

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

IN THE MATTER OF WATER	)	
DISTRIBUTION IN WATER	)	ORDER DENYING
DISTRICT NO. 34	)	PETITIONS FOR
(THE BIG LOST RIVER)	)	RECONSIDERATION
	)	
_____	)	

On July 26, 2013, Keith Hill, Terry Monson, and Mitchell Sorensen, (collectively “Petitioners”) filed a *Petition for Reconsideration of Final Order Requiring Measuring Devices for Ground Water Diversions* (“Petition”) of the July 10, 2013 *Final Order Requiring Measuring Devices for Ground Water Diversions* (“Final Order”) issued by the Director of the Idaho Department of Water Resources (“Director”). In the Petition, the Petitioners affirm the Director’s legal authority to issue the Final Order to “enforce the existing rule requiring measurement of ground water diversions.” However, Petitioners assert that by limiting the Final Order to only ground water diversions, the Final Order does not fully comply with the provisions of Idaho Code § 42-701 and IDAPA 37.03.12.35.01. Petitioners request the Final Order be amended or another order issued to include the same requirements of water measuring devices for all surface water diversions in Water District No. 34.

On July 29, 2013, Loy Pehrson (“Pehrson”) filed a *Motion for Reconsideration of Final Order Requiring Measuring Devices for Groundwater Diversions* and *Memorandum in Support* (“Motion”). In the Motion, Pehrson makes the same argument as the Petitioners. Pehrson affirms the Director’s authority to issue the Final Order, but argues that “surface water measurement devices should be required as well” to ensure the Director obtains all the measurements and information necessary to adequately deliver water and protect water rights in priority. Pehrson further states that the Director’s Final Order appears arbitrary by limiting the water measurement requirements to only ground water diversions. Pehrson requests that the Director reconsider or rescind the Final Order, or issue an additional order requiring measuring devices for surface water diversions.

ANALYSIS

Idaho Code provides the Director broad discretion regarding the installation and maintenance of measuring devices:

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 such appropriator shall construct and maintain, *when required by the director of the department of water resources*, a rating flume or other measuring device at such point as is most practical in such canal, ditch, wellhead or pipeline for the purpose of assisting the watermaster or department in determining the amount of water that may be diverted into said canal, ditch, wellhead or pipeline from the stream, well or other source of public water.

Idaho Code § 42-701(1)(emphasis added).

Idaho Code § 42-701(1) grants broad discretionary authority to the Director to require measuring devices. The Director may decide when it is appropriate to issue measuring device orders and to decide the appropriate scope of each order. More often than not, measurement and control orders are specific to a single diversion or a group of diversions, rather than basin-wide or district-wide. In this case, the Final Order addressed ground water users and included criteria specific to ground water measurement requirements. This does not mean the Director's decision to issue the Final Order for ground water diversions was arbitrary by not addressing surface water. As the Final Order points out, the ground water pumping systems in Water District No. 34 are complex, both physically, and with regard to the administration of the water rights they divert. It is appropriate to issue a Final Order addressing just ground water at this point and it is within the Director's discretion to limit the scope of the Final Order to just ground water. Idaho Code § 42-701(1); IDAPA 37.03.12.35.01 (Each water user shall install and maintain measuring devices "as determined necessary by the director..."). Moreover, the Final Order was issued in response to written and verbal requests by water users, the Water District No. 34 Advisory Committee, and the Watermaster. These requests were specific to ground water diversions.

Requirements for measurement of surface water diversions go back at least as far as the UC- Abbot Decree of 1936. A few orders already exist addressing surface water measurement in Water District No. 34.¹ Notwithstanding those orders, the Director agrees there needs to be one order requiring measuring devices for surface water diversions in Water District No. 34, but disagrees with the Petitioners and Pehrson that this should be done in the Final Order. A separate order is needed, superseding current surface water measurement orders in Water District No. 34 and instituting measurement device requirements in the parts of Water District No. 34 not already covered by water measurement orders.

¹ The Department has issued at least three orders requiring measurement and control for certain surface water diversions in Water District No. 34 (above the reservoir in 1991 and 2001, and Antelope Creek in 2004).

ORDER

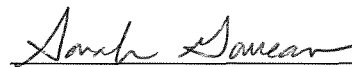
Based upon the foregoing, it is hereby ORDERED that the petitions for reconsideration filed by Petitioners and Pehrson to amend or rescind the Final Order are DENIED. It is within the Director's discretion to limit the Final Order to ground water diversions. However, the Director will issue a subsequent order updating and superseding current surface water measurement orders in Water District No. 34 and instituting measurement device requirements in the parts of Water District No. 34 not already covered by water measurement orders.

