BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF DETERMINING A FUTILE CALL FOR THE DELIVERY OF SURFACE WATER IN WATER DISTRICT NO. 34, BIG LOST RIVER	)	**ORDER**

The Director of the Department of Water Resources ("Director" or "Department"), being charged with the duty of protecting vested water rights, enforcing certain statutes of the State of Idaho, and the rules of the Department, has consulted with the watermaster for Water District No. 34 regarding the determination of a futile call and delivery of surface water on the Big Lost River.

Based on the Department's investigation and his understanding of the law, the Director makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. The watermaster of Water District No. 34 has contacted the Director and provided measurements of the flow and diversions in the various reaches of the Big Lost River for those reaches defined in the Distribution Rules. The following pertinent data were provided by the watermaster:

a) Flows at the Leslie gaging station and downstream diversions. The Beck Ditch is the only diversion between the Leslie gaging station at the Leslie Bridge and the Moore/Eastside Diversion. The Beck Ditch is located nearly one mile below the Leslie Bridge and the Moore/Eastside Diversion is located over 7 miles below the Leslie Bridge.

	Discharge (cfs)			
Date	Big Lost River at Leslie Bridge	Beck Ditch	Moore Ditch	Eastside Ditch
7/24/2004	202	12	42	0
7/25/2004	166	12	30	0
7/26/2004	149	12	24	0
7/27/2004	133	11	13	0
7/28/2004	133	13	3	0

b) The watermaster reported on July 26, 2004, that he had curtailed distribution of water on the Big Lost River below Mackay Dam to water rights having priority dates later than April 22, 1884. The watermaster distributed about 13.5 cfs of natural flow to the Moore Ditch, including 0.14 cfs to the one water right on the Moore Ditch having a priority date of April 22, 1884, and about 13.4 cfs to water rights bearing priority dates between June 1, 1883 and August 10, 1883. About 10.5 cfs of storage water was also delivered to the Moore Ditch on this date. The watermaster further reported that of the 13.5 cfs of natural flow delivered to the Moore Ditch, only 3.4 cfs was deliverable to and used at the field headgates of the senior priority water right holders. This constitutes a loss of about 75 percent of the decreed natural flow between the ditch heading and the senior priority right field headgates.

c) Also on July 26, 2004, the total loss of water in the river between the Beck Ditch and the Moore Ditch was about 113 cfs, or 82.5 percent.

d) The Eastside Ditch was shut off on July 24, 2004, when water rights having priority dates later than May 20, 1884, were curtailed. There are only three decreed natural flow rights on the Eastside Ditch with priority dates of May 20, 1884, or earlier, totaling 1.65 cfs, and water to these senior rights could not be delivered to the field headgates on the Eastside Ditch. On July 29, 2004, the manager of the Big Lost River Irrigation District ("BLRID") reported to the Department that all active storage water on the Eastside Ditch had been used by July 24, 2004.

e) On July 28, 2004, flow in the river at the Leslie Bridge was 133 cfs, and the amount of water distributed to the Moore Ditch declined to 3 cfs. The watermaster reported that the 3 cfs could not be delivered to the field headgates of the most senior priority water right holders. The total loss of water in the river between the Beck Ditch and the Moore Ditch was about 120 cfs, or 90.2 percent. The manager of the BLRID reported to the Department that all water allocated to the Moore Ditch from active storage had been used by July 29, 2004, and/or there were no further calls for delivery of stored water to the Moore Ditch.

2. On July 28, 2004, the watermaster for Water District No. 34 reported that water was being delivered to just four diversions above the Leslie Bridge, including the Sharp, Swauger, Burnett, and Darlington Ditches. The watermaster reported that only storage water was delivered to three of these four ditches, while about 5.9 cfs of natural flow rotation credit was delivered to the heading of the Sharp Ditch. The watermaster reported that a total of 82.5 cfs of storage water was delivered to the remaining three ditches plus the Beck Ditch, and that all water rights having a priority date of April 22, 1884, on the remaining three ditches and the Beck Ditch had been curtailed on July 28, 2004. Water rights having the priority of April 22, 1884, are the most senior rights on the Sharp, Swauger, Burnett, Darlington, and Beck diversions, and have a total diversion rate of about 33.6 cfs.

3. On July 28, 2004, the watermaster reported that the available storage remaining in Mackay Reservoir was 1,922 acre-feet. The Department's determination of storage water released from Mackay Reservoir, based on the data provided by the watermaster, was 62 cfs on

July 28, 2004. Assuming no loss in the conveyance of storage water between Mackay Dam and the Beck Ditch, the data indicate that approximately 20.5 cfs of natural flow may have been delivered as storage water to the Swauger, Burnett, Darlington, and Beck Ditches. The manager of the BLRID reported to the Department on July 30, 2004, that the reservoir control gates at Mackay Dam were raised on July 28, 2004, to release additional storage water as the April 22, 1884, priority rights were curtailed, but that flow in the river did not correspondingly increase. While delivery of the 20.5 cfs as storage water may be in error, the accounting as storage water resulted from on-going daily adjustments to release of water from Mackay Reservoir and is within the range of what can be practically administered. Curtailment of this water will not allow any additional distribution of water to senior priority water rights at the Moore Diversion.

