

December 10, 2007

<<Antelope Creek Water User>>

<<Address>>

<<City, State, Zip>>

RE: Control and Measurement of Diversions

Dear Water User:

On November 16, 2004, the Idaho Department of Water Resources (IDWR) issued the enclosed order requiring installation of measuring devices and headgates for all diversions of water from Antelope Creek and tributaries. This letter is sent to holders of water rights affected by that order as a reminder that all diversions from Antelope Creek and tributaries to Antelope Creek must be equipped with a lockable controlling works and a functioning measuring device. All holders of water rights from Antelope Creek and tributaries are asked to contact the watermaster to ensure each of the user's diversions are either in compliance, or are brought into compliance.

The 2004 order was issued in response to numerous complaints to IDWR from water users describing a lack of administration by the watermaster. Adequate measuring and lockable control works are essential for proper administration by the watermaster. Although the order required installation of controlling works and measuring devices by June 1, 2005, several diversions from the creek and tributaries currently are not equipped with suitable controlling works and/or measuring devices.

The number of diversions currently without adequate controlling works and measuring devices limits the watermaster's ability to effectively deliver water and respond quickly to changes in the water supply. This was demonstrated in May of this year when the watermaster petitioned IDWR to issue a futile call determination for the delivery of senior Big Lost River water rights through the regulation of junior Antelope Creek users. The futile call determination was difficult and time consuming, as it was uncertain whether the delivery of water rights on Antelope Creek was held to the same priority date as the river since many of the diversions were unmeasured and uncontrolled. If adequate measurement and control were in place, it is possible that the futile call determination could have been made as much as a week earlier.

Please note that the watermaster is authorized to refuse delivery to any diversion that fails to comply with the order. Also, pursuant to Section 42-701, Idaho Code, users who neglect to comply with any provision of Department orders requiring installation of measuring devices and lockable controlling works may be subject to the administrative enforcement actions provided by Section 42-1701B, Idaho Code. Enforcement actions may include the issuance of Notices of Violation and Cease and Desist Orders, as well as possible civil penalties.

Antelope Creek Measurement and Control

December 10, 2007

Page 2 of 2

The Department asks that you contact the Water District 34 Watermaster, Mr. Bob Shaffer and review each of your diversions with respect to compliance with the measurement and control order. However, if you require additional assistance or have questions about bringing your diversions into compliance, please feel free to contact me at (208) 287-4956.

Respectfully,

Nick Miller, PE
Water Distribution Section

c: IDWR Eastern Region
Bob Shaffer, Water District 34 Watermaster

Attachments: November 16, 2004 Order Requiring Measuring Devices and Controlling Works

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

IN THE MATTER REQUIRING MEASURING DEVICES)
AND CONTROLLING WORKS ON ANTELOPE CREEK)
AND TRIBUTARIES, WATER DISTRICT 34)

**ORDER REQUIRING INSTALLATION AND
MAINTENANCE OF CONTROLLING
WORKS AND MEASURING DEVICES**

This matter has come before the Idaho Department of Water Resources ("Department") as a result of ongoing inquiries and concerns by water users regarding regulation of water on Antelope Creek and tributaries located in Water District 34. Department staff recently inspected certain diversions on Antelope Creek and determined that adequate measuring devices and controlling works do not exist on many Antelope Creek and tributary diversions despite previous Water District 34 resolutions requiring headgates and measuring devices.

FINDINGS OF FACT

1. Water users at the 2002 Water District 34 annual meeting adopted a budget and resolution that provided for hiring a deputy watermaster to regulate water rights on Antelope Creek and tributaries. The users also adopted a resolution requiring installation of lockable headgates and measuring devices on each diversion. On April 18, 2002, the Department sent notice to Antelope Creek water right holders advising them that the Department expected compliance with the 2002 Water District 34 resolution requiring measuring devices and lockable headgates. The notice requested water users on Antelope Creek to install measuring devices by May 20, 2002, and install lockable headgates or controlling works by June 15, 2002. The notice further advised the users that that the watermaster could cease delivery of water to any diversion that was not in compliance with the Water District's resolution and the Department's notice.

2. In 2004, the Department received several phone calls and letters from different water users in Water District 34 regarding delivery and regulation of water rights on Antelope Creek, including two separate letters from an Antelope Creek water user dated October 5 and October 7, 2004. The letter of

October 5, 2004 specifically alleged certain water delivery problems and requested that the Department make a field inspection of diversions and conditions on the creek.

3. On October 6, 2004, Department staff made a field trip to Antelope Creek to inspect water diversions and creek conditions. Four irrigation diversions located along Antelope Creek and its tributaries were inspected. Of these four, only one had an acceptable locking headgate and measuring device.