DATED this 14th day of August, 2013.


GARY SPRACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of August, 2013, the above and foregoing document was served on each individual or entity on the service list for this matter on file at the Idaho Department of Water Resources, 322 East Front Street, Boise, Idaho, and posted on the Department's website: www.idwr.idaho.gov. Each individual or entity on the service list was served by placing a copy of the above and foregoing document in the United States mail, postage prepaid and properly addressed.



Sarah Garceau
Technical Records Specialist
Idaho Department of Water Resources

EXPLANATORY INFORMATION TO ACCOMPANY AN ORDER DENYING PETITION FOR RECONSIDERATION

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

(Required by Rule of Procedure 740.02)

The accompanying order is an **Order Denying Petition for Reconsideration** of the "final order" or "amended final order" issued previously in this proceeding by the Idaho Department of Water Resources ("department") pursuant to section 67-5246, Idaho Code.

REQUEST FOR HEARING

Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person who is aggrieved by the action of the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action. The person shall file with the director, within fifteen (15) days after receipt of written notice of the action issued by the director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the director and requesting a hearing. See section 42-1701A(3), Idaho Code. **Note: The request must be received by the Department within this fifteen (15) day period.**

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter 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: a) the service date of the final order, b) the service date of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

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PO BOX 32
ARCO ID 83213

CHRISTY J AND JAMES A RINDFLEISCH
2167 N 2900 W
ARCO ID 83213

RONALD C RISH
2576 N 3300 W
ARCO ID 83213

ALVIN J AND GERTRUDE A ROESSNER
RT 1 BOX 247
ARCO ID 83213

PAMELA ANN AND W GARY ROGERS
3771 N US HIGHWAY 93
MOORE ID 83255-8725

DELORES I AND DOUGLAS G ROSENKRANCE
3926 N 4300 W HOUSTON RD
MACKAY ID 83251

MIMI L G AND SHANE D ROSENKRANCE
5532 BARTON FLAT RD
MACKAY ID 83251

HOWARD AND LAVON ROSENKRANCE
PO BOX 374
MACKAY ID 83251

LANCE ROSENKRANCE
PO BOX 382
MACKAY ID 83251

ARVELLA I AND LYNN O ROTHWELL
3995 N 3700 W
DARLINGTON ID 83255

DOROTHY AND LOREN SAYER
3839 W HOUSTON RD
LESLIE ID 83255

EVAN KENT SAYER
4221 N US HWY 93
MACKAY ID 83251

BIRGITTA AND ROGER SAYER
4644 S LOCUST LN
SALT LAKE CITY UT 84117

NOLAN SAYER
PO BOX 213
MACKAY ID 83251

INGRID K SCHOLZ-ALVAREZ
PO BOX 151
MACKAY ID 83251

DOUGLAS D AND LORE SCHUREMAN
3059 W 2230 N
ARCO ID 83213

SANDRA K SCOTT
3493 ANTELOPE RD
MOORE ID 83276

JIM L AND LINDA SCOUTEN
PO BOX 623
MOORE ID 83255

HOLLY C AND WILLIAM A SEEFRIED
4399 HOUSTON RD
MACKAY ID 83251

THOMAS A SHELTON
1085 CHAMA CT
WASHINGTON UT 84780

SHELTON FAMILY TRUST
C/O LEONARD A SHELTON
319 HARVARD AVE
CLAREMONT CA 91711

DEAN AND GAYLE SIDDOWAY
3312 W 3400 N
MOORE ID 83255-8730

ROBERT SILACCI
820 PARK ROW #680
SALINAS CA 93901-2406

DWIGHT SIMMONS
