

State of Idaho  
Department of Water Resources  
**Water Right License**  
WATER RIGHT NO. 25-14425

**PRIORITY:** February 21, 2018

Maximum Diversion Rate: 0.25 CFS  
Maximum Diversion Volume: 75.4 AF

It is hereby certified that:

CORP OF PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS  
50 E NORTH TEMPLE ST 12TH FLOOR SALT LAKE CITY UT 84150-0012

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated September 08, 2015, and has submitted Proof of Beneficial Use on February 21, 2018. An examination confirms water is diverted from:

**SOURCE:**  
SOUTH FORK SELLARS CREEK

**TRIBUTARY:**  
SELLARS CREEK

and a water right has been established as follows:

**BENEFICIAL USE**  
RECREATION

**PERIOD OF USE**  
05/01 to 09/30

**DIVERSION RATE**  
0.25 CFS

**ANNUAL DIVERSION VOLUME**  
75.4 AF

**LOCATION OF POINT(S) OF DIVERSION:**

SOUTH FORK SELLARS CREEK SW¼SW¼ Sec. 11, Twp 02S, Rge 39E, B.M. BINGHAM County

**PLACE OF USE:** RECREATION

| Twp | Rge | Sec | NE |    |    |    | NW |    |    |    | SW |    |    |    | SE |    |    |    | Totals |
|-----|-----|-----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|--------|
|     |     |     | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE |        |
| 02S | 39E | 11  |    |    |    |    |    |    |    |    |    |    | X  |    |    |    |    |    |        |

**CONDITIONS OF APPROVAL**

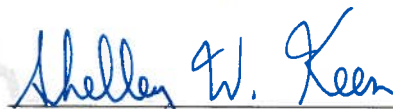
1. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 01.
2. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversions.
3. The right holder shall not divert water at a rate exceeding 1/2 of the total flow of South Fork Sellars Creek.
4. To measure the rate of flow in the South Fork Sellars Creek immediately downstream from the point of diversion for this right, the right holder shall maintain a rated section, permanent staff gauge, and rating curve acceptable to the Department.

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5. The recreational storage portion of right 25-2020 authorizes the diversion of annual total of 3.7 af to be used for the initial filling of the pond and for the replacement losses caused by evaporation. Water right 25-14425 authorizes 0.25 cfs and 75.4 af of flow through water for the pond.
6. An intake screen of 1/4 inch mesh or smaller shall be maintained at the point of diversion. The right holder must ensure the intake screen remains operational at all times and shall be responsible for maintenance, repair, and replacement of the intake screen. The right holder shall consult the Idaho Department of Fish and Game prior to replacing the intake screen.
7. Use of water under this right shall be non-consumptive.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed this 15<sup>th</sup> day of March, 2018.



SHELLEY W. KEEN  
Water Rights Section Manager



**State of Idaho**

**DEPARTMENT OF WATER RESOURCES**

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: [www.idwr.idaho.gov](http://www.idwr.idaho.gov)

GARY SPACKMAN  
Director

C.L. "BUTCH" OTTER  
Governor

March 21, 2018

CORP OF PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER  
DAY SAINTS  
50 E NORTH TEMPLE ST 12TH FLOOR  
SALT LAKE CITY UT 84150-0012

RE: License No. 25-14425

**Issuance of License**

Dear Water Right Holder(s):

The Department of Water Resources has issued the enclosed Water Right License confirming that a water right has been established in accordance with your permit. Please be sure to thoroughly review the conditions of approval and remarks listed on your license.

The license is a PRELIMINARY ORDER issued by the Department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

The rating table/curve for the rated section of South Fork Sellars Creek downstream of the diversion must comply with the standards set forth in Section 10 of the "State of Idaho Department of Water Resources Water Measurements Guidelines" for a rated section. You can find these guidelines at <http://www.idwr.idaho.gov/files/water-measurement/IDWR-Water-Measurement-Reporting-Guidelines.pdf>. The guidelines require the following:

After the first year in which a rated section is developed, an approved examiner shall maintain the rating by providing at least two discharge-stage measurements per year. This additional data shall be incorporated into the existing rating table. Annual discharge-stage measurements should also be used to determine gage shifts when necessary. A copy of the updated rating shall be submitted to the department or remain on file with the appropriate reporting district pursuant to Section 14(C).

