysis in writing on Department forms. The watermaster may request additional information, written justification, or both, from the water user to complete this analysis.
7. If the watermaster determines that a request to rotate into storage cannot be approved under Instruction 5, the watermaster will notify the water user and BLRID in writing and explain the basis for the denial. Water users dissatisfied with the denial of a rotation into storage request may petition the Director for reconsideration of the watermaster's denial.
8. During the irrigation season, water users with rotation storage balances that want rotation storage delivered must notify the ditch rider when the user wants rotation storage delivered. The ditch rider must receive requests for delivery of rotation storage 48 hours in advance of the calendar date on which delivery of rotation storage is requested to commence. The ditch rider must record each request for rotation storage delivery into a ditch rider log which must be submitted to BLRID and the watermaster daily. The watermaster will review delivery requests to ensure that rotation storage will be beneficially used at the same place of use described by the water right for which natural flow was rotated into storage.

9. For delivery of rotation storage, the watermaster will consult with BLRID and determine the total amount of rotation storage to be released from the reservoir, the amount of rotation water to be released for each user and for each point of diversion, and the dates when rotation storage will be delivered. The watermaster shall assess losses to the delivery of rotation storage consistent with WD34 Rule 40.03.
10. In the event that a futile call determination on the Big Lost River below the Beck Canal diversion is imminent or likely, the watermaster shall contact water users with diversions below the Beck Canal diversion who have rotation storage balances and ask whether the users wish to release rotation storage.
11. The watermaster will retain the following information in the WD34 archives and make it available for public review:
 - All NOI forms submitted by water users;
 - All written correspondence submitted to the watermaster by BLRID documenting in-season requests by water users to rotate natural flow into storage or have rotation storage delivered;
 - All written watermaster correspondence denying requests for either rotation for credit or delivery of rotation storage;
 - The annual rotation for credit summary report submitted by BLRID; and
 - All written documentation related to Instructions 3, 4, 5, and 6.
12. A summary of rotation for credit for the irrigation season will be included in the watermaster's annual report. The intent of the summary is to provide transparency so water users in WD34 understand how rotation for credit was implemented during the irrigation season. The watermaster has discretion concerning the content and format of the summary report. The report may vary from year to year based on the circumstances of the irrigation season, but at a minimum it should include the following information:
 - Identification of each user that rotated natural flow into storage, by canal or point of diversion;
 - The volume of water under each natural flow water right rotated for credit and rotation storage released associated with each natural flow water right from the reservoir for each user at each point of diversion;
 - The volume of any unused rotation storage that remained in Mackay Reservoir at the end of the irrigation season for each user for each point of diversion;
 - Each user who was denied rotation for credit and a discussion of the reasons for denying rotation for credit;
 - A discussion of the positive and negative input received from water users regarding how rotation for credit is being implemented; and

- Recommendations by the watermaster, water district advisory committee, or both, for improving implementation of rotation for credit.

IT IS FURTHER ORDERED that the following instructions shall be implemented by BLRID in the administration and accounting of rotation for credit:

1. BLRID must adopt and implement accounting procedures to track rotation for credit and the subsequent delivery of rotated storage that produces data that can be shared with and used by WD34 for administrative and accounting processes. Accounting procedures implemented by BLRID must:
 - a. Identify individual water right rotation storage balances on a daily time step and publish such information on a weekly basis to its website;
 - b. Apply losses to the storage and delivery of rotation storage as determined by the watermaster consistent with WD34 Rule 40.03;
 - c. Prohibit negative rotation storage balances;
 - d. Prohibit cancellation of negative storage water account balances with rotation storage balances;
 - e. Prohibit the use of rotation storage on lands separate from the place of use under the rights rotated into storage (rotation storage must be used on the same land as the rights rotated into storage);
 - f. Ensure that if the Mackay Reservoir fills after water has been rotated into storage, all water in the reservoir at the time it fills becomes storage water of BLRID; and
 - g. Ensure any water stored under rotation for credit that is not used in the same irrigation season in which it is stored shall become storage water of BLRID at the end of the irrigation season.
2. Each year, after the end of the irrigation season, but no later than December 15, BLRID will prepare and submit an annual report to the watermaster and the Director summarizing rotations for that year. The written summary must include daily rotation storage balances and storage water right balances for all water rights for which rotation for credit occurred. The summary must also include year-end rotation storage balances and storage water right balances for all water rights for which rotation occurred.

IT IS FURTHER ORDERED that these instructions may be modified by the Director as necessary to implement the General Provisions and WD34 Rules and improve the efficiency of water use.

Dated this 7th day of March 2025.

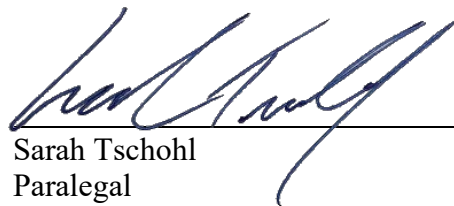


Mathew Weaver
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of March 2025, I caused to be served a true and correct copy of the foregoing *Amended Final Order Regarding Instructions to Water District 34 Watermaster*, by the method indicated below, upon the following:

Preston Marcroft PO Box 53 Mackay, ID 83251 watermaster34@atcnet.net	<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
Fritz X. Haemmerle Haemmerle Law, PLLC PO Box 1800 Hailey, ID 83333 fxh@haemlaw.com	<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
Norman M. Semanko Garrett M. Kitamura Parsons Behle & Latimer 800 W Main St, Ste 1300 Boise, ID 83702 nsemanko@parsonsbehle.com gkitamura@parsonsbehle.com	<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
Mitchell D. Sorensen 3871 W 2500 N Moore, ID 83255 soremd@gmail.com	<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
Young Harvey Walker 2338 N 2930 W Arco, ID 83213 why@atcnet.net	<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


 Sarah Tschohl
 Paralegal

**EXPLANATORY INFORMATION TO ACCOMPANY A
FINAL ORDER**

(To be used in connection with actions when a hearing was **not** held)

The accompanying document is a "Final Order" issued by the Idaho Department of Water Resources ("Department") pursuant to Idaho Code § 67-5246.

PETITION FOR RECONSIDERATION

(See Idaho Code § 67-5246(4))

Any party may file a petition for reconsideration of this final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The presiding officer will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law.

REQUEST FOR HEARING

(See Idaho Code § 42-1701A(3))

Unless the right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director, and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to Idaho Code § 42-1701A(3). A written petition to the Director contesting this final order and requesting a hearing must be filed with the Department by any aggrieved person **within fifteen (15) days after service of this final order.**

CERTIFICATE OF SERVICE

(See IDAPA 37.01.01.053, 37.01.01.202)

All documents filed with the Department in connection with a petition for reconsideration or a request for hearing of this final order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 53 and 202.