CONCLUSIONS OF LAW

1. Idaho Code § 42-701 provides, in pertinent part, as follows:

42-701. INSTALLATION AND MAINTENANCE OF CONTROLLING WORKS AND MEASURING DEVICES BY WATER APPROPRIATORS -- PROCEDURE UPON FAILURE TO INSTALL AND MAINTAIN -- MEASURING AND REPORTING OF DIVERSIONS -- PENALTY FOR FAILURE TO COMPLY -- ENFORCEMENT PROCEDURE -- REPORT FILING FEE.

(1) 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. 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. Plans for such headgates, rating flumes or other measuring devices shall be approved by the department of water resources.

(3) Any appropriator or user of the public waters of the state of Idaho that neglects or refuses to construct or maintain such headgates, controlling works, or measuring devices, or has not executed an agreement in lieu of a measuring device as provided in subsection (2) of this section, upon receiving ten (10) days' notice from the director of the department of water resources within which to begin and diligently pursue to completion the construction or installation of the required device or devices or to begin and diligently pursue to completion a remedy to such defects as exist in accordance with said notice, then the director of the department of water resources may order the duly qualified and acting watermaster of the water district to shut off and refuse to deliver at the point of diversion, the water owned by such appropriator or user until the user does construct and maintain such headgates, controlling works or measuring devices or remedy the defects which exist or the director may take action pursuant to section 42-1701B, Idaho Code, to enforce the requirement to construct, install or maintain such devices.

(4) The appropriators or users of the public waters of the state of Idaho shall be given a reasonable time within which to complete construction of such headgates, controlling works or measuring

devices, depending upon the size and extent thereof, when due diligence has been used in the prosecution of such work.

2. In order for the watermaster to properly execute his duties, adequate measuring devices and controlling works must be installed at all points of diversion from Antelope Creek and tributaries.

ORDER

IT IS HEREBY ORDERED AS FOLLOWS:

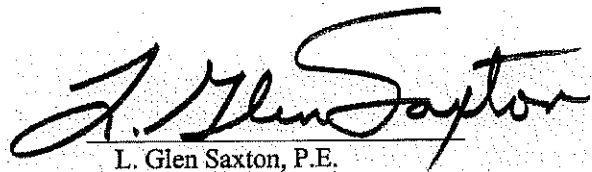
1. On or before February 28, 2005, all water right holders diverting water from Antelope Creek and tributaries shall submit plans for proposed, or existing measuring devices and lockable controlling works to the Department and to the watermaster of Water District No. 34 for review and approval.

2. Submitted plans shall be of a sufficient scale with an adequate number of views showing proper dimensions, so that the plans may be readily interpreted.

3. On or before June 1, 2005, all holders of water rights describing Antelope Creek and tributaries within Water District 34 as a source of water shall install and maintain measuring devices and lockable controlling works of a type acceptable to and approved by the Department.

4. After June 1, 2005, the watermaster shall shut off and refuse delivery of water to any diversion from Antelope Creek and its tributaries that does not have an adequate measuring device and/or lockable controlling works.

Dated this 16th day of November, 2004.

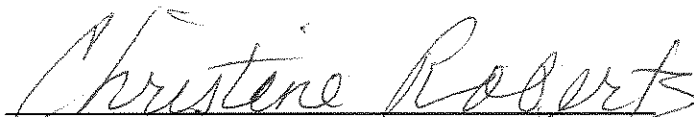


L. Glen Saxton, P.E.
Administrator
Water Management Division

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of December 2007, 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. 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.

Documents served: Reminder letter RE: Headgates & Measuring Device for water users of Antelope Creek.

A handwritten signature in cursive script, reading "Christine Roberts", written over a horizontal line.

