IDAPA 37 – DEPARTMENT OF WATER RESOURCES

Water Compliance Bureau

37.03.12 – Idaho Department of Water Resources Water Distribution Rules – Water District 34

Who does this rule apply to?
Users of surface and ground water within Water District 34 (i.e., the Big Lost River Basin).

What is the purpose of this rule?
These rules govern the distribution of surface and ground water within Water District 34, the Big Lost River Basin.

What is the legal authority for the agency to promulgate this rule?
This rule implements the following statutes passed by the Idaho Legislature:

Appropriation of Water -
General Provisions:
- Section 42-111, Idaho Code – Domestic Purposes Defined

Permits, Certificates, and Licenses — Survey:
- Section 42-222, Idaho Code – Change in Point of Diversion, Place of Use, Period of Use, or Nature of Use of Water Under Established Rights – Forfeiture & Extension - Appeals

Distribution of Water Among Appropriators:
- Section 42-603, Idaho Code – Supervision of Water Distribution – Rules & Regulations
- Section 42-604, Idaho Code – Creation of Water Districts
- Section 42-605, Idaho Code – District Meetings – Watermaster & Assistants – Election – Removal – Oath & Bond – Advisory Committee
- Section 42-606, Idaho Code – Reports of Watermasters

Headgates and Measuring Devices:
- Section 42-701, Idaho Code – Installation & Maintenance of Controlling Works & Measuring Devices by Water Appropriators – Procedure Upon Failure to Install & Maintain – Measuring & Reporting of Diversions – Penalty for Failure to Comply – Enforcement Procedure – Report Filing Fee

Who do I contact for more information on this rule?

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000. LEGAL AUTHORITY (RULE 0).
The Idaho Department of Water Resources (IDWR) is authorized under Section 42-603, Idaho Code, to adopt rules for the distribution of water from the streams, rivers, lakes, ground water and other natural water sources. (10-26-94)

001. TITLE AND SCOPE (RULE 1).
These rules are titled IDAPA 37.03.12, "Idaho Department of Water Resources Water Distribution Rules – Water District 34." This chapter contains the rules that govern the distribution of surface and ground water within Water District 34, the Big Lost River Basin, by the duly appointed watermaster pursuant to the provisions of Chapter 6, Title 42, Idaho Code, and applicable court decrees. This chapter shall not be construed to limit the authority of the Director of the Idaho Department of Water Resources in exercising the duties and responsibilities of the director or the department under other provisions of Idaho law. (10-26-94)

002. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).
For the purposes of these rules, the following terms will be used as defined below. (10-26-94)

01. 2-B Gage. The U.S. Geological Survey gaging station located below Mackay Dam in the SW1/4SW1/4NE1/4, Section 18, Township 7 North, Range 24 East, B.M. (10-26-94)

02. Acre-Foot (AF). The unit commonly used to measure a volume of water which is equal to the amount of water to cover one (1) acre of land one (1) foot deep and is equal to forty-three thousand five hundred sixty (43,560) cubic feet or three hundred twenty-five thousand eight hundred fifty-one (325,851) gallons. (10-26-94)

03. Acre-Foot Per Year (AFY). Acre foot per calendar year. (10-26-94)

04. Arco Gage. The U.S. Geological Survey gaging station located near the town of Arco in the SW1/4SE1/4SW1/4, Section 17, Township 3 North, Range 27 East, B.M. (10-26-94)

05. Cubic Foot Per Second (CFS). The unit used to express a rate of flow of water equal to fifty (50) miner's inches or about four hundred forty-eight and eight tenths (448.8) gallons per minute. (10-26-94)

06. Delivery Call. A request from the holder of a water right for administration of water rights under the prior appropriation doctrine. (10-26-94)

07. Director. The Director of the Idaho Department of Water Resources (IDWR) or the director's duly authorized designee. (10-26-94)

08. Eastside Canal. The Eastside Canal diverts from the east side of the Big Lost River in the NW1/4SE1/4SE1/4, Section 4, Township 5 North, Range 26 East, B.M. and extends southerly to the point it discharges back into the Big Lost River in the NW1/4NW1/4NW1/4, Section 26, Township 4 North, Range 26 East, B.M. (10-26-94)

09. Holder of a Water Right. The legal owner or user pursuant to lease or contract of a right to divert or to protect in place surface or ground water of the state for a beneficial use or purpose. (10-26-94)

10. Howell Gage. The U.S. Geological Survey gaging station located above Mackay Reservoir in the SE1/4NE1/4NW1/4, Section 30, Township 8 North, Range 21 East, B.M. (10-26-94)

