

To: Western

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WATER RESOURCES  
WESTERN REGION



State of Idaho  
**DEPARTMENT OF WATER RESOURCES**  
WESTERN REGION, 450 W. State Street, Boise, Idaho

JOHN V. EVANS  
Governor

A. KENNETH DUNN  
Director

Mailing address:  
Statehouse  
Boise, Idaho 83720  
(208) 334-2190

September 25, 1986

Dear Rush Creek Water User:

Enclosed please find a copy of an Order which may affect your use of water from Rush Creek. Note that the order requires the installation of lockable controlling works and measuring devices on diversion from Rush Creek, to be installed prior to any diversion in water year 1987.

If you wish to apply for an exception, or if you have questions about the Order, please contact this office.

Sincerely,

DAVID R. TUTHILL, JR., P. E.  
Manager, Western Regional Office

DRT:jp

Enclosure: Order

c.c. Watermaster Lawson Howland

ADDRESS LABELS FOR  
RUSH CREEK WATER USERS  
FOR DAVE T.

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C/O KEITH FORD  
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STEPHEN BERARDINELLI  
1486 ELYSIAN WAY  
POMONA, CA 91767

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

IN THE MATTER OF MEASURING DEVICES )  
AND LOCKING CONTROLLING WORKS ON )  
DIVERSIONS FROM RUSH CREEK WITHIN )  
WATER DISTRICT 67, WEISER RIVER )

ORDER

This matter having come before the Idaho Department of Water Resources (Department) as a result of a request from the Watermaster of Water District 67, the Department finds as follows:

FINDINGS OF FACT

1. The rights to the use of the waters of the Weiser River and tributaries have been determined by a decree of the Seventh Judicial District Court of the State of Idaho in the case of:

John T. Muir and William H. Muir  
vs.  
William Allison, et al,

dated June 20, 1921.

2. Said decree includes a requirement that measuring devices and lockable controlling works must be constructed by appropriators, such that the headgates shall be constructed and placed to divert water from the stream without holding back the general flow thereof and without unnecessary loss by seepage and evaporation.

3. The flows of Rush Creek, tributary to the Weiser River, were adjudicated in the above-referenced decree.
4. Water District Number 67, Weiser River and tributaries, is an active Water District under the laws of Chapter 6, Title 42, Idaho Code.
5. During some low flow periods the watermaster of Water District 67 regulates the flows in Rush Creek by closing off diversions that have junior priority dates.
6. Not all of the diversions from Rush Creek are currently equipped with adequate controlling works and measuring devices. This impedes the watermaster in his efforts to insure that Rush Creek waters are delivered to the senior water right holders on a priority basis.

#### CONCLUSIONS OF LAW

##### Applicable Legal Principles

1. Section 42-607, Idaho Code, provides in part that:

It shall be the duty of said watermaster to distribute the waters of the public stream, streams or water supply, comprising his water district, among the several ditches taking water therefrom according to the prior rights of each respectively, in whole or in part, and to shut and fasten, or cause to be shut or fastened, under the direction of the department of water resources, the headgates of the ditches heading from such stream, streams or water supply, when in times of scarcity of water it is necessary so to do in order to supply the prior rights of others in such stream or water supply . . .

2. Section 42-701, Idaho Code, provides in part that:

The appropriators or users of any public waters of the state of Idaho shall maintain to the satisfaction of the department of water resources suitable headgates and controlling works at the point where the water is diverted, which 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 and such appropriator shall construct and maintain, when required by the department, a rating flume or other measuring device at such point as is most practical in such canal or ditch for the purpose of assisting the watermaster or department in

determining the amount of water that may be diverted into said ditch from the stream . . .

Application of Legal Principles

3. To properly distribute the waters of Rush Creek tributary to the Weiser River, lockable controlling works and measuring devices are required.
4. The Department is authorized by both decree and statute to order the installation of proper lockable controlling works and measuring devices.

ORDER

It is, therefore, hereby ORDERED:

1. That headgates and/or controlling works capable of controlling flows of water under the various rights shall be installed at all points of diversion from Rush Creek tributary to the Weiser River. This requirement does not apply to diversions where:

- a. The water is to be used for single household domestic purposes only.
- b. A specific exemption is approved by the Department. An exemption can be issued only when the controlling works would be unfeasible or unnecessary.

Where water is diverted from the source and then rediverted from a man-made ditch, channel or pipeline, the headgate and/or controlling works is required only at the diversion from the source.

2. That a means of measurement of flows of water shall be provided for each diversion that requires a headgate or controlling works. The means of measurement shall be a standard measuring device of a type approved by the Department of Water Resources. In those cases where a measuring device is unnecessary even though controlling works are required, an exemption may be approved by the Department.

determining the amount of water that may be diverted into said ditch from the stream . . .

Application of Legal Principles

3. To properly distribute the waters of Rush Creek tributary to the Weiser River, lockable controlling works and measuring devices are required.
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2. That a means of measurement of flows of water shall be provided for each diversion that requires a headgate or controlling works. The means of measurement shall be a standard measuring device of a type approved by the Department of Water Resources. In those cases where a measuring device is unnecessary even though controlling works are required, an exemption may be approved by the Department.

3. That the required headgates and/or controlling works, and means of measurement, must be installed and permanently maintained for diversions from Rush Creek before any water is delivered by the watermaster in the 1987 water year.