**Christine Roberts
Technical Records Specialist
Idaho Department of Water Resources**

| OrganizationName | StreetAddress | City | StateCode | PostalCode |
|---|--------------------------------------|----------------|-----------|------------|
| LYNNE AND STEVEN L WOOLLEY | 4815 W CLEARWATER SPACE 139 | KENNEWICK | WA | 99336 |
| CHARMAINE AND ROBERT D WADDOUPS | 3474 W 2850 N | MOORE | ID | 83255 |
| ELSIE L WADDOUPS | 6 TAMARACK CT | GARDEN VALLEY | ID | 83622 |
| JIMMIE K WADDOUPS | 4253 ANTELOPE RD | MOORE | ID | 83255 |
| DEE J AND SANDRA VAN ETTEN | RT 1 | DARLINGTON | ID | 83231 |
| MITCHELL D SORENSEN | 3871 W 2500 N | MOORE | ID | 83255 |
| R BRUCE SOELBERG | 1482 THREE FOUNTAINS DR | IDAHO FALLS | ID | 83404 |
| PEGGY AND ROBERT W SHAWVER | 143 S 1200 W | BLACKFOOT | ID | 83221 |
| EVELYNN J AND MILTON H REESE | 4741 W ANTELOPE RD | MOORE | ID | 83255-8703 |
| LAVELL R AND SHIRLEY K PURSER | 315 N 4150 E | RIGBY | ID | 83442 |
| MICHELLE AND RANDY R PURSER | RT 1 BOX 121B | MOORE | ID | 83255 |
| MARSHAL TODD PERKES | RT 1 BOX 69 | MOORE | ID | 83255 |
| BYRON AND LOY G PEHRSON | RT 1 BOX 48 | DARLINGTON | ID | 83231 |
| NORMAN NIEDERER | RT 1 BOX 63 | MOORE | ID | 83255 |
| JOHN A AND MATEA H MC CRAY | 3470 COBBLESTONE LN | IDAHO FALLS | ID | 83404 |
| RANDY AND TRILBY MC AFFEE | RT 1 BOX 64A | DARLINGTON | ID | 83231 |
| EARL AND ROBERT MARCROFT | BOX 1092 | HAILEY | ID | 83333 |
| JOHN D AND MERLE M KING | HC 60 BOX 280 | DARLINGTON | ID | 83231 |
| MARCUS D AND PAMELA S KELLEY | RT 1 BOX 60 | DARLINGTON | ID | 83231 |
| ARTHUR J AND EMMA E KELLER | 505 DICKSON AVE | IDAHO FALLS | ID | 83402 |
| DAVID TAYLOR KEELE | 4608 W CHERRY CREEK RD | MOORE | ID | 83255-8704 |
| COLLEEN AND DALE HUFFAKER | 3929 ANTELOPE RD | MOORE | ID | 83255 |
| DOROTHY HARWOOD | PO BOX 135 | ARCO | ID | 83213 |
| LEON W HARWOOD | 3588 N 3400 W | MOORE | ID | 83255 |
| JACQUELINE L AND KENTON L HARWOOD | PO BOX 463 | MOORE | ID | 83255 |
| ALLEN F ARTHUR AND CAROL L EMERSON | 2182 GROUSE DR | VALLEY SPRINGS | CA | 95252 |
| GRANT AND RETA J DANIELS | ANTELOPE RT | DARLINGTON | ID | 83231 |
| GREG DANIELS | RT 1 BOX 63 | MOORE | ID | 83255 |
| ALVIN W AND SHERRIE G CRAWFORD | 3943 W ANTELOPE RD | MOORE | ID | 83255 |
| CRAIG A AND ELLEN B CLARK | PO BOX 65 | NEW CASTLE | UT | 84756 |
| MARY KATHLEEN AND PRESTON K BELL | RT 1 BOX 58 | DARLINGTON | ID | 83231 |
| DONALD L AND SANDRA R BARNUM | 3646 W ANTELOPE RD | MOORE | ID | 83255 |
| CHRISTINA M, J BOONE, LARRY P, AND SHANNON K BARNES | PO BOX 808 | ARCO | ID | 83213 |
| LARRY P AND SHANNON K BARNES | RT 1 BOX 24 PO BOX 808 | ARCO | ID | 83213 |
| EVERETT T ACOR JR | 3196 N YELLOWSTONE HWY | IDAHO FALLS | ID | 83401 |
| A LITTLE SOUTH OF HEAVEN LLC | C/O LEEANN O MOATES 3861 ANTELOPE RD | MOORE | ID | 83255 |
| ANTELOPE VALLEY RANCH LLC | 2411 WHALER COURT | VIRGINA BEACH | VA | 23451 |
| BIG LOST RIVER IRRIGATION DIST | PO BOX 205 | MACKAY | ID | 83251 |
| BONANZA LOWBOY LTD | PO BOX 10 | NEW ALMADEN | CA | 95042 |
| CONTRARY LIMITED PARTNERSHIP, ALISON MADHAVI BRADFORD | 3776 W 3700 N | DARLINGTON | ID | 83255 |
| DOUBLE J RANCH, LLC | 434 E CYPRUSS | REDDING | CA | 96002 |
| HARROP RANCH INC, CORRIENE D AND E J HARROP | PO BOX 4102 | POCATELLO | ID | 83205 |
| MOUNTAIN SPRINGS RANCH LLC | 5550 BARTON FLAT RD | MACKAY | ID | 83251 |
| SMITH RANCHES INC | C/O HAROLD SMITH PO BOX 106 | DARLINGTON | ID | 83231-0106 |
| | USDI BUREAU OF LAND MANAGEMENT | | | |
| | IDAHO STATE OFFICE | | | |
| UNITED STATES OF AMERICA ACTING THROUGH | 1387 S VINNELL WAY | BOISE | ID | 83709-1657 |