11. Rotation Credit. Water impounded in Mackay Reservoir pursuant to a water right whose source of water is the Big Lost River and which does not include storage as a purpose of use. The impoundment of water as rotation credit is described in Rule Subsection 040.02. (10-26-94)

12. Small Domestic and Stock Water Uses. Water uses meeting the definition of Section 42-111 or Section 42-1401A(12), Idaho Code. (10-26-94)

13. Storage Water. Water impounded in a storage facility, including Mackay Reservoir, pursuant to a water right which includes storage as a purpose of use. (10-26-94)

14. Watermaster. The duly elected and appointed state watermaster of Water District 34 who is

authorized to perform duties pursuant to Chapters 6 and 8, Title 42, Idaho Code, and the decree, or order for interim administration, of water rights for Basin 34. (10-26-94)

011. -- 024. (RESERVED)

025. RIVER REACHES (RULE 25).

01. Divisions of the Big Lost River. For the purposes of quantifying river gains, losses, and calculating and accounting for natural flow, the Big Lost River shall be divided into the reaches identified below. Reference to a specific river reach will be by the name of the downstream station or terminus point. (3-20-20)

a. Above Howell Gage. (10-26-94)

b. Howell Gage to Chilly Bridge located in the NW1/4NE1/4NW1/4, Section 5, Township 8 North, Range 22 East, B.M. (10-26-94)

c. Chilly Bridge to the 2-B Gage. (10-26-94)

d. 2-B Gage to Leslie Gage located in the NW1/4SW1/4SE1/4, Section 10, Township 6 North, Range 25 East, B.M. (10-26-94)

e. Leslie Gage to Moore diversion located in the NW1/4SE1/4SE1/4, Section 4, Township 5 North, Range 26 East, B.M. (10-26-94)

f. Moore diversion to Arco diversion located in the NW1/4NW1/4NW1/4, Section 26, Township 4 North, Range 26 East, B.M. (10-26-94)

g. Below Arco diversion to the Arco Gage. (10-26-94)

02. River Reach Computations. For each reach of the river the natural flow will be computed as the natural flow entering the reach plus gains entering the reach minus losses from the reach. The natural flow thus calculated will be allocated as described in Rule 40. (10-26-94)

03. Gage Station or Other Flow Measuring Facility. A gage station or other flow measuring facility, as approved by the director, shall be located at the Howell Gage, Chilly Bridge, 2-B Gage, Leslie Gage, Moore diversion, Arco diversion and Arco Gage. The Howell, 2-B and Arco gages shall be maintained as part of the USGS Cooperative Program, or equivalent measurement program, and operated continuously. Water District 34 shall continue to contribute to the maintenance and operation of these gage sites in the same proportion as is currently contributed. All other gages shall be operated when water diversions, other than solely storage in Mackay Reservoir, are being made from the river. The cost of installation, operation and maintenance of these other measuring facilities is the responsibility of Water District 34. (10-26-94)

026. -- 029. (RESERVED)

030. NATURAL FLOWS (RULE 30).
Natural flow shall be delivered through the natural river channel to the point of diversion of record except as provided in these rules. (10-26-94)

01. Eastside Canal. The watermaster, with the approval of the director and after consultation with the Big Lost River Irrigation District, may elect to deliver the natural flow of the river through the Eastside Canal when the following conditions are met: (10-26-94)

a. The full flow of the river, including impounded water, to be delivered downstream of the Moore diversion is not greater than the capacity of the Eastside Canal. (10-26-94)

b. More natural flow water can be delivered to calls for natural flow than could be delivered by using the natural river channel. (10-26-94)

c. No water right is injured. (10-26-94)

d. Measuring devices of a type acceptable to the director are installed and maintained where the flow leaves the river channel and where it returns to the river channel. (10-26-94)

e. When used for the delivery of natural flow to the Arco diversion, the Eastside Canal is considered to be the river channel for water delivery accounting purposes and the watermaster shall protect the natural flow for delivery to prior water rights. Water rights diverting water from the river channel downstream from the point the Eastside Canal returns to the river channel shall be measured at their point of diversion from the river downstream from the Eastside Canal return. (10-26-94)

f. Conveyance losses in the Eastside Canal, when considered to be the river channel, shall be proportioned between the river flow, the diversions from the Eastside and pumps that inject ground water into the Eastside Canal. The proportioning will be based upon the ratio of total Eastside diversions and injected ground water to the total inflow to the canal. (10-26-94)

