

Memorandum

Date: 04/22/2010

To: Water Right File 72-16692

From: Nick Miller

Re: Measurement and Control Devices, Permit 72-16692

Darla Block phoned me today to discuss the above referenced permit. Proof of beneficial use was submitted for this permit, but there is some question as to whether the measuring device and controlling works are in place. Marshall Ogden had called her earlier this afternoon and asked that she place a document in the permit file stating that I had told him that I would visit the diversion(s) and determine if a lockable headgate is required. I do not recall that conversation, so I suggested I write this memo for the file.

I have had conversations with Mr. Ogden in the past regarding compliance with the 2007 IDWR order requiring measuring devices and controlling works on the two diversions for his existing water rights that are also used to divert water under the permit in question. During those conversations, I told Mr. Ogden that the two diversions will require measuring devices and controlling works, and that the upper diversion (that Mr. Ogden shares with the late John Moore) has an adequate controlling works, but no measuring device, and the lower ditch has an adequate measuring device, but no controlling works. Mr. Ogden has indicated that he plans to reconstruct the diversion on the lower ditch and install a lockable controlling works, and we have discussed a workable plan to install a measuring device on the upper diversion. Although Mr. Ogden is working in Hawaii for the next year or so, and Mr. Moore is recently deceased, it is unlikely these two projects will be completed in the near future, but I am confident they will be completed.

I have told Mr. Ogden that, since the lower ditch is small and could be easily shut off with a shovel and a tarp, and since the upper diversion seems to consistently divert close to the water right amount, and there are no other users on French Creek, I am willing to provide an extension of time to comply with the 2007 Order, with the understanding that he will work diligently toward completing the projects when he returns to Idaho. However, I told him that I cannot be certain that such an extension would affect the permit requirement. Nevertheless, given that the ditches are controllable, and that there is an IDWR order in place that will continue to support efforts to ensure these devices are installed, I do not feel that the lack of compliance at this time should be grounds for voiding the permit.