



## State of Idaho

# DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER  
Governor

DAVID R. TUTHILL, JR.  
Interim Director

July 23, 2007

JEANNE A. EVENDEN  
DIRECTOR, LANDS  
USDA FOREST SERVICE, INTERMOUNTAIN REGION  
324 25<sup>TH</sup> STREET  
OGDEN, UT 84401

**Re: May 30, 2007 Request for Exemption from the Order Requiring Measuring Devices  
and Head Gates in Water District 170**

Dear Ms. Evenden:

IDWR received your letter dated May 30, 2007 requesting an exemption from the February 20, 2007 order requiring head gates and measuring devices in Water District No. 170 (the Order). IDWR may exempt diversions from the requirements of the Order under certain circumstances. Several of the diversions associated with the water rights listed in your letter will not require compliance or further action until use of the water rights is resumed. However, many of the diversions associated with the water rights listed in your letter divert water for other users and so must be brought into compliance if those users plan to divert water in 2008.

Your letter states that none of the water rights held by the United States Forest Service (USFS) and listed on Attachment A of the Order will be diverted during the 2008 irrigation season. IDWR interprets this to mean that these rights will not be diverted in 2008, but may be diverted at some point in the future. If this understanding is correct, an extension, rather than an exemption may be more appropriate for these water rights and their diversions. Additionally, some of the diversions associated with these water rights are also used to divert water rights owned and used by others. In such cases, unless there is reason other than USFS non-use, the diversions must be brought into compliance. An example is diversion IC1. Two users divert from IC1 in addition to the USFS. Unless these other two users will also not be diverting from IC1, that diversion must be brought into compliance.

Of the twenty diversions associated with each of the USFS rights listed on Attachment A of the Order, eight do not divert water rights held and used by others. The eight diversions listed below require no further action with respect to complying with the Order until diversion is resumed: ALC1, HC1, S45, S46, UD1, UD5, UD6, and UD7. Note that this is not an exemption; controlling works and measuring devices must be in place and functioning prior to future diversion of water under the USFS water rights from these points of diversion.

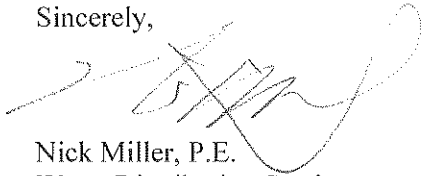
The remaining twelve points of diversion must be brought into compliance prior to diverting water during the 2008 irrigation season. The extent to which the USFS is responsible for bringing shared diversions into compliance is a matter for the USFS and the other water right

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owners to determine and will likely be based on whether or not the USFS plans to resume diversion and use of these rights at these points of diversion. If it is unlikely the USFS will resume diversion from these locations, the USFS may elect to do nothing. Since it is not diverting water, the USFS would see no penalty for non-compliance. The other users on the diversions must still bring the diversion into compliance or otherwise obtain an extension or exemption if they will be using water from these diversions.

Please feel free to contact our office if you have further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Nick Miller", is written over a dotted line. The signature is stylized and somewhat cursive.

Nick Miller, P.E.  
Water Distribution Section

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