02. Alternate Point of Diversion. The watermaster may elect, with the approval of the director, to deliver natural flow water rights to the alternate point of diversion described in Rule Subsection 030.02.a. below when conditions in Rule Subsections 030.02.b. through 030.02.f. below are met: (10-26-94)

a. This rule may be used to deliver water rights through the Munsey diversion located in the NW1/4NW1/4NW1/4, Section 26, Township 4 North, Range 26 East, B.M. as an alternate point of diversion for water rights with a recorded point of diversion at the McLaughlin diversion located in the NE1/4NW1/4SE1/4, Section 12, Township 3 North, Range 26 East, B.M. (10-26-94)

b. The additional delivery losses through the natural channel to the recorded point of diversion for a water right prevents delivery of natural flow to one (1) or more other water rights then calling for water. (10-26-94)

c. The user receives the same amount of water at the field headgate from the natural flow water right that would be delivered to the field headgate had the natural flow right been delivered at the recorded point of diversion. (10-26-94)

d. Delivery of the water right at the alternate point of diversion is limited to the period of time the water right could have been delivered to the recorded point of diversion based upon the natural flow available at any time delivery is called for and the loss of the river channel at the time the alternate point of diversion began to be used for the delivery of this water right. (10-26-94)

e. No water right is injured by the use of the alternate point of diversion. (10-26-94)

f. The owner of the diversion works at the alternate point of diversion and the ditch(es) used to deliver the water to the field headgate from the alternate point of diversion concurs in the use of those facilities. (10-26-94)

031. -- 034. (RESERVED)

035. MEASURING DEVICES AND CONTROL WORKS (RULE 35).

01. Installation and Maintenance of Measuring Devices and Control Works. In addition to measuring devices or control works specifically described in the listing of the water right, each water user, except small domestic and stock water users from ground water, shall, at the water user's expense, install and maintain measuring devices and control works of a type acceptable to the director, at all points of diversion and any other points, as determined necessary by the director for the proper administration of the use of water. The director may prohibit or prevent the diversion of water by a water user who refuses or fails to comply with this rule in accordance with the provisions of Chapter 7, Title 42, Idaho Code. (10-26-94)

02. Access to Diversion Works. Water users shall provide the water district staff continual access to

all diversion works, measuring devices and control structures, except ground water diversions for small domestic and stock water uses. (10-26-94)

03. Diversions Which May Be Exempt. Diversions below the Chilly Bridge and above the Mackay Reservoir that divert water from the Big Lost River, whose place of use is within the flood plain of the Big Lost River as determined by the director, may be exempt from the requirement for measuring devices and control works with the approval of the director. Flow rates through exempt diversions will be estimated by the watermaster for accounting purposes by assuming the recorded flow rate of the water right is being diverted. (10-26-94)

036. -- 039. (RESERVED)

040. ALLOCATION OF NATURAL FLOW (RULE 40).

01. Administration of Surface Water Rights. Water not diverted or rotated for credit is available for the next in time water right. Natural flow rights are delivered to the point of diversion with no conveyance loss assessment. A natural flow water right delivered through a lateral or canal of a water conveyance entity shall be assessed the conveyance loss for the canal through which the water right is delivered. (3-20-20)

a. All water deliveries must be called for by the water user at least forty-eight (48) hours in advance of the actual water delivery. Water which can be delivered by the watermaster in less than forty-eight (48) hours may be used by the water user. (10-26-94)

b. The water user must notify the watermaster of the water users intent to use water as required by Rule Subsection 040.05. (10-26-94)

02. Rotation Credit. 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: (10-26-94)

a. Rotation for credit must be approved by the director as provided by these rules. (10-26-94)

b. Rotation for credit must be pursuant to the Big Lost River Irrigation District's approved plan of operation. (10-26-94)

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 at the end of the irrigation season. (10-26-94)

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. (10-26-94)

i. Natural flow must be available at the river headgate point of diversion for the water right requesting rotation credit. (10-26-94)

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. (10-26-94)

iii. If natural flow can not 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. (10-26-94)

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. (10-26-94)

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. (10-26-94)

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. (10-26-94)

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. (10-26-94)

03. Assessment of Evaporation and Conveyance Losses to Impounded Water. (10-26-94)

a. Evaporation losses from Mackay Reservoir shall be estimated daily by the watermaster by applying correlated evapotranspiration data and shall be assessed to all impounded water. (3-20-20)

b. Conveyance losses in the natural channel shall be proportioned by the watermaster between natural flow and impounded water. The proportioning shall be done on a river reach basis. Impounded water flowing through a river reach that does not have a conveyance loss will not be assessed a loss for that reach. Impounded water flowing through any river reach that does have a conveyance loss will be assessed the proportionate share of the loss for each losing reach through which the impounded water flows. (3-20-20)

i. An exception is made for impounded water delivered through the Beck and Evan diversion located in the SW1/4SE1/4SW1/4, Section 11, Township 6 North, Range 25 East, B.M. Conveyance loss for this impounded water will be assessed the conveyance loss of the Leslie reach, if any, and the additional conveyance loss to the Beck and Evan diversion but not the conveyance loss of the entire Moore reach. (10-26-94)