4. That no water from Rush Creek shall be delivered by the watermaster of Water District 67 after October 31, 1986 to diversions where required headgates and/or controlling works, and means of measurement, have not been provided.

Signed this 24<sup>TH</sup> day of SEPTEMBER, 1986.

*for Norman C. Young*  
A. KENNETH DUNN  
Director





State of Idaho  
DEPARTMENT OF WATER RESOURCES  
WESTERN REGION, 2735 Airport Way, Boise, Idaho 83705 • (208) 334-2190

ECIL D. ANDRUS  
Governor

R. KEITH HIGGINSON  
Director

September 21, 1988

DISTRIBUTION: Rush Creek Waterusers

RE: Water Delivery on Rush Creek, Tributary to the Weiser River,  
Within Water District 67

Dear Water User:

This Department was requested by the Watermaster of Water District 67, Mr. Gerald Meyers, to perform an assistance visit on Rush Creek. Accordingly, on August 31, 1988, Mr. Meyers and I reviewed the diversions from the creek. The purposes of this letter are to provide for the waterusers on Rush Creek an account of what we found, and to document the modifications that were found to be necessary.

As you are aware, the flows in Rush Creek, as for most of the Weiser River drainage basin, have been at drought levels for the second consecutive year. The flows in the creek on the day of our visit were insufficient to satisfy even the oldest water rights, with date of priority May 1, 1878. Accordingly, Mr. Meyers and I reviewed the rates of flow in all diversions from Rush Creek to insure that they were not adversely affecting the senior water rights.

Our review was based on the understanding of the Watermaster that the senior water right holder would not object to a small stockwater flow in upstream ditches, if such flow was not in excess of the flow of a single garden hose. Generally, the flow of a garden hose is not in excess of one miner's inch (0.02 cubic feet per second or 9 gallons per minute), so we reviewed the diversions to determine if they were in excess of this amount.

A detailed accounting of this investigation is beyond the scope of this letter. Information regarding each diversion is available on request. In summary, however, we found two diversions that were diverting 1878 senior water rights, and two upstream diversions that were diverting more than one miner's inch. One of the upstream diversions had a closed, locked headgate but was passing about 5 miner's inches due to what appeared to be seepage around the headgate. This diversion, owned by Mr. Hubbard, needs to be repaired so that the flow in the ditch is fully controllable.

The other upstream diversion, through Mr. Ward's land, is unique in that the diverted stream does not stray far from the main channel of Rush Creek, and appears to reenter the main channel with the same flow as that which is diverted. The diverted stream provides a portion of the water for a small yard and garden, but it is replenished by tributary springs from the property.

September 21, 1988

Because of the unique nature of this diversion, it can be considered to be a meander of the main channel stream rather than a standard diversion. Accordingly, the Watermaster and I could see no reason for flow in this meander to be curtailed.

With respect to the installation of measuring devices on the diversions from Rush Creek, a note of explanation is needed. As a general rule for water delivered throughout the state, a measuring device is needed only on diversions that will receive water delivered by the Watermaster. For any diversion that has a junior water right (so that it is shut off as soon as the Watermaster begins to make deliveries), no measuring device is required. We reviewed several headgates that were in this category. It should be understood by the wateruser that the Watermaster will shut and lock the headgate of such a diversion as soon as any downstream wateruser can demonstrate that he is not receiving his decreed amount of water which is needed to be applied to a beneficial use.

Some of the headgates that we reviewed had not been locked. The Watermaster indicated that he intends to purchase additional locks and chain to accomplish this. All Rush Creek diversions must be locked by the Watermaster.

The Newbold diversion from the Wiggins penstock is not currently measurable. After October 15, 1988, diversion through the Newbold pipeline will be delivered by the Watermaster only at the locations where a totalizing measuring device is installed. During low flow periods diversion via this measuring device shall be limited to the amount needed for stockwater.

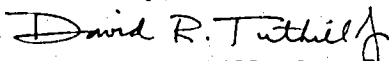
A system is needed for measuring the water level of the Wiggins storage reservoirs. This system can consist of galvanized pipe or other material which is painted in 6 inch increments to be readable at a distance, and which is attached to the inside of the reservoir. This system is necessary as a backup to the totalizing flow devices that are currently installed.

A lockable headgate is needed for the Hubert Ward upper diversion. This diversion was totally dry on the day of our field visit, but must be made controllable prior to next season.

This year significant improvements were made regarding the water delivery system on Rush Creek. However, the corrections listed above are needed before the delivery is fully controlled. The Watermaster has spent a significant amount of time this year learning the system and insuring that the delivery has been as equitable as possible. His efforts are commended.

Please advise either this office or the Watermaster if you have questions or comments regarding the information and requirements identified in this letter.

Sincerely,



David R. Tuthill, Jr., P.E.  
Manager, Western Regional Office

MAILING LIST FOR LETTER  
DATED SEPTEMBER 21, 1988  
RE: WATER DELIVERY ON  
RUSH CREEK

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KEITH FORD

CAMBRIDGE, ID 83601

September 29, 1986

I, certify that true and correct copies of the foregoing ORDER, Water District 67, was mailed, postage prepaid, from this office on, September 29, 1986, to the attached list of Rush Creek water users.

Judy Pense

Judy Pense  
Secretary

RECEIVED  
OCT 1 1986

Department of Water Resources  
Western Regional Office