4. On July 28, 2004, the watermaster submitted a written request to the Director for consideration of a futile call determination pursuant to Rule 20.04 of the Water District 34 Water Distribution Rules. The watermaster made this request based on the data reported to the Department showing extremely high losses in both the river channel between Leslie and the Moore Ditch, as well as high losses in the Moore Ditch and the inability to distribute water to the most senior priority water rights on the Moore Ditch.

5. Based on the information supplied by the watermaster for Water District No. 34 and analysis of that information by the Department, the call for the delivery of surface water in the Big Lost River by senior right holders located from Leslie downstream to and including the Moore Diversion would be futile.

CONCLUSIONS OF LAW

1. Rule 20.04 (IDAPA 37.03.12.20.04) of the Rules Governing Water Distribution in Water District No. 34 (Distribution Rules), provides:

> **Rule 37.03.12.020.04. Futile Call for the Delivery of Surface Water**
> When curtailment of junior upstream surface water rights will not make water available for delivery and use to senior downstream surface water rights, without unreasonable waste as determined by the Director, the watermaster will not curtail the junior water rights in a futile effort to deliver water to the senior rights. The Director may consult the Water District 34 advisory board, the Big Lost River Irrigation District and other impacted water users when determining whether attempting to deliver senior downstream surface water rights would be futile.

2. Rule 30 (IDAPA 37.03.12.30.01 - .02) of the Distribution Rules, provides:

> **Rule 37.03.12.030. Natural Flows**
> Natural flow shall be delivered through the natural river channel to the point of diversion of record except as provided in these rules.

3. Rule 30.01 and 30.02 (IDAPA 37.03.12.30.01 - .02) of the Distribution Rules provide only two exceptions to Rule 30 above. The watermaster is allowed to deliver the natural

flow of the river channel only through the Eastside Canal and the Munsey Ditch to downstream diversions under certain conditions.

4. Curtailment of junior surface water rights upstream of the Moore Diversion for delivery and use of senior rights at the Moore Diversion constitutes a futile call by the senior water right holders at the Moore Diversion for the remainder of the 2004 irrigation season, except as provided in the order below.

ORDER

IT IS THEREFORE HEREBY ORDERED as follows:

1. The watermaster for Water District No. 34 is hereby instructed to distribute surface flows of the Big Lost River in the reach from Mackay Dam to the Beck Diversion as a separate source for the remainder of the 2004 irrigation season, except as provided below.

2. The watermaster for Water District No. 34, with the approval of the Director, may discontinue the futile call determination anytime during the 2004 irrigation season if it is subsequently determined that delivery is no longer futile.

Dated this 30th day of July, 2004.

KARL J. DREHER
Director

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 30th day of July, 2004, the attached ORDER was served upon the following individual by placing a copy of the same in the United States Mail, postage prepaid, and properly addressed as follows:

BOB DUKE
WATERMASTER
WATER DISTRICT 34
PO BOX 53
MACKAY ID 83251

BOB SHAFFER
GENERAL MANAGER
BIG LOST RIVER IRRIG DIST
P.O. BOX 205
MACKAY ID 83251

ANN S ANDERSEN
LARMAN D ANDERSEN
RT 1 BOX 52
MOORE ID 83255

MARY ANN BURT
FRED N BURT
PO BOX 628
MOORE ID 83255

PHYLLIS J. JONES
RT 1 BOX 91BB
MOORE ID 83255

PENNY R HAWKINS
RT 1 BOX 91A
MOORE ID 83255

VAUGHN L JENSEN
THEOLA E JENSEN
RT 1 BOX 93
MOORE ID 83255

HERMAN AIKELE
RT 1 BOX 61
MOORE ID 83255

DON A AIKELE
RT 1 BOX 60
MOORE ID 83255

JACK A JENSEN
DIANA JENSEN
RT 1 BOX 32
MOORE ID 83255

RAYMOND W NOBLE
ARABELL M NOBLE
1425 MOUNTAIN VIEW LN
IDAHO FALLS ID 83402-1813

LLOYD A BINGHAM
RT 1 BOX 21
MOORE ID 83255

JAY F PEARSON
SUSAN PEARSON
RT 1 BOX 47
MOORE ID 83255

WILLIAM HUGH RUSSELL
JACKIE LEE RUSSELL
RT 1 BOX 70
MOORE ID 83255

DE ANN N JENSEN
JAY V JENSEN
RT 1 BOX 112A
MOORE ID 83255

RON CARLSON - MANAGER
IDWR EASTERN REGION
900 N SKYLINE DR STE A
IDAHO FALLS ID 83402-6105

C Calais

Crystal Calais
Administrative Assistant
Water Distribution Section