State of Idaho
DEPARTMENT OF WATER RESOURCES
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DIRK KEMPTHORNE
Governor
KARL J. DREHER
Director

June 4, 2001

Mr. Doug Rosenkrance
Watermaster, Water District 34
Mackay, ID

Sent by FAX to (208) 588-3137

RE: Implementation of General Provisions in Water District 34

Dear Doug:

I am writing as the senior IDWR representative who participated in the negotiations that developed the new General Provisions in Water District 34. It is my understanding that you and others in Water District 34 have expressed concerns about the implementation of the new General Provisions. Because the General Provisions have been decreed by the District Court, these General Provisions should be implemented as soon as is practicable. If an appeal is filed, the provisions remain in effect unless stayed by the Court.

I have been advised that you have a specific question about General Provision 3g, which has been decreed as follows:

> 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.

During the negotiations, users of water upstream from Mackay Reservoir stated a concern that the ability of waterusers downstream from the reservoir to rotate direct flow water rights into storage could in some situations cause injury to water rights upstream from the reservoir. In response to this concern, the parties agreed to the language above. This General Provision provides that rotation into storage cannot occur when water rights senior to October 1, 1936 are being curtailed upstream from Mackay Reservoir. Stated another way, rotation into storage can continue when the river is disconnected (as defined by General Provision No. 6), and while the river is connected when curtailments are not being made to water rights upstream from Mackay Reservoir for priority dates senior to October 1, 1936.

Please contact me if this information does not address the question that you have raised. As you are aware, IDWR guidance regarding water distribution in your district comes from Mr. Tim Luke, and he will continue to provide this assistance.

Sincerely,

David R. Tuthill, Jr.

David R. Tuthill, Jr., P.E.
Adjudication Bureau Chief

Cc: Norm Young, Tim Luke, Susan Hamlin

It is my understanding that a question has arisen regarding the potential for a situation whereby the river (1) connects on the rising stage of the river at flows of 750 cfs or greater for three consecutive days, (2) disconnects on the falling stage of the river at flows of 450 cfs or less for three consecutive days, and (3) experiences flows of greater than 750 cfs for three consecutive days again during the same irrigation season.

Analysis of these General Provisions requires that the terms "rising stage" and "falling stage" be interpreted. While formal definitions are not included in the General Provisions, the terms are commonly used by hydrologists to refer to trends in water levels as depicted on a hydrograph. For example, a one-day spike on a hydrograph due to a flash flood, or a one-day depression in a hydrograph due to a freeze would not be considered to depict the "rising stage" or the "falling stage." Stages are considered to be multi-day trends. However, it is possible that during a year a stream could experience more than one "rising stage" and "falling stage", as confirmed by the senior hydrologist at IDWR, Mr. Bill Ondrechen. As an example, in 1992 the hydrograph clearly depicts two separate rising and falling stages, one in early May and another in late May. Thus, it is possible for the river to connect on the rising stage as described in General Provision 6a, and for the river to disconnect as described in General Provision 6b, more than one time during the year.

To assess the impact of this analysis we have reviewed the hydrographs for Howell Gage on the Big Lost River for recent years. We have found that this situation is infrequent, but can occur. This year, for example, it is possible that this situation will again occur. As you are aware, we have already experienced the connection of the river at 750 cfs or greater, and the disconnection of the river at 450 cfs or less. In the event that the river again reaches 750 cfs or greater for three days, the river will be considered to have experienced another rising stage and will reconnect again under General Provision 6a.

I recognize that this assessment is different from off-the-cuff discussions that various IDWR members, including myself, have had at various times with various waterusers during recent weeks. However, this assessment, which has been reviewed by knowledgeable people in the Department, represents our official interpretation at this time. Thus, please consider this letter to serve as guidance for you as Watermaster on this issue.

Sincerely,

David R. Tuthill, Jr.

David R. Tuthill, Jr., P.E.
Adjudication Bureau Chief

Cc: Attached Mailing List
Norm Young, Tim Luke, Susan Hamlin, Carter Fritschle

Enclosure: Letter dated June 4, 2001

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BIG LOST RIVER GENERAL PROVISIONS LETTER
06/15/01

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