

JUN 23 2016

DEPARTMENT OF
WATER RESOURCES

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

**IN THE MATTER OF ROTATION
CREDIT IN WATER DISTRICT 34,
BIG LOST RIVER BASIN**

**MOTION TO TAKE JUDICIAL
NOTICE OF BASIN-WIDE ISSUE 5
SRBA DOUCMENTS (ROTATION
CREDITS) AND OTHER
DOCUMENTS**

COMES NOW, the Objectors, Nelson Mackay Ranch, L.L.C., et al.¹ requests that the Director take judicial notice of the following documents:

1. Documents filed in Twin Falls County Case 39576 (Snake River Basin Water Adjudication or "SRBA"), designated as Basin-Wide Issue 5 rotation credits, and more particularly specified in the Objectors' Amended Exhibit List as Exhibit 4 through 29, and 32 and 33, attached hereto as Exhibit 1, are files that are maintained in the SRBA Court. These documents were either downloaded to the SRBA site or provided to me by Diana Delany, Clerk of the SRBA Court,

2. The SRBA Decrees WERE downloaded from the Idaho Department of Water Resources website, listed as Exhibit 23 in the Amended Exhibit list.

¹ Nelson Mackay Ranch , LLC et al includes Bell Smith, LLC; Byron Pehrson, Lanna Pehrson, Terry Pehrson, and Loy Pehrson; Harry J. and Beverly Crawford; Jennie M. and Orville E. Smith ; John and Patrick Powers; Magee Family Trust ; Mojanet J. and Deborah D. Broadie; Nelson Mackay Ranch, LLC; Notch Butte Farms, LLC; Peggy and Randy D. Pehrson; and Wight Enterprises, LLC.

3. Finally, I am asking that the Director take Judicial Notice of archived documents for the archived Rule for the Department addressing Water District 34, designated as Exhibits 35 and 37 on the Amended Exhibit List.

Oral argument is requested.

DATED this 23 day of June, 2016.

HAEMMERLE LAW, P.L.L.C.


FRITZ X. HAEMMERLE

CERTIFICATE OF SERVICE

I hereby certify that on the 23 day of June, 2016, I have caused to be presented the foregoing to the Department of Water Resources and Participants and will send notification of such filing to the following e-mail addresses and/or Post Office Boxes by United State Mail:

Original:

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Terry Pehrson, and Loy Pehrson
Harry J. and Beverly Crawford
Jennie M. and Orville E. Smith
John and Patrick Powers
Magee Family Trust
Mojanet J. and Deborah D. Broadie
Nelson Mackay Ranch, LLC
Notch Butte Farms, LLC
Peggy and Randy D. Pehrson
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FRITZ X. HAEMMERLE

Exhibit 2 (AMENDED EXHIBIT LIST)

1. IDWR Order Suspending Rotation Credits
2. Nelson Mackay Ranch, et al Brief and Objection
3. List of Participants with Partial Decrees
4. BWI 5 Notice of Intent to Participate Seth Beal (9/20/1999)
5. BWI 5 Motion for More Definite State (Sorenson, Beal and Walker) (12/17/1999)
6. BWI 5 Affidavit of Karl Dreyer (12/30/1999)
7. BWI 5 Proposed Order Requesting Supplemental Report on Basis of Recommendations (1/19/2000)
8. BWI 5 Proposed Order Setting Deadlines for IDWR to file Direct Testimony (1/20/2000)
9. BWI 5 State's Notice of Intent to Participate (1/25/2000)
10. BWI 5 Order Setting Mandatory Settlement Conference (2/16/2000)
11. BWI 5 2000 Supplemental Director's Report (3/27/2000)
12. BWI 5 Order Appointing Cushman as Settlement Facilitator (4/28/2000)
13. BWI 5 Settlement Conference Report (5/12/2000)
14. BWI 5 Minutes (5/23/2000)
15. BWI 5 Order to Show Cause (5/25/2000)
16. BWI 5 Trial Setting Order (6/13/2000)
17. BWI 5 Settlement Conference Report (9/15/2000)
18. BWI Order Requesting Dates (12/11/2000)
19. BWI 5 Available Dates Submitted by Sorenson, Walker and Beal (12/20/2000)
20. BWI 5 Minutes from Status Conference (1/16/2001)
21. BWI 5 Second Settlement Conference Report (2/20/2001)
22. BWI 5 Notice of Intent to Produce Evidence and Cross Sorenson, Walker & Beal (3/8/2001)
23. BWI 5 Witness List Sorenson, Walker and Beal (3/15/2001)
24. BWI 5 State of Idaho Witness List (3/15/2001)
25. BWI Witness List Sorenson., Walker and Beal (3/16/2001)
26. BWI 5 Pretrial Held (4/23/2001)
27. BWI 5 Order of Partial Decree for General Provisions (5/9/2001)
28. BWI 5 Certificate of Mailing, Notice of Appeal (6/18/2001)
29. BWI 5 Petition for Judicial Review, Sorenson, Walker and Beal (12/31/2002)
30. BLRID Position Statement (5/20/16) Supplemental BLRID Position Statement (6/3/2016)
31. Affidavit of John Lezamiz
32. 1999 Director's Report, Reporting Area 1, IDWR Basin 34
33. 1999 Supplemental Director's Report, Reporting Area 1, IDWR Basin 34
34. *State v. Nelson*, 131 Idaho 12, 951 P.2d 943 (1998)
35. IDAPA 37.03.12.040 (Rotation Credits)
36. Mackay et al. Motion in Limine
37. Current IDAPA 37.03-12.040
38. Statement of Gary Wight, Wight Enterprises, LLC
39. Statement of Harry and Beverly Crawford
40. Statement of Loy Pehrson
41. Statement of Lewene Clark, Personal Representative for Jennie Marie Smith Estate
42. Statement of Mojanet and Deborah Broadie

