



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

August 19, 2004

EM Bell Ditch Water Users

Re: Order Requiring Installation of Measuring Device and Headgate, and Measuring and Reporting of Annual Water Use for the EM Bell Ditch

Dear Water User,

The Idaho Department of Water Resources (Department) has issued the enclosed order requiring installation of a standard measuring device for the EM Bell Ditch, a diversion of water from Billingsley Creek, located within Water District No. 36-A. Please note that a measuring device must be installed on the main ditch prior to March 1, 2005. A copy of the order and this letter is being sent to those users who hold water rights on the ditch and identified in Attachment A of the order.

Starting in 1995, the Department required measurement and reporting of both surface and ground water diversions in Basin 36 and Water District 36-A. The EM Bell Ditch is currently not in compliance with these requirements. The Department and the local water district watermaster have had some concerns regarding the adequacy of measurement and reporting of diversions to this ditch for several years. The Department has been somewhat lenient in enforcing these requirements but believes that proper measurement of the spring diversions is important and in the best interest of the spring users. The Department therefore asks for your full cooperation in resolving this matter.

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.

Additional information and links to water measurement publications may be found on the Department's web site at: www.idwr.state.id.us/water/districts/water_measurement.htm. If you have questions concerning this issue, please contact me directly at the above location or contact the Water District 36-A watermaster, Frank Erwin.

Respectfully,

Tim Luke
Manager, Water Distribution Section

Attachments: Order Requiring Measuring Devices and Controlling Works
Minimum Standards for Measuring Surface Water Diversions

Cc: IDWR Southern Region
Frank Erwin, Water District 36-A Watermaster

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF REQUIRING A MEASURING)
DEVICE ON THE EM BELL DITCH, A DIVERSION)
FROM BILLINGSLEY CREEK, LOCATED IN)
WATER DISTRICT NO. 36-A)

ORDER

FINDINGS OF FACT

1. On December 6, 1994, the Director of the Idaho Department of Water Resources ("Department") issued an order to all water users in Basin 36 to measure water diverted and file annual measurement reports each year, beginning with 1995, except for diversions which:
 - a) For irrigation use, do not irrigate more than 5 acres, or
 - b) For all other uses, do not exceed a diversion rate of 0.20 cfs.
2. The EM Bell Ditch is a diversion of water from Billingsley Creek, and located in the Department's Administrative Basin 36.
3. The cumulative diversion of water rights on the EM Bell Ditch exceeds the exemption limits in Finding of Fact 1 above.
4. A standard measuring device has not been installed on the EM Bell Ditch. In 1995 the Department accepted the use of a rating table that had been developed for a particular cross section on the ditch for purposes of recording and reporting diversions. The rating table used for the ditch was not provided to the Department until 1998. Charles Brockway, a professional engineer, developed the rating table in 1981. The Department's records show that the rating section has not been maintained or updated since 1981. Calibration measurements by the Department in 1995 showed that the rating at that time was moderately accurate at higher flows (about 10 to 12 percent error), requiring application of periodic gage shifts, but at certain

low flows, the rating table was in error by more than 40 percent. The Department requires measuring devices, rated sections and other methods of measurement to be accurate within +/- 10 percent of any calibrated measurement.

5. On July 13, 2004, Department staff inspected and performed a calibration measurement of the rated section. The Department found that the rating section staff gage was silted in. The water level on the staff gage did not conform to any gage height listed on the rating table and if the rating formula were extended to the gage height, the flow reading on the table would exceed the measured flow by more than 460 percent. Use of the rating table on file with the Department and the current staff gage installation is clearly inaccurate and does not conform to minimum Department standards.

CONCLUSIONS OF LAW

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

- (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..., 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. Section 42-351, Idaho Code, provides in pertinent part as follows:
 - (2) It is unlawful for any person to divert or use water in substantial violation of any provision of this title, or any rule, permit, condition of approval or order issued or promulgated pursuant to this title that is related to the diversion or use of water.
 - (3) Upon investigation of available information, the director of the department of water resources shall have the discretion to issue a written notice of violation to the person in accordance with the provisions of section 42-1701B, Idaho Code, for the illegal diversion or use of water.
 3. The Department should require the owners of the EM Bell Ditch to install and maintain a standard measuring device on the ditch.

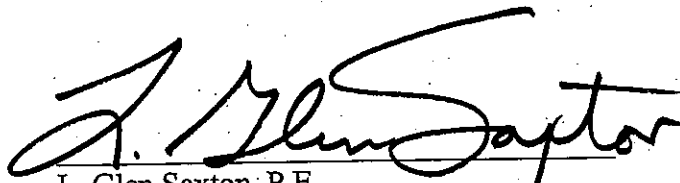
ORDER

IT IS HEREBY ORDERED AS FOLLOWS:

1. The users on the EM Ditch shall submit a plan to the Department no later than October 15, 2004 that shows the type, and location of measuring device and lockable controlling works proposed for the ditch. The Department will review the plan to determine whether the proposed measuring device and controlling works is of a type acceptable to the Department.
2. Those water right holders diverting water to the EM Bell Ditch and identified in Attachment A of this order, shall install a measuring device of a type acceptable to the Department prior to March 1, 2005. The measuring device installed shall be capable of measuring the total amount of water diverted to the ditch.
3. Water users on the EM Bell Ditch shall measure and record the water diverted to the ditch, and file an annual water use report with the Department in accordance with Section 42-701, Idaho Code, and measurement and reporting guidelines established by the Department. The watermaster shall shut off and refuse to deliver water to the EM Bell Ditch at any and all times during the 2005 irrigation season if the diversion does not have an adequate measuring device.

4. The Department may issue a written Notice of Violation to water right holders on the EM Bell Ditch in accordance with Section 42-1701B, Idaho Code, for failure to install an adequate measuring device and/or for failure to measure diversions and annually report water use to the Department.

Dated this 19th day of August, 2004.


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

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 19th day of August 2004, the above and foregoing document was served upon the following individuals by placing a copy of the same in the United States Mail, postage prepaid and properly addressed as follows using the attached list of names



Crystal N. Calais
Administrative Assistant I
Water Distribution Section
Idaho Department of Water Resources

<u>Name</u>	<u>Address</u>	<u>City</u>	<u>ST</u>	<u>ZIP</u>
UNITED STATES OF AMERICA ACTING THROUGH	DEPT OF INTERIOR	SEATTLE	WA	98104-1060
ROBERT OR BRADLEY OR HARRY GISLER	755 E 2800 S	HAGERMAN	ID	83332
LLOYD BROWN	2802 S 850 E RT 1	HAGERMAN	ID	83332
ROGER SHAFFER	PO BOX 123	HAGERMAN	ID	83332
LLOYD OR KATHLEEN BROWN	PO BOX 543	HAGERMAN	ID	83332-0543
RICK OR SHERRI MARTINAT	2810 S 850 E	HAGERMAN	ID	83332
HAROLD OR CHARMAIN MAYS	2820 S 850 E	HAGERMAN	ID	83332
EDWARD OR DOUG OR BEVERLY WICKHAM	PO BOX 297	HAGERMAN	ID	83332
BYRON OR PHYLLIS ROWLAND	2771 S 850 E	HAGERMAN	ID	83332
CHILDS FAMILY 2002 TRUST DTD 8-19-02	1808 BISMARC CT	NORMAN	OK	73072
CORALIE OR ALBERT ADKISON	PO BOX 607	HAGERMAN	ID	83332
OLIVER OR YOSHI PAYNE	PO BOX 745	SHOSHONE	ID	83352



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

**DIRK KEMPTHORNE
GOVERNOR**

**KARL J. DREHER
DIRECTOR**

August 19, 2004

Sand Ditch Water Users

Re: Order Requiring Installation of Measuring Device and Headgate, and Measuring and Reporting of Annual Water Use for the Sands Ditch

Dear Water User,

The Idaho Department of Water Resources (Department) has issued the enclosed order requiring installation of a standard measuring device for the Sands Ditch, a diversion of water from Billingsley Creek, located within Water District No. 36-A. Please note that a measuring device must be installed on the main ditch prior to March 1, 2005. A copy of the order and this letter is being sent to those users who hold water rights on the ditch and identified in Attachment A of the order.

Starting in 1995, the Department required measurement and reporting of both surface and ground water diversions in Basin 36 and Water District 36-A. The Sands Ditch is currently not in compliance with these requirements. The Department and the local water district watermaster have had some concerns regarding the adequacy of measurement and reporting of diversions to this ditch for several years. The Department has been somewhat lenient in enforcing these requirements but believes that proper measurement of the spring diversions is important and in the best interest of the spring users. The Department therefore asks for your full cooperation in resolving this matter.

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.

Additional information and links to water measurement publications may be found on the Department's web site at: www.idwr.state.id.us/water/districts/water_measurement.htm. If you have questions concerning this issue, please contact me directly at the above location or contact the Water District 36-A watermaster, Frank Erwin.

Respectfully,

A handwritten signature in black ink, appearing to read 'Tim Luke', is written over a light blue horizontal line.

Tim Luke
Manager, Water Distribution Section

Attachments: Order Requiring Measuring Devices and Controlling Works
Minimum Standards for Measuring Surface Water Diversions

Cc: IDWR Southern Region
Frank Erwin, Water District 36-A Watermaster

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF REQUIRING A MEASURING)
DEVICE ON THE SANDS DITCH, A DIVERSION)
FROM BILLINGSLEY CREEK, LOCATED IN)
WATER DISTRICT NO. 36-A)

ORDER

FINDINGS OF FACT

1. On December 6, 1994, the Director of the Idaho Department of Water Resources ("Department") issued an order to all water users in Basin 36 to measure water diverted and file annual measurement reports each year, beginning with 1995, except for diversions which:

- a) For irrigation use, do not irrigate more than 5 acres, or
- b) For all other uses, do not exceed a diversion rate of 0.20 cfs.

2. The Sands Ditch is a diversion of water from Billingsley Creek, and located in the Department's Administrative Basin 36.

3. The cumulative diversion of water rights on the Sands Ditch exceeds the exemption limits in Finding of Fact 1 above.

4. A standard measuring device has not been installed on the Sands Ditch. In 1995 the Department accepted the use of a rating table that had been developed for a concrete structure installed in the ditch. The rating table for the Sands Ditch on file with the Department is not dated or documented as being validated by a professional engineer. Department records show that the rating table has not been maintained or updated since prior to 1995. Calibration measurements by the Department in 1995 showed that the rating at that time was accurate to within +/-10 percent without the application of gage shifts, although the Department noted that the ditch is frequently mossy and that accuracy could be improved with frequent calibration

measurements and application of gage shifts. The Department requires measuring devices, rated sections and other methods of measurement to be accurate within +/- 10 percent of any calibrated measurement.

5. On July 13, 2004, Department staff inspected and performed a calibration measurement of the rated section. The Department measured the ditch flow at 17.4 cfs. The corresponding flow rate for the ditch at that same date and time using the water level reading on the installed rating section staff gage and rating table was 8.7 cfs, or nearly 50 percent less than the actual measured flow. Use of the current rating table on file with the Department and the current staff gage installation is clearly inaccurate and does not conform to minimum Department standards.

CONCLUSIONS OF LAW

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

- (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..., 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. Section 42-351, Idaho Code, provides in pertinent part as follows:
 - (2) It is unlawful for any person to divert or use water in substantial violation of any provision of this title, or any rule, permit, condition of approval or order issued or promulgated pursuant to this title that is related to the diversion or use of water.
 - (3) Upon investigation of available information, the director of the department of water resources shall have the discretion to issue a written notice of violation to the person in accordance with the provisions of section 42-1701B, Idaho Code, for the illegal diversion or use of water.
 3. The Department should require the owners of the Sands Ditch to install and maintain a standard measuring device on the ditch.

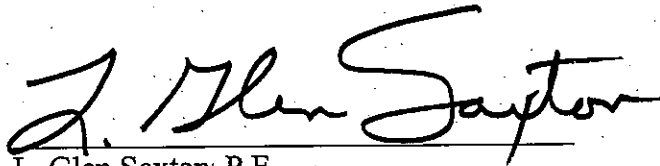
ORDER

IT IS HEREBY ORDERED AS FOLLOWS:

1. The users on the Sands shall submit a plan to the Department no later than October 15, 2004 that shows the type, and location of measuring device and lockable controlling works proposed for the ditch. The Department will review the plan to determine whether the proposed measuring device and controlling works is of a type acceptable to the Department.
2. Those water right holders diverting water to the Sands Ditch and identified in Attachment A of this order, shall install a measuring device of a type acceptable to the Department prior to March 1, 2005. The measuring device installed shall be capable of measuring the total amount of water diverted to the ditch.
3. Water users on the Sands Ditch shall measure and record the water diverted to the ditch, and file an annual water use report with the Department in accordance with Section 42-701, Idaho Code, and measurement and reporting guidelines established by the Department. The watermaster shall shut off and refuse to deliver water to the Sands Ditch at any and all times after March 1, 2005 if the diversion does not have an adequate measuring device.

4. The Department may issue a written Notice of Violation to water right holders on the Sands Ditch in accordance with Section 42-1701B, Idaho Code, for failure to install an adequate measuring device and/or for failure to measure diversions and annually report water use to the Department.

Dated this 19th day of August, 2004.



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

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 19th day of August 2004, the above and foregoing document was served upon the following individuals by placing a copy of the same in the United States Mail, postage prepaid and properly addressed as follows using the attached list of names



Crystal N. Calais
Administrative Assistant I
Water Distribution Section
Idaho Department of Water Resources

<u>Name</u>	<u>Address</u>	<u>City</u>	<u>ST</u>	<u>ZIP</u>
PENELOPE F TURNER	923 PIONEER RD	HAGERMAN	ID	83332
PATSY SMITH BANNING	938 PIONEER RD	HAGERMAN	ID	83332
MARLENE M BRUHN CLARK	1400 COLORADO ST	BOULDER CITY	NV	89005
MONTE W BRUHN	4655 N 950 E	BUHL	ID	83316-5014
FAYE COATES OR FRED BECKSTEAD	PO BOX 359	HAGERMAN	ID	83332
ELAINE OR DALE BOYER	PO BOX 232	HAGERMAN	ID	83332
RUTH C SHOKAL	963 PIONEER RD	HAGERMAN	ID	83332
THOMAS E KING	PO BOX 254	HAGERMAN	ID	83332
GARY COOK CORP	A CALIFORNIA CORP 110 NEWPORT CENTER DR #250	NEWPORT BEACH	CA	92660
E A COLLINS	2933 COASTLINE CT	LAS VEGAS	NV	89117
KATHLEEN OR ROSS COOPER	6773 PORTSHEAD DR	MALIBU	CA	90265
SARAH OR JOSEPH ARCHIE	3417 WILLIAMSBOROUGH CT	RALEIGH	NC	27609
M J & SHARON WIENS JR FAMILY TRUST	C/O JOHN SHAW PO BOX 1823	HAILEY	ID	83333
BOB PORTER OR FRED SURBAUGH	598 SUNRISE N	TWIN FALLS	ID	83301
FRAN OR TERRY WOODHEAD	15465 DAVID ST	CALDWELL	ID	83605
WILLIAM OR VERA FLINT	7745 ROPALT ST	LA MESA	CA	91942
SLOPE COMPACTION A CALIFORNIA CORP	C/O DONALD L & DENNIS M MC COY 23622 CALABASAS RD #239	CALABASAS	CA	91302
JAMIE G MARTIN	PO BOX 356	HAGERMAN	ID	83332
J3G HOLDINGS	AN IDAHO PARTNERSHIP PO BOX 514	HAGERMAN	ID	83332
ROBERT OR CHRISTINE GERTSCHEN	PO BOX 2166	SUN VALLEY	ID	83353
TAMRA KLEIN OR BRIAN HANLEY	612 W 10TH ST	LIBBY	MT	59923
KENDALL OR REBECCA HARPER	800 S 105 WEST	BURLEY	ID	83318
LEROY OR PATRICIA KASBERG	755 BLUE JAY LANE	COPPELL	TX	75019



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

August 19, 2004

Hoagland Tunnel Ditch Water Users

Re: Order Requiring Installation of Measuring Device and Headgate, and Measuring and Reporting of Annual Water Use for Hoagland Tunnel Ditch

Dear Water User,

The Idaho Department of Water Resources (Department) has issued the enclosed order requiring installation of a measuring device and headgate for the Hoagland Tunnel Ditch, a diversion of water from springs, tributary to Billingsley Creek, located within Water District No. 36-A. Please note that a headgate and measuring device must be installed on the main ditch prior to March 1, 2005. A copy of the order and this letter is being sent to those users who hold water rights on the ditch and identified in Attachment A of the order.

Starting in 1995, the Department required measurement and reporting of both surface and ground water diversions in Basin 36 and Water District 36-A. The Hoagland Tunnel Ditch has not been in compliance with these requirements since 1995. Your ditch is one of only several spring diversions in the entire Basin 36 Thousand Springs area for which no measurement data exists. The Department has been somewhat lenient in enforcing these requirements but believes that measurement of the spring diversions is important and in the best interest of the spring users. The Department therefore asks for your full cooperation in resolving this matter.

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.

Additional information and links to water measurement publications may be found on the Department's web site at: www.idwr.state.id.us/water/districts/water_measurement.htm. If you have questions concerning this issue, please contact me directly at the above location or contact the Water District 36-A watermaster, Frank Erwin.

Respectfully,

Tim Luke
Manager, Water Distribution Section

Attachments: Order Requiring Measuring Devices and Controlling Works
Minimum Standards for Measuring Surface Water Diversions

Cc: IDWR Southern Region
Frank Erwin, Water District 36-A Watermaster

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF REQUIRING A MEASURING)
DEVICE AND CONTROLLING WORKS ON THE)
HOAGLAND TUNNEL DITCH, A DIVERSION FROM)
SPRINGS TRIBUTARY TO BILLINGSLEY CREEK,)
LOCATED IN WATER DISTRICT NO. 36-A)

ORDER

FINDINGS OF FACT

1. On December 6, 1994, the Director of the Idaho Department of Water Resources ("Department") issued an order to all water users in Basin 36 to measure water diverted and file annual measurement reports each year, beginning with 1995, except for diversions which:

- a) For irrigation use, do not irrigate more than 5 acres, or
- b) For all other uses, do not exceed a diversion rate of 0.20 cfs.

2. The Hoagland Tunnel Ditch is a diversion of water from springs, tributary to Billingsley Creek, and located in the Department's Administrative Basin 36.

3. The cumulative diversion of water rights on the Hoagland Tunnel Ditch exceeds the exemption limits in Finding of Fact 1 above.

4. A measuring device has not been installed on the Hoagland Tunnel Ditch and annual water measurement reports have not been filed with the Department.

5. There is no regulating headgate or other controlling works installed at or near the head of the Hoagland Tunnel Ditch, and thus there is no means for the watermaster of Water District No. 36-A in which to control or regulate the flow of water to the ditch.

CONCLUSIONS OF LAW

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

- (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..., 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. Section 42-351, Idaho Code, provides in pertinent part as follows:

- (2) It is unlawful for any person to divert or use water in substantial violation of any provision of this title, or any rule, permit, condition of approval or order issued or promulgated pursuant to this title that is related to the diversion or use of water.
- (3) Upon investigation of available information, the director of the department of water resources shall have the discretion to issue a written notice of violation to the person in accordance with the provisions of section 42-1701B, Idaho Code, for the illegal diversion or use of water.

3. The Department should require the owners of the Hoagland Tunnel Ditch to install and maintain a measuring device and lockable controlling works on the ditch, and also record the diversion of water to the ditch and annually report water use to the Department.

ORDER

IT IS HEREBY ORDERED AS FOLLOWS:

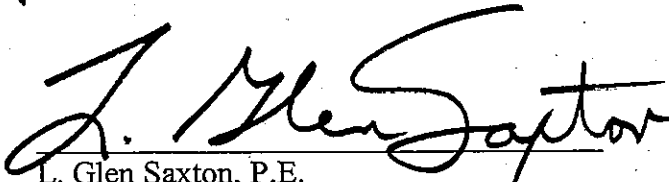
1. The users on the Hoagland Tunnel Ditch shall submit a plan to the Department no later than October 15, 2004 that shows the type, and location of measuring device and lockable controlling works proposed for the ditch. The Department will review the plan to determine whether the proposed measuring device and controlling works is of a type acceptable to the Department.

2. Those water right holders diverting water to the Hoagland Tunnel Ditch and identified in Attachment A of this order, shall install a measuring device and lockable controlling works of a type acceptable to the Department prior to March 1, 2005. The measuring device installed shall be capable of measuring the total amount of water diverted to the ditch.

3. Water users on the Hoagland Tunnel Ditch shall measure and record the water diverted to the ditch, and file an annual water use report with the Department in accordance with Section 42-701, Idaho Code, and measurement and reporting guidelines established by the Department. The watermaster shall shut off and refuse to deliver water to the Hoagland Tunnel Ditch at any and all times during the 2005 irrigation season if the diversion does not have an adequate measuring device and/or lockable controlling works.

4. The Department may issue a written Notice of Violation to water right holders on the Hoagland Tunnel Ditch in accordance with Section 42-1701B, Idaho Code, for failure to install an adequate measuring device and/or lockable controlling works, and/or for failure to measure diversions and annually report water use to the Department.

Dated this 19th day of August, 2004.


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

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 19th day of August 2004, the above and foregoing document was served upon the following individuals by placing a copy of the same in the United States Mail, postage prepaid and properly addressed as follows using the attached list of names



Crystal N. Calais
Administrative Assistant I
Water Distribution Section
Idaho Department of Water Resources

<u>Name</u>	<u>Address</u>	<u>City</u>	<u>ST</u>	<u>ZIP</u>
JUDITH OR PHILIP DICE	2912 S 1050 E	HAGERMAN	ID	83332
NEVADA B OMOHUNDRO	2901 S 1050 E	HAGERMAN	ID	83332
GERTRUDE B OWSLEY BYBEE	1071 E 2900 S	HAGERMAN	ID	83332
RODNEY OR MARY MORELAND	2928 S 1050 E	HAGERMAN	ID	83332
DORIS M GRIDLEY	926 E 2700 S	HAGERMAN	ID	83332
HOWARD OR RHONDA MORRIS	1101 E 2900 S	HAGERMAN	ID	83332
	C/O SALVADOR GARACIA □			
TIM MUSSER	2969 S 1175 E	HAGERMAN	ID	83332
J ALVIN MUSSER	1747 WILSON AVE	UPLAND	CA	91764
LARRY OR TARA LITTLEFAIR	2906 S 1175 E	HAGERMAN	ID	83332
	2930 S 1050 E □			
ANDREE G BROOKS	PO BOX 516	HAGERMAN	ID	83332
MAURICE OR LESLIE HORNOCKER	40 HERONWOOD LN	BELLEVUE	ID	83313