As shown above, you are required to update the rating table/curve by having an approved examiner perform a minimum of two (2) measurements per year and integrate that information into the rating table/curve. The updated rating table/curve should be supplied to Water District 01 to ensure they have the ability to properly regulate your diversion as needed.

Please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at 208-287-4951.

Sincerely,



Pamela Skaggs, Water Rights Supervisor  
Water Right Permits Section

Enclosure(s)

c: WATER DISTRICT #01  
SPF WATER ENGINEERING C/O SCOTT KING

## **CERTIFICATE OF SERVICE**

I hereby certify that on March 22, 2018 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDERS (Order Reinstating A Permit) & (Approved License) to the person(s) listed below:

**RE: WATER RIGHT NO.                      25-14425**

**CORP OF PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST  
OF LATTER DAY SAINTS  
50 E NORTH TEMPLE ST 12TH FLOOR  
SALT LAKE CITY UT 84150-0012**

**WATER DISTRICT #01  
LYLE SWANK  
900 N SKYLINE DR STE A  
IDAHO FALLS ID 83402-1718**

**SPF WATER ENGINEERING LLC  
C/O SCOTT KING  
300 E MALLARD DR STE 350  
BOISE ID 83706**



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Darla Block  
Technical Records Specialist

## EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

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

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "Preliminary Order" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:

### PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department 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. See Section 67-5243(3) Idaho Code.

### EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

### REQUEST FOR HEARING

Unless a 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 of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

### ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

## CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

## FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

## APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

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

IN THE MATTER OF PERMIT NO. 25-14425     )  
IN THE NAME OF CORPORATION OF THE     )  
PRESIDING BISHOP OF THE CHURCH OF     )  
JESUS CHRIST OF LATTER DAY SAINTS     )  
\_\_\_\_\_ )

**ORDER REINSTATING  
A PERMIT**

This matter having come before the Idaho Department of Water Resources ("Department"), the Department finds, concludes and orders as follows:

**FINDINGS OF FACT**

1. On July 26, 2016, the Department issued Permit No. 25-14425 ("Permit") in the name of the Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter Day Saints ("Permit Holder"), with the condition that proof of construction of works and application of water to beneficial use ("Proof of Beneficial Use") be submitted to the Department on or before August 1, 2017. The permit bore the priority date of September 8, 2015.
2. On May 31, 2017, the Department notified the Permit Holder that a Proof of Beneficial Use statement ("Proof") was due and instructed the Permit Holder of the steps to be taken to submit the Proof or a request for extension of time ("Extension Request").
3. On August 1, 2017, the permit lapsed because the Department had not received an acceptable Proof or Extension Request.
4. On August 8, 2017, the Department mailed a lapse notice ("Lapse Notice") to the Permit Holder.
5. On October 6, 2017, the Permit Holder filed Proof and a beneficial use field report ("Field Report") prepared by a certified water right examiner.
6. On October 31, 2017, the Department determined that the Field Report was deficient and returned it and the Proof to the Permit Holder.
7. On November 17, 2017, the Department received an amended Field Report and the Permit Holder's Proof.
8. On January 4, 2018, the Department sent the Permit Holder a letter explaining that because more than 60 days had elapsed between the mailing of the Lapse Notice and the submittal of the amended Field Report and Proof, Idaho Code §42-218a(2) requires a statement of reasonable cause and a reinstatement fee also.

9. On February 21, 2018, the Department received the Permit Holder's statement of reasonable cause and the reinstatement fee.

### CONCLUSIONS OF LAW

1. Idaho Code § 42-218a.2 provides as follows:

In connection with a proof of beneficial use statement submitted more than sixty (60) days after such notice of lapsing, the director shall require all of the following items to be submitted to the department:

(a) A report prepared by a certified water right examiner as a result of an examination to clearly confirm and establish the extent of the beneficial use of water established in connection with the permit during the time authorized by the permit and any extensions of time previously approved. The report shall be on a form or forms specified by the director and shall provide the information specified in section 42-217, Idaho Code, for confirming beneficial use and such other information as may be required by the director.

(b) A statement of reasonable cause for filing a late proof of beneficial use.

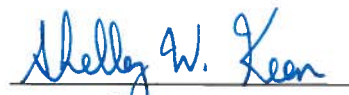
(c) A reinstatement fee of two hundred fifty dollars (\$250).

The Permit Holder has provided a reasonable showing why this Permit should be reinstated, by submitting an acceptable Proof, Field Report, statement of reasonable cause, and reinstatement fee. The Permit should be reinstated based upon the February 21, 2018, filing date.

### ORDER

IT IS HEREBY ORDERED that Permit No. 25-14425 is **REINSTATED** with the priority date advanced to February 21, 2018.

Dated this 15<sup>th</sup> day of March, 2018.

  
Shelley W. Keen, Manager  
Water Rights Section

## MEMORANDUM

TO: Water Right File 25-14425

FROM: Daniel Nelson – Analyst 3

DATE: March 6, 2018

SUBJECT: License Review of Water Right 25-14425

This field exam for this right was performed by Certified Field Examiner Scott King of SPF Water Engineering. Mr. King sent in his original field report on October 6, 2017, which was subsequently rejected. My letter dated October 31, 2017, provides the reasons for the rejection of the field report. Mr. King resubmitted his field report on November 17, 2017. In the second report, Mr. King recommended 0.25 cfs and 75.4 af for recreational use.

### **History:**

The use associated with this permit is for recreation use for a pond near a church campground. Water right transfer 79132 was filed to change a portion of water right 25-2020 to recreation storage to cover the filling of the pond. The transfer proposed to change and move approximately 1.8 of the 25 acres of irrigation in the SWNW quarter of Section 8, Township 2 South, Range 40 East, to fill a pond in the SWSW quarter of Section 11, Township 2 South, Range 39 East. The transfer provided information that suggested that all of water right 25-2020 was in the water supply bank. Therefore the transfer required that the permit holder remove the 1.8 acres from the water supply bank lease.

Further review of the water supply bank lease shows that only 135 acres of the 269 acres authorized by water right 25-2020 was placed into the water supply bank, and only 13 of the 25 acres authorized in the SWNW of Section 8 was placed into the water supply bank.

The permit holder never did amend or change their water supply bank lease, so I questioned the certified field examiner to determine what they were using to mitigate the pond. Roxanne Brown who is working with the Scott King responded in a letter stating that the 1.8 acres that were retired was taken out of the 12 acres not placed into the water supply bank.

Water right 25-2020 was decreed in 2005, and water right transfer 79132 was filed in 2014. The aerial imagery available to the Department suggests that approximately 5 to 6 acres could have been irrigated in 2011 and possibly 2009, but it doesn't appear as though any irrigation has occurred in the SWNW of Section 8 since 2011. Considering the information available, it appears as though more acres than 1.8 acres haven't been irrigated in the SWNW for some time, and it appears as though sufficient acres were retired to cover the mitigation without pulling those acres from the water supply bank lease.

### **Diversion Rate:**

Mr. King supplied a measurement for a compound weir, which is an unconventional way of measuring the flows for this system. Although the compound weir is unconventional, the measurements supplied by Mr. King, did follow established parameters for measuring water over a compound weir. Please see the attached memo and diagram that discusses the compound weir measurement.

The permit holder was required to install a measurement device in Sellars Creek, but opted to use a rated section. This option was chosen due to an agreement with Idaho Fish and Game. According to the minimum measurement requirements, a rating curve and measurement plan is required before a rated section can be approved as an authorized measurement option. I contacted the certified field examiner on this issue, and he has supplied the rating curve needed to monitor the flows in Sellars Creek according to the minimum measurement requirements set forth by the Department.

### **Rated Section Plan Review:**

The permit holder made a request to use a rated section for the stream measurement to satisfy condition 7 on the permit. The Idaho Department of Water Resources Water Measurement Guidelines (Measurement Guidelines) provide the requirements for calibration of non-standard open channel measurement devices and rated sections in Section 10 of the Measurement Guidelines. The Measurement Guidelines require a plan be submitted with a rating curve or table. On January 29, 2018, the field examiner supplied the measurement plan and rating curve. The rating curve was reviewed by the Water Allocation Engineer and the Water Compliance Bureau Chief, and both staff members determine the rating curve supplied was acceptable.

The plan did provide that the permit holder would provide a single measurement every two years to ensure that the rating curve remained accurate. However, the Measurement Guidelines require that a minimum of two measurements be made every year to ensure that changes in the stream channel do not adversely affect the rating curve. I wrote the letter to the permit holder on March 6, 2018, that partially approved the measurement plan. The letter stated the rating curve was acceptable, but a minimum of two measurements per year were required to maintain the rating curve. The letter stated that if I did receive a response from them within 14 days, I would move forward with the licensing of the permit. I also informed them a condition would be added to ensure that they complied with the Measurement Guidelines and measure the stream a minimum of two times per year to be used to determine gage shifts.

**Diversion Volume:**

Mr. King did not provide a volume in the original field report. The second report that was resubmitted did have a volume, and the volume calculations do seem reasonable.

**Overlap:**

Water right permit 25-14404 was originally filed for this same use from an unnamed stream. It appears it was discovered that the diversion from the unnamed stream authorized by permit 25-14404 was not developed, and water from the South Fork of Sellars Creek was developed instead. The permit holder informed Department staff that there was not sufficient water in the unnamed stream to refresh the pond, so they diverted from Sellars Creek instead. In order to resolve this issue, the permit holder filed this permit, since permit 25-14404 couldn't be amended to change the source of water. In order to resolve any further complications, the permit holder has submitted a relinquishment of permit form for permit 25-14404. Overlapping water right 25-2020 was discussed thoroughly above in the history.

**Conditions:**

No combined diversion rate limit is needed for this permit, since the capacity of the system is more than capable of supplying the 0.04 cfs for diversion to storage authorized by 25-2020 and the 0.25 cfs authorized by this permit. All of the conditions on the permit should be carried forward to licensing except for conditions 4 and 5. Condition 5 should be changed to condition R43 as is standard, and condition 4 should be changed to condition 259 as follows:

The recreational storage portion of right 25-2020 authorizes the diversion of annual total of 3.7 af to be used for the initial filling of the pond and for the replacement losses caused by evaporation. Water right 25-14425 authorizes 0.25 cfs and 75.4 af of flow through water for the pond.

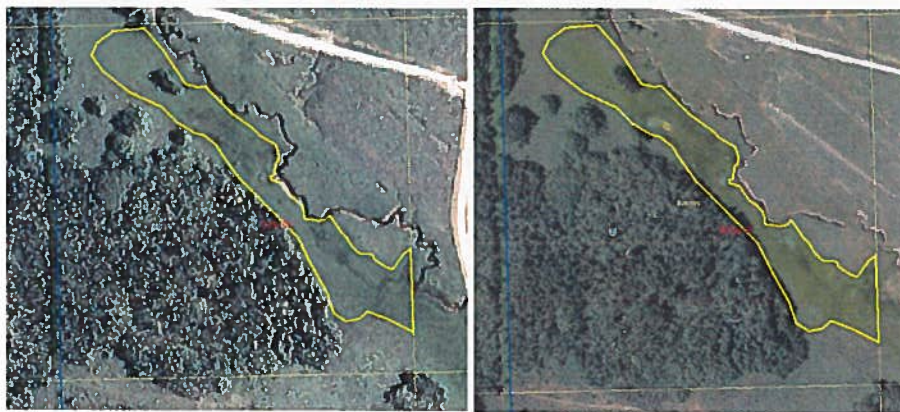
A condition should be added to address the measurement requirement for a rated section. This condition should state the following:

The right holder is authorized to measure the instantaneous rate of flow of water in South Fork Sellars Creek by using a rated of stream by maintaining a permanent staff gauge, maintaining a rating curve, or table and shall maintain the rating by providing a minimum of 2 discharge-stage measurements per year by an approved examiner to be used to determine gage shifts and updating the rating curve or table.

Permit 25-14425 – License Review Maps



The image on the left is the 2004 aerial image and the one on the right is the 2006 aerial image. It appears from these photos that some irrigation might have occurred in these years.



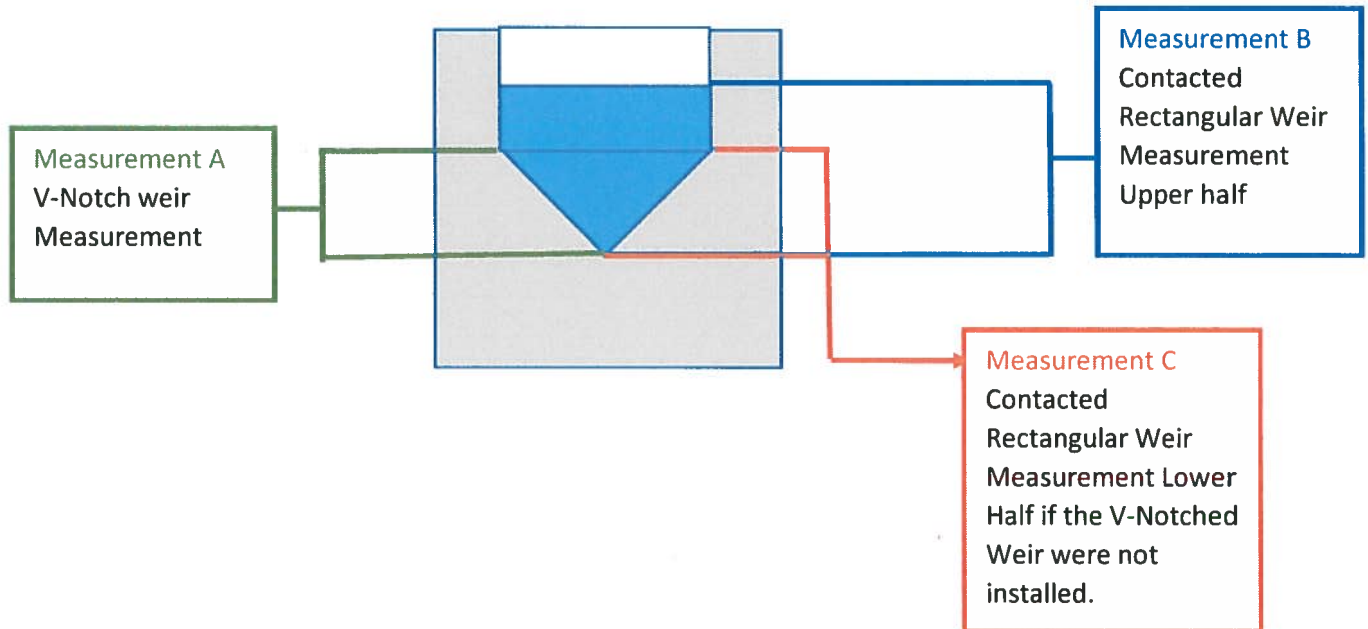
The image on the left is the 2009 aerial image and the one on the right is the 2011 aerial image. It appears from these photos that 5 to 6 acres (in yellow border) were irrigated south of the creek during these years.



The image on the left is the 2013 aerial image and the one on the right is the 2015 aerial image. It doesn't appear as though these acres were actually irrigated. There does appear to be some overflow from a stock tank or pond.

## Permit 25-14425 – Measurement Analysis

The weir for this system was designed as a compound weir. In other words, it is two weirs in one device. The bottom part of the weir is a v-notch weir and the top part of the weir is a rectangular weir. Please see the diagram below:



To calculate the flows for this type of compound weir, you need to add the entire flow rate from the V-Notch Weir (Measurement A) to the total flow as if it were only a Contracted Rectangular Weir (Measurement B) and then remove or subtract the bottom portion of the Contracted Rectangular Weir (Measurement C). The bottom portion of the Contracted Rectangular Weir was replaced with the V-Notch Weir, so it is really isn't there any longer. Due to head pressures on the weir, you have to treat Measurement B as if the weir was full of water. The calculation needed is as follows:

$(\text{Measurement A} + \text{Measurement B}) - \text{Measurement C} = \text{Flow through the Weir.}$

In this permit, Mr. King used this formula to measure the amount of water flowing through the point of diversion. This is not the formula used in the Bureau of Reclamation Handbook, but it is the formula used in the USGS Weir Experiments, Coefficients, and Formulas paper printed in 1907. Several studies have been done to create a formula for a compound weir to replace the standard calculation shown above, but those studies have only been done on 90 degree V-Notch weirs. The Bureau of Reclamation Handbook includes a disclaimer on the accuracy of the formula that they created, and their formula only addresses a 90 degree V-Notch Weir, and it doesn't work with the 60 degree used in this measurement device. The weir used in this situation is a 60 degree V-Notch Weir. Therefore, I believe the formula that Mr. King used is the best alternative for this type of device at this time. Although this type of weir is a bit unorthodox, it is a weir that has been in use for several years for measuring a wide range of flow rates, so I believe that Mr. King's calculations are reasonably accurate.