5457 FISH HATCHERY RD
MACKAY ID 83251

DALE E SMITH
3076 N 3350 W
MOORE ID 83255-9794

MICHAEL S AND SANDIE L SMITH
3595 W 3600 N
MOORE ID 83255

JENNIE MARIE AND ORVILLE E SMITH
3897 W 3700 N
MOORE ID 83255

RULLA H SMITH
4335 W HOUSTON RD
MACKAY ID 83251

M CAROLYN SMITH
5872 HWY 93
MACKAY ID 83251

LLOYD L SMITH
RT 1 BOX 19
MACKAY ID 83251

JENNIE M AND ORVILLE E SMITH
RT 1 BOX 52
DARLINGTON ID 83231

ELAINE R AND MITCHELL D SORENSEN
3871 W 2500 N
MOORE ID 83255

NORMAN K AND W T SOWARDS
1719 FINCH RD
HAYDEN LAKE ID 83835

ROBERT L AND JOSEPHINE SPRAKER
2652 N 3300 W
ARCO ID 83213

RONALD SCOTT AND TEKLA A STALEY
1443 W 3700 N
HOWE ID 83244

ANDREW G AND E ELAINE STAV
3306 W 3400 N
MOORE ID 83255

HAROLD AND NANCY A STEIN
3506 W 3900 N
MOORE ID 83255

G CRAIG AND JACKIE STEWART
2700 N 3405 W
MOORE ID 83255

BRUCE N AND GWEN STEWART
2731 N 3325 W
MOORE ID 83255

SUNSET TRUST ORGANIZATION
C/O ARTHUR W QUIST MGR
2272 N 2900 W
ARCO ID 83213

ANNA L TAGGART
3981 W 4100 N
MACKAY ID 83251

VIVA TAYLOR
PO BOX 275
MACKAY ID 83251

RAYMOND J TEA
PO BOX 212
MENAN ID 83434

MARK TELFORD
PO BOX 511
ARCO ID 83213

TELFORD LANDS LLC
1450 W HWY 24
PAUL ID 83347

MARJEAN ARMSTRONG AND WENDELL HURST TEW
WENDELL & MARJEAN TEW REVOCABLE LIVING TRUST
3939 HWY 93
LESLIE ID 83255

KERRI L AND WILLIAM E TOELCKE
386 COACHMAN DR
IDAHO FALLS ID 83402

LUCAS L TRACY
312 7TH AVE E
TWIN FALLS ID 83301

UNITED STATES OF AMERICA ACTING THROUGH
USDA FARM SERVICE AGENCY
9173 W BARNES STE B
BOISE ID 83709-1555

UNITED STATES OF AMERICA ACTING THROUGH
USDI BUREAU OF LAND MANAGEMENT
IDAHO STATE OFFICE
1387 S VINNELL WAY
BOISE ID 83709-1657

VALLEY VISTA CARE CENTER
820 ELM ST
SAINT MARIES ID 83861

D KEITH AND DEBORA J WADDOUPS
2778 N 3520 W
MOORE ID 83255

LE ANNE AND WADE WADDOUPS
3221 W 3300 N
MOORE ID 83255

ROBERT D WADDOUPS
PO BOX 42
MOORE ID 83255

JACK L AND LOIS J WALKER
1134 E 97TH N
IDAHO FALLS ID 83401

YOUNG HARVEY WALKER
2338 N 2930 W
ARCO ID 83213

DAVID E AND NANCY W WANSTROM
3384 W 3200 N
MOORE ID 83255

KURT AND SUSAN WANSTROM
3486 N 3350 W
MOORE ID 83255

WARM SPRINGS CREEK RANCH LLC
C/O MARK GATES
700 EMERSON ST
PALO ALTO CA 94301

WESLEY F WATSON
PO BOX 546
ARCO ID 83213

DIANE WEAVER
PO BOX 365
MACKAY ID 83251

GAY D WHEELER
BOX 915
MOORE ID 83255

G ALVIN WHEELER
PO BOX 915
MOORE ID 83255

DUANE AND MONARAE WHIPPLE
2835 N 3300 W
MOORE ID 83255

WIGHT PROPERTIES LLC
3798 W 4050 N
MOORE ID 83255

DARRELL AND KAREN WILBURN
4001 N 3200 W
DARLINGTON ID 83255

WILD HORSE PARTNERS LLC
C/O DAVID STOECKLEIN
PO BOX 856
KETCHUM ID 83340

TERRY AND VICKIE WILLIAMS
PO BOX 33
MACKAY ID 83251

MARCIE L WILLIAMS
PO BOX 361
MACKAY ID 83251

LINDA C WILLIAMS
PO BOX 96
MACKAY ID 83251

JUNE T AND LEON L WILLIAMS
RT 1 BOX 20
DARLINGTON ID 83231

BRETT AND TRUDY WILLIAMS
RT 1 BOX 21
DARLINGTON ID 83213

LOGAN WILLIAMS JR
BOX 361
MACKAY ID 83251

HOWARD AND SHEILA WOOD
PO BOX 567
ARCO ID 83213

L VERNON AND VERNETTA WOODBURY
4021 W HOUSTON RD
MACKAY ID 83251

L RANDY AND SHEILA WOODBURY
4037 W 4300 N
MACKAY ID 83251

MALLNEE PEHRSON WREDE
2112 WAHLQUIST DR
IDAHO FALLS ID 83401

JAMES M AND JEAN E YORK
14738 BAUMHART RD
OBERLIN OH 44074-9670

BRET L AND JOLENE ZOLLINGER
5415 FISH HATCHERY
MACKAY ID 83251