

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES



WATER DISTRICT NO. 37 & 37M
107 WEST 1ST
SHOSHONE, IDAHO 83352
(208) 886-2451

RECEIVED
SEP 08 2005
Department of Water Resources
Southern Region

Diamond A Livestock
1997 South 1875 East
Gooding, Idaho 83330

September 7, 2005

CERTIFIED MAIL

Re: Failure to meet "Order Requiring Installation and Maintenance of Controlling Works and Measuring Devices"

Water User:

On November 10, 2004 the Idaho Department of Water Resources (IDWR) issued an "Order Requiring Installation and Maintenance of Controlling Works and Measuring Devices" for the Croy Creek drainage in Blaine County. As a water user in the Croy Creek drainage, you are subject to this order.

In January 2005 Water District 37 sent you an assessment for your water right on Croy Creek. We have received your payment of that assessment. Assessments were sent to all Croy Creek water users to provide for administration of water use and water rights on the creek. The IDWR order also required all water users to install and maintain water measuring and controlling devices by June 1, 2005. A recent inspection by this office of your diversion point from Croy Creek found no measuring or controlling devices have been installed.

Your failure to meet the requirements of the IDWR order warrants this letter of warning. I am forwarding a copy of this letter to the Director of IDWR for further direction. Under Section 42-701(3) Idaho Code, (IDWR) may take action pursuant to section 42-1701B, Idaho Code, to enforce the requirement to construct, install or maintain suitable headgates and measurement devices. Section 42-1701B provides that the director of IDWR may commence an administrative enforcement action to obtain a remedy for a violation and seek civil penalty not to exceed ten thousand dollars (\$10,000) per violation or one hundred fifty dollars (\$150) per day for a continuing violation, whichever is greater.

To avoid further action you must comply with the directives of the enclosed November 10th order. Please contact Kevin Lakey, Water District 37 Watermaster at (208) 886-2451 to discuss resolution of this matter. Questions regarding the IDWR order and potential enforcement action may be addressed to Tim Luke at (208)287-4959.

Respectfully,

A handwritten signature in cursive script, appearing to read "Kevin Lakey", with a long horizontal flourish extending to the right.

Kevin Lakey, Watermaster District 37

Cc: Tim Luke, IDWR
Allen Merritt, IDWR Southern Region

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

IN THE MATTER REQUIRING MEASURING)	
DEVICES AND CONTROLLING WORKS AND)	
WATER MASTER CONTROL ON CROY CREEK)	ORDER REQUIRING INSTALLATION
AND TRIBUTARIES, WATER DISTRICT 37)	AND MAINTENANCE OF
)	CONTROLLING WORKS AND
)	MEASURING DEVICES
)	

In 2004, the Idaho Department of Water Resources ("Department") received a written petition from waterusers on Croy Creek and tributaries requesting the watermaster of Water District 37, Big Wood River and tributaries, to regulate and control the waters of Croy Creek and tributaries, including Elk Creek.

FINDINGS OF FACT

1. In recent years, water rights on Croy Creek and its tributaries have not been administered by the watermaster of Water District no. 37 ("watermaster").
2. By letter dated August 3, 2004, six water users holding water rights diverted from Croy Creek and/or Elk Creek requested that Croy Creek and Elk Creek be actively administered by the watermaster of Water District no. 37.
3. On October 7, 2004, the Department inventoried diversion works and measuring devices on Croy Creek and Elk Creek and determined that the diversion works and measuring devices were inadequate or non-existent.
4. Croy Creek and its tributaries are surface water sources located within Water District No. 37. The watermaster should administer the Croy Creek and tributary water rights.

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. Idaho Code § 42-610 provides that holders of water rights within a water district are required to pay assessments equal to the proportion of their volume of water diverted to the total volume diverted times the total assessment of the district.

3. 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 Croy Creek and tributaries.

ORDER

IT IS HEREBY ORDERED AS FOLLOWS:

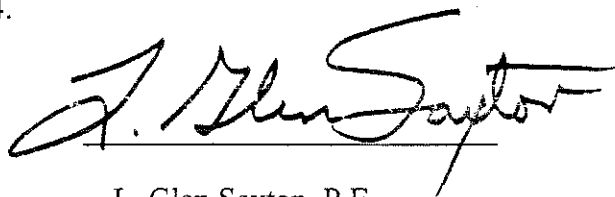
1. On or before January 31, 2005, all water right holders diverting water from Croy Creek and tributaries shall submit plans for measuring devices and lockable controlling works to the Department and to the watermaster of Water District No. 37 for review and approval.

2. On or before June 1, 2005, all holders of water rights describing Croy Creek and tributaries within Water District 37 as a source of water shall install and maintain measuring devices and lockable controlling works of a type acceptable to the Department.

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

4. Water District No. 37 shall assess holders of water rights describing Croy Creek and tributaries as a source for the expenses related to the distribution and administration of water.

Dated this 10 ^{Tu} day of November, 2004.



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