



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

October 26, 2004

RECEIVED

OCT 29 2004

Department of Water Resources
Southern Region

Hoagland Tunnel Ditch Water Users

CERTIFIED MAIL

RE: **Notice of Violation of Idaho Code Section 42-351
Order Requiring Measuring Device and Controlling Works, and Submittal of Plans
for Measuring Device and Controlling Works on the Hoagland Tunnel Ditch, a
Diversion from Springs Tributary to Billingsley Creek, Water District 36-A**

Dear Water User:

On August 19, 2004, the Idaho Department of Water Resources (IDWR) sent the above referenced order to water right holders on the Brailsford Ditch requiring the ditch users to install a measuring device and controlling works (or headgate) on the Hoagland Tunnel Ditch on or before March 1, 2005. The order also required the ditch users to submit a plan to IDWR on or before October 15, 2004 showing the type and location of measuring device and controlling works proposed for the ditch. As of this date, no plan has been submitted to IDWR as required by the order dated August 19, 2004.

Pursuant to Section 42-351 Idaho Code, IDWR may take action pursuant to section 42-1701B, Idaho Code, when water users do not comply with any provision of an order issued by IDWR that is related to the diversion or use of water. Under Section 42-1701B, the director of IDWR may commence an administrative enforcement action to obtain a remedy for a violation and seek a 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.

Pursuant to Idaho Code, Section 42-1701B, IDWR requires that the following action be taken:

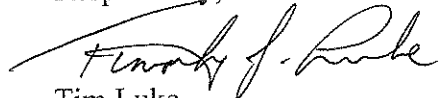
1. Immediately cease and desist any further diversion of water to the Hoagland Tunnel Ditch.
2. Immediately submit the measuring device and controlling works plan required by the IDWR order dated August 19, 2004.
3. Pay an agreed civil penalty in the amount of ten thousand dollars (\$10,000), which is the maximum penalty authorized by law for violating the provisions of Section 42-351, Idaho Code. The civil penalty shall be due and payable to IDWR on or

before December 1, 2004. If the Hoagland Tunnel Ditch water users immediately submit the measuring device and controlling works plan to IDWR, then the users on the ditch may petition IDWR at the compliance conference to reduce any penalties sought.

If you object to any provision in this notice, you have the opportunity to schedule a compliance conference to discuss the violation with IDWR. Your written request must be received at this office within 14 days of receipt of this notice. Send written requests to Tim Luke at the address on the letterhead. Failure to comply with the requirements of this notice will be cause for IDWR to initiate a civil enforcement action through the Attorney General in district court.

Questions concerning this notice may be directed to Tim Luke at 208-287-4959.

Respectfully,

A handwritten signature in black ink, appearing to read "Tim Luke", written over a horizontal line.

Tim Luke
Manager, Water Distribution Section

Attachment

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

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) ORDER
)
SPRINGS TRIBUTARY TO BILLINGSLEY CREEK,)
)
LOCATED IN WATER DISTRICT NO. 36-A)
)
_____)

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.

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

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.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of October, 2004, the foregoing letter dated October 26, 2004 to the Hoagland Tunnel Ditch Water Users along with a copy of an Order issued on August 19, 2004, was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

PHILIP OR JUDITH DICE
2912 S 1050 E
HAGERMAN ID 83332

J ALVIN MUSSER
1747 WILSON AVE
UPLAND CA 91764

NEVADA B OMOHUNDRO
2901 S 1050 E
HAGERMAN ID 83332

LARRY OR TARA LITTLFAIR
2906 S 1175 E
HAGERMAN ID 83332

GERTRUDE B OWSLEY BYBEE
1071 E 2900 S
HAGERMAN ID 83332

ANDREE G BROOKS
2930 S 1050 E
PO BOX 516
HAGERMAN ID 83332

RODNEY OR MARY MORELAND
2928 S 1050 E
HAGERMAN ID 83332

MAURICE OR LESLIE HORNOCKER
40 HERONWOOD LN
BELLEVUE ID 83313

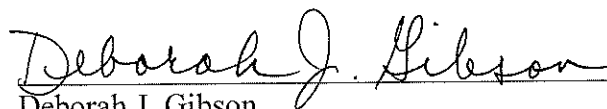
DORIS M GRIDLEY
926 E 2700 S
HAGERMAN ID 83332

FRANK ERWIN
WATERMASTER
WATER DISTRICT 36-A
2628 S 975 E
HAGERMAN ID 83332

HOWARD OR RHONDA MORRIS
1101 E 2900 S
HAGERMAN ID 83332

IDWR - SOUTHERN REGION
1341 FILLMORE ST STE 200
TWIN FALLS ID 83301-3380

TIM MUSSER
C/O SALVADOR GARCIA
2969 S 1175 E
HAGERMAN ID 83332



Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

<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