



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

July 3, 2018

Re: Preliminary Order Requiring Controlling Works and Measuring Devices in Water District No. 29-H

Dear Water User,

The Idaho Department of Water Resources ("Department") has issued the enclosed Preliminary Order ("Order") requiring installation of controlling works and measuring devices for certain surface water diversions in Water District 29-H ("WD 29-H"), Marsh Creek and tributaries. Pursuant to Idaho Code § 42-1701A(3), any person aggrieved by the Order may, within fifteen days after receipt of written notice of the Order or receipt of actual notice, file with the Director of the Department a written petition stating the grounds for contesting the Order and requesting a hearing.

The Order **excludes diversions for irrigation uses less than or equal to 5 acres and non-irrigation uses with a total rate of diversion less than or equal to 0.24 cfs (approximately 108 gallons per minute).** A common or shared point of diversion serving multiple water rights must be measured if the sum of the total irrigated acres exceeds 5 acres or the total diversion rate of non-irrigation use is greater than 0.24 cfs.

Please note that **irrigation diversions must be controlled and measured by the start of the 2021 irrigation season and non-irrigation diversions by January 1, 2021.**

Enclosed is the Department's "Minimum Acceptable Standards and Requirements for Open Channel and Closed Conduit Measuring Devices" qualifying types of measuring devices acceptable to the Department. This document and related information about acceptable measuring devices is available on the Department's Internet site at the following address: <https://idwr.idaho.gov/water-data/water-measurement/>

Users are encouraged to attend a water measurement workshop to be held by the Department on **Tuesday, August 14, 2018, 6 pm, at the Marsh Valley Senior Center, Downey ID.** The workshop will provide additional information on requirements for controlling works and measuring devices.

If you have questions concerning this order, please contact IDWR State Office (208-287-4800) or WD 29-H watermaster, Brad Maddox (208-380-1341).

Respectfully,

Tim Luke
Chief, Water Compliance Bureau

Enclosures: *Preliminary Order Requiring Controlling Works and Measuring Devices in Water District 29-H, Dated July 3, 2018 (6 pages)*
IDWR Minimum Acceptable Standards and Requirements for Open Channel and Closed Conduit Measuring Devices (2 pages)

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

IN THE MATTER OF REQUIRING)	
LOCKABLE HEADGATES,)	
CONTROLLING WORKS AND)	PRELIMINARY ORDER REQUIRING
MEASURING DEVICES ON DIVERSIONS)	CONTROLLING WORKS AND
IN WATER DISTRICT NO. 29-H)	MEASURING DEVICES
(MARSH CREEK))	
_____)	

The Director (“Director”) of the Idaho Department of Water Resources (“IDWR” or “Department”) finds, concludes, and orders as follows:

FINDINGS OF FACT

1. Water District No. 29-H (“WD 29-H”), Marsh Creek, is located in Bannock County. WD 29-H includes the entire Marsh Creek basin to its junction with the Portneuf River, excluding Water District No. 29-B, Garden Creek, and Water District No. 29-G, Birch Creek.
2. At the WD 29-H annual meeting on February 15, 2018, Department representatives announced they would issue an order requiring the installation of measuring devices on diversions within WD 29-H in the summer of 2018.
3. The Department met with the WD 29-H advisory committee and the watermaster on May 30, 2018, to discuss details associated with the proposed order requiring the installation of measuring devices on diversions in the water district. The advisory committee recommended a three year period of time to install measuring devices, with the final deadline to install measuring devices for irrigation occurring at the start of the 2021 irrigation season. The advisory committee also recommended exempting surface water diversions used for irrigation of 5 acres or less, and diversions for non-irrigation purposes where the diversion rate is less than or equal to 0.24 cubic feet per second (“cfs”).

LEGAL PROVISIONS

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 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.*

CONCLUSIONS OF LAW

1. Pursuant to Section 42-701(1), Idaho Code, the Director is authorized to require installation and maintenance of suitable, lockable headgates and controlling works and measuring devices at the point where the water is diverted.

2. The Director of IDWR has a “clear legal duty to distribute water” according to the partial decrees issued by the Snake River Basin Adjudication (“SRBA”) District Court. *City of Blackfoot v. Spackman*, 162 Idaho 302, 309 (2017). The SRBA was completed on August 26, 2014, through issuance of the *Final Unified Decree* by the SRBA District Court. *See Final Unified Decree, In re SRBA, Case No. 39576* (Fifth Jud. Dist. Ct. Aug. 26, 2014). The *Final Unified Decree* included general provisions applicable to Basin 29. *See Partial Decree Pursuant to I.R.C.P 54(b) for General Provisions in Basin 29* (Feb. 6, 2014). Since the Basin 29 general provisions do not list any Basin 29 water rights as being administered separately from all other water rights in the

Snake River Basin, all water rights within Basin 29 “will be administered as connected sources of water in the Snake River Basin in accordance with the