04. Initiation and Duration of Surface Water Allocation for Irrigation. Any time after May 1 an irrigation water user can make a delivery call on the natural flow if the water user can make beneficial use of the water for irrigation. If sufficient natural flow exists to deliver the called for water right in a useable amount to the water users place of use, the watermaster shall deliver the right. In addition, the director may allow the diversion of rights or portions of rights for irrigation use from the Big Lost River as early as April 20 and as late as October 31, and from surface water tributaries to the Big Lost River either before or after the period of use for irrigation described in the water right where: (10-26-94)

a. The water so diverted is applied to a beneficial use resulting in an immediate benefit to growing plants or is necessary to allow performance of an agricultural practice generally accepted in the community, as determined by the director. (10-26-94)

b. All surface water rights, regardless of priority, unless subordinated to the water right or class of rights being called for, (now existing or developed subsequent to these rules), existing at the time of diversion that are within their period of use can be satisfied. (10-26-94)

c. The diversion and use of the water does not conflict with the public interest as determined by the director. (10-26-94)

05. Notice to Initiate Delivery. Water users must initiate delivery of their water right(s) by notifying the watermaster that they are ready to put water to beneficial use. (10-26-94)

06. Diversion of Additional Flows. The director may allow the diversion of surface water in addition to the quantity of surface water described in a water right for irrigation use to be diverted for irrigation of the described place of use where: (10-26-94)

a. The waters so diverted are applied to a beneficial use, as determined by the director. (10-26-94)

b. All surface water rights, regardless of priority, unless subordinated to the water right or class of water rights being called for, (now existing or developed subsequent to these rules), existing at the time of diversion that are within their period of use can be satisfied. (10-26-94)

c. The diversion and use of the water does not conflict with the public interest as determined by the director. (10-26-94)

d. Additional flows diverted pursuant to Rule 040.06 are natural flows and will not be assessed as impounded water. (10-26-94)

07. Mackay Dam Minimum By-Pass. Mackay Dam and Reservoir shall be operated to maintain a minimum flow of fifty (50) CFS at the 2-B gage. (10-26-94)

08. Canal or Lateral Delivery. In the event a water user feels inappropriate delivery of natural flow water is occurring on any lateral or canal, the water user can request the watermaster to investigate. In the event the watermaster determines that delivery of natural flow water rights within a lateral or canal is being improperly conducted he shall: (10-26-94)

a. Notify the ditch rider and the water delivery entity of the results of his investigation and coordinate efforts to make proper delivery of the natural flow. (10-26-94)

b. If the situation has not been sufficiently resolved within twenty-four (24) hours the watermaster will notify the director who may take all actions authorized by law to remedy the situation. (10-26-94)

041. -- 054. (RESERVED)

055. WATER USAGE (RULE 55).

01. Incidental Stock Water. When stock water is not specifically included for a water right that includes irrigation, a portion of the quantity described for irrigation use may be diverted and used, from the same point of diversion and at the same place of use as the irrigation use, for purposes of maintaining a reasonable water supply for stock watering use during the period of use for irrigation described in the water right. (10-26-94)

02. Winter (Non-Irrigation Season) Stock Water. During the non-irrigation season, from October 16 through April 30 except as modified by Rule 040.04, the storage of water in Mackay Reservoir is superior to all rights from the Big Lost River with points of diversion downstream from Mackay Dam, subject to minimum release. (3-20-20)

a. Winter stock water can be called for and delivered pursuant to the list of water rights if it does not interfere with storage in Mackay Reservoir. (3-20-20)

b. A right holder calling for delivery of stock water must have access to a diversion point and delivery system to convey the right to the place of use recorded in the list of water rights. If the headgate and delivery system are controlled by an entity other than the water user, the watermaster will only deliver the water with the concurrence of the owner of the headgate and delivery system and then only when such delivery does not constitute unreasonable waste as determined by the director. (10-26-94)

056. -- 059. (RESERVED)

060. ACCOUNTING FOR WATER DELIVERY (RULE 60).
Water diversions shall be accounted for continuously, throughout the year by the watermaster. (10-26-94)

061. -- 999. (RESERVED)

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