- 43. Statement of Randy and Peggy Pehrson
- 44. Statement of Randy Nelson
- 45. Deposition of Mathew Weaver (06/17/16)
- 46. Deposition of Timothy Luke (06/17/16)
- 47-50. Reserved for additional Mackay Exhibits
- 51-70. Reserved for IDWR Exhibits (See attached Exhibit List for IDWR Deposition)
- 71-90. Reserved of Participants Exhibits

**IN THE MATTER OF ROTATION CREDIT IN WATER DISTRICT 34,
BIG LOST RIVER BASIN**

**IDWR DEPOSITION EXHIBITS
Depositions of Mat Weaver and Tim Luke
June 17, 2016, at IDWR State Office**

| NO. | EXHIBITS | DATE |
|------------|---|--------------------------|
| 1 | 1991 IWRRRI Report, Ground Water Pumping Impacts Big Lost River | 12/1991 |
| 2 | 2006 Rotation by User | 10/15/2006 |
| 3 | 2007 Rotation by User | 10/14/2007 |
| 4 | 2010 Rotation Sum | 2010 |
| 5 | 2011 Rotation by User | 10/16/2011 |
| 6 | 2011 Rotation Sum | 2011 |
| 7 | 2012 Rotation Sum | 2012 |
| 8 | 2013 Rotation Sum | 2013 |
| 9 | 2014 Rotation by Canal | 2014 |
| 10 | 2014 Rotation Sum by Canal User | 2014 |
| 11 | 2014 WD 34 WM Well Readings | 2014 |
| 12 | 2015 Rotation by Canal | 2015 |
| 13 | 2015 Rotation by Canal excel spreadsheet | 2015 |
| 14 | 2015 Rotation by Canal User | 2015 |
| 15 | 2015 WD 34 WM Well Readings | 2015 |
| 16 | April 1, 1935 Big Lost Irrigation District Minutes | 4/1/1934 |
| 17 | Copies of documents from Mackay Dam File from 2006 | 2006 |
| 18 | Excerpt from annual report of distribution of water of the Big Lost River Nov. 1, 1995 through October 31, 1996 | 11/1/1995– 10/31/1996 |
| 19 | Howell Gage 1990-2015 | 1990-2015 |
| 20 | Mackay Res USGS contents 1990-2015 | 1990-2015 |
| 21 | Rotation Credit 2013 | 2013 |
| 22 | WD34 2015 use with names | 2015 |
| 23 | WD34 2015 GW Usage | 2015 |
| 24 | WD34 2002 Operation Plan for Mackay Dam and Reservoir | 2002 |
| 25 | Preliminary Order Suspending Rotation Credit in Water District 34 | 4/29/2016 |
| 26 | December 12, 2013, letter from Gary Spackman regarding WD 34 expectations for the 2014 irrigation season | 12/12/2013 |
| 27 | March 3, 2016, letter from Gary Spackman regarding notice of intent to suspend rotation credit | 3/3/2016 |