

**WATER DISTRICT 74
P O BOX 744
SALMON, ID. 83467**

Jan 5, 2010

To: Idaho Department Of Water Resources.

As Water Master of Dist 74, I would like to make a request of the Dept. of Water Resources. Currently I measure all of the diversions in Dist 74 with a Swoffer flow meter. I have staff gauges fixed to the IDFG fish screens and have attempted to develop rating curves. It is impossible to rate these diversions because of (moss, laterals, ditch maintenance, etc) below these staff gauges.

I would like for IDWR to issue an order to the water right holders of these diversions to have proper in stream measuring devices installed by irrigation season 2011.

These diversions are locally called (HC-1, HC-3, HC-5, HC-7, HC-8, HC-8A, HC-8B, HC-9, HC-10, HC-11, EFHC-1) . Attached is a list of the users on each of the diversions. These diversions were selected as per the lowest ranked on my list. I will be requesting another additional list for installation in 2012 at a later time.

If you have any questions you can contact me on my Cell (208) 303-7449.

Thank You

Rick Sager



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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January 22, 2010

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

Re: Order Requiring Measuring Devices and Controlling Works in Water District 74

Dear Water User,

The Idaho Department of Water Resources (IDWR or Department) has issued the enclosed preliminary order requiring installation of measuring devices and control works for certain diversions in Water District No. 74, Lemhi River and tributaries, prior to the 2011 irrigation season. Pursuant to Section 67-5243, Idaho Code, the preliminary order will become a final order without further action of the Department unless a party petitions for reconsideration or files an exception and/or brief as explained in the enclosed information sheet.

This order requires users receiving the order to submit plans for measuring devices and control works to the Department on or before December 01, 2010. The order only applies to the control and measurement of water at the head of the main canals, ditches, or points of diversions from Hayden Creek listed in the order, not the points of re-diversion or laterals from those main ditches. Please refer to the enclosed document "*Minimum Acceptable Standards for Open Channel and Closed Conduit Measuring Devices*" for information on types of measuring devices acceptable to IDWR. This document and other information on the topic are available on IDWR's Internet site at the following address:

http://www.idwr.idaho.gov/WaterManagement/WaterMeasurement/water_measurement.htm

If you have questions concerning this order, please contact the watermaster for Water District 74, Rick Sager, or from IDWR, contact Bob Foster, IDWR Salmon Field Office (208-756-6644), or Tim Luke, IDWR Water Distribution, Boise (208-287-4959).

Respectfully,

Tim Luke
Water Distribution Section Manager

Enclosures:

Preliminary Order in the matter of Requiring Measuring Devices and Controlling Works on Certain Diversions from Hayden Creek in Water District 74, Dated January 21, 2010
Explanatory Information to Accompany a Preliminary Order (2 pages/double sided)
IDWR Minimum Acceptable Standards for Open Channel and Closed Conduit Measuring Devices (Open Channel - page 1 only)

Cc: Rick Sager, Watermaster, Water District 74
Bob Foster, IDWR Salmon Field Office
IDWR Eastern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF REQUIRING MEASURING)
DEVICES AND CONTROLLING WORKS ON) PRELIMINARY
CERTAIN DIVERSIONS FROM HAYDEN CREEK) ORDER
IN WATER DISTRICT NO. 74)

On January 05, 2010 the Idaho Department of Water Resources (IDWR) received a letter from the Watermaster of Water District No. 74, the Lemhi River and tributaries, requesting IDWR to require installation of measuring devices for certain diversions on Hayden Creek. The watermaster stated in his January 5th letter that he manually measures diversions in the district using a current meter. The watermaster has developed stage-discharge rating tables for diversions on Hayden Creek using the fixed staff gages that are installed on diversion fish screens. A rating table relates the stage or water level of a ditch against the ditch flow or discharge. The watermaster has determined that rating tables for many of the diversions on Hayden Creek cannot be adequately maintained due to frequent staff gage shifts caused by moss and algae, and/or changes in the physical conditions of the ditch due to ongoing ditch maintenance or delivery of water to lateral ditches. The watermaster has prioritized a need for installation of standard measuring devices on the following Hayden Creek ditches or diversions: HC-1, HC-3, HC-5, HC-7, HC-8, HC-8a, HC-8b, HC-9, HC-10, HC-11, EFHC-1.

Section 42-701, Idaho Code, provides in pertinent part:

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 – 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

Measuring Device and Controlling Works Order, Water District 74

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.

ORDER


IT IS HEREBY ORDERED AS FOLLOWS:

1. Prior to diverting water during the 2011 irrigation season, the water right owners or water users identified with each individual diversion listed in Attachment A of this order shall install a measuring device and a functional, lockable controlling works of a type acceptable to the Department. The measuring device for each point of diversion listed on Attachment A shall be installed at, or in reasonable proximity, to the point where water is diverted from Hayden Creek.

2. All water users diverting water from Hayden Creek at the points of diversion listed on Attachment A must submit plans for measuring devices and controlling works to IDWR no later than December 1, 2010. If measuring devices and/or controlling works are already in place, a written description shall be submitted by December 1, 2010. Plans or descriptions shall be reviewed by the Department to determine whether proposed measuring devices and controlling works are of a type acceptable to the Department.

3. The watermaster shall shut off and refuse to deliver water to any diversion listed on Attachment A that does not have an acceptable measuring device and/or lockable controlling works at any and all times beginning with the 2011 irrigation season.

Dated this 21ST day of January, 2010.



JEFF PEPPERSACK
Water Allocations Bureau Chief

Statement of Available Procedures and Applicable Time Limits

RESPONDING TO PRELIMINARY ORDERS ISSUED BY THE IDAHO DEPARTMENT OF WATER RESOURCES (To be used in connection with actions when a hearing was not held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of; or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES (IDWR)**

**MINIMUM ACCEPTABLE STANDARDS FOR
OPEN CHANNEL AND CLOSED CONDUIT
MEASURING DEVICES**

The source and means of diversion of water, whether surface or ground water, generally affects the selection of a measuring device. Surface water sources such as streams, springs and waste channels are normally diverted into open channels (ditches or canals), but closed conduits (pipes or culverts) are also used. Ground water is usually diverted into pipes (which may also discharge into open channels).

Measuring devices when required by IDWR are to be installed at or near the point of diversion from the public water source.

Open Channel

I. SURFACE WATER DIVERSIONS

The following discussion is applicable only to diversions from surface water sources. Measurement of a ground water diversion with an open channel measuring device must be pre-approved by the IDWR.

A. Standard Open Channel Measuring Devices

All open channel surface water diversions should be measured using one of the following standard open channel flow measuring devices commonly used in Idaho:

- contracted rectangular weir
- suppressed rectangular weir
- Cipolletti weir
- 90 degree V-notch weir
- Parshall flume
- trapezoidal flume
- submerged rectangular orifice
- constant head orifice
- ramped broad crested weir (or ramped flume)
- acoustic Doppler flow meter (ADFM)

Construction and installation of these devices should follow published guidelines. References are available upon request.

B. Non-standard open channel devices: Rated Structures or Rated Sections

IDWR may authorize the use of non-standard devices and rated sections provided the device or section is rated or calibrated against a set of flow measurements using an acceptable open channel current meter or a standard portable measuring device. Further restrictions and requirements are available from IDWR upon request.

<u>FIRST</u>	<u>LAST</u>	<u>ADDRESS</u>	<u>TOWN</u>	<u>STATE</u>	<u>ZIP</u>	<u>DIVERSION</u>
	LEMHI RANCHES	2235 EAST 265th ST STE 220	IDAHO FALLS	ID	83404	EFHC-1
SPIRO	DASKALOS	1853 BOGEY WAY	HENDERSON	NV	89104	HC-01
DOROTHY	PETERSON	P O BOX 24	LEMHI	ID	83465	HC-01
CLOVER	AIKENS	P O BOX 11	LEMHI	ID	83465	HC-03
	LEMHI RANCHES	2235 EAST 265th ST STE 220	IDAHO FALLS	ID	83404	HC-03
OPAL	ADAMS	P O BOX 18	LEMHI	ID	83465	HC-05
	LEMHI RANCHES	2235 EAST 265th ST STE 220	IDAHO FALLS	ID	83404	HC-05
ODEEN	REDMAN	1077 SO HWY 77	ALBION	ID	83311	HC-05
MARK	SHINER	P O BOX 116	LEMHI	ID	83465	HC-05
OPAL	ADAMS	P O BOX 18	LEMHI	ID	83465	HC-07
SPIRO	DASKALOS	1853 BOGEY WAY	HENDERSON	NV	89104	HC-07
RICK	HAFENFELD	P O BOX 83	LEMHI	ID	83465	HC-07
	LEMHI RANCHES	2235 EAST 265th ST STE 220	IDAHO FALLS	ID	83404	HC-07
CECIL	HOLLENBECK	P O BOX 7	LEMHI	ID	83465-0007	HC-08
JOSEPH	TONSMEIRE	P O BOX 72	LEMHI	ID	83465	HC-08A & 08B
JOSEPH	TONSMEIRE	P O BOX 72	LEMHI	ID	83465	HC-09
ANDREW	KNIGHT	P O BOX 71	LEMHI	ID	83465	HC-10
JOSEPH	TONSMEIRE	P O BOX 72	LEMHI	ID	83465	HC-10
	LEMHI RANCHES	2235 EAST 265th ST STE 220	IDAHO FALLS	ID	83404	HC-10
	LEMHI RANCHES	2235 EAST 265th ST STE 220	IDAHO FALLS	ID	83404	HC-11