

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

IN THE MATTER OF PERMIT	)	PRELIMINARY ORDER DENYING
NO. 74-15701 IN THE NAME OF	)	PETITION TO REMOVE LOCKABLE
ROSS BOND JR.	)	DEVICE AND FISH SCREEN
_____	)	REQUIREMENTS

This matter having come before the Department of Water Resources (Department) as a request to remove a lockable device requirement and a fish screen requirement, the Department finds, concludes, and orders:

FINDINGS OF FACT

1. On March 27, 2012, the Department issued Permit No. 74-15701 ("permit") authorizing Ross Bond Jr., ("permit holder") to divert 0.10 cfs of water from McDevitt Creek, a tributary of the Lemhi River, for recreation and recreation storage purposes.

2. Among the permit conditions is the following requirement to install a lockable device:

Prior to diversion of water under this right, the right holder shall install a lockable device, subject to the approval of the Department, in a manner that will provide the watermaster suitable control of the diversion.

3. Also among the permit conditions is the following requirement to install a fish screen:

A fish screen of ¼ inch or smaller mesh shall be installed and maintained at the point of diversion.

4. On March 27, 2017, the Department received the permit holder's petition to remove the lockable device requirement and the fish screen requirement from the permit.

5. On April 7, 2017, the Department received an email from the watermaster of Water District 74, Lemhi River and tributaries, stating, "I do not require a lockable head gate or measuring device. There are no other diversions this would have a conflict with and there is no consumptive use."

6. On May 5, 2017, the Department received an email from the Idaho Department of Fish & Game ("IDFG") stating:

The Lemhi Drainage area incorporates know spawning and rearing streams for Endangered Species Act (ESA) listed steelhead, bull trout and Chinook Salmon. The proposal submitted by the applicant may potentially affect these species in the Lemhi River Drainage. Before IDFG can submit any formal comments or waiver, we need to view and understand what the applicant is proposing.

7. On July 17, 2017, the Department received an email from IDFG stating, “IDFG will be requesting Ross Bond to attach a fish screen to his 6 inch diversion.”
8. The Lemhi River is tributary to the Salmon River upstream from the ending point of the minimum stream flow established on the Salmon River consistent with the purposes of the federal Wild and Scenic Rivers Act, Pub. L. 90-542, 82 Stat. 906, Oct 2, 1968 (codified as amended at 16 U.S.C. §§ 1271, et seq.) and decreed as Water Right 75-13316.

APPLICABLE STATUTES, RULES, AND AUTHORITIES

IDAPA 37.03.08.50.01 states:

The Director may issue permits with conditions to insure compliance with the provisions of Title 42, Chapter 2, Idaho Code, other statutory duties, the public interest, and specifically to meet the criteria of Section 42-203A, Idaho Code, and to meet the requirements of Section 42-203C, Idaho Code, to the fullest extent possible including conditions to promote efficient use and conservation of energy and water.

Idaho Code § 42-701(1) states, in pertinent part:

The appropriators or users of any public waters of the state of Idaho shall maintain to the satisfaction of the director of the department of water resources suitable headgates and controlling works at the point where the water is diverted. Each device shall be of such construction that it can be locked and kept closed by the watermaster or other officer in charge, and shall also be of such construction as to regulate the flow of water at the diversion point.

The *Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees* (“Stipulation”) signed by the United States of America, the State of Idaho, and other parties to the Snake River Basin Adjudication in July of 2004 states on page 5:

IDWR will condition each water right permit or license issued after the effective date of this Stipulation for a non-de minimis water right upstream from the ending point of the Wild and Scenic River as set forth in this Stipulation to require that each diversion is equipped with lockable controlling works, a measuring device, and a data logger or other suitable device that regularly monitor and records the rate of diversion.

CONCLUSIONS OF LAW

1. Pursuant to IDAPA 37.03.08.50.01 the Department can issue permits with conditions to promote the public interest and efficient use of water.

2. Pursuant to Idaho Code § 42-701(1) the Department can require appropriators of a public water source, such as McDevitt Creek, to install lockable controlling devices on the diverting works for their water rights.
3. Because the waters of the Lemhi River drainage are inhabited by fish species listed as threatened under the Endangered Species Act, it is not in the public interest at this time to waive the fish screen requirement on the permit.
4. The Department should deny the permit holder's request to waive the fish screen requirement on the permit.
5. Through the 2004 Stipulation the State of Idaho committed to a program of lockable controlling works and measuring devices on new water diversions to promote efficient administration of water rights in streams tributary to the Salmon River upstream from the ending point of the minimum stream flow established by Water Right 75-13316. The commitment in the Stipulation applies to the Lemhi River drainage, and it does not state an exemption for non-consumptive water rights.
6. It is not in the public interest to waive the lockable controlling works requirement on the permit.
7. The Department should deny the permit holder's request to waive the measuring device requirement on the permit.

ORDER

IT IS HEREBY ORDERED that the permit holder's petition to waive the lockable controlling device requirement on the permit is **DENIED**.

IT IS ALSO HEREBY ORDERED that the permit holder's petition to waive the fish screen requirement on the permit is **DENIED**.

Dated this 24th day of July 2017.



Shelley W. Keen, Manager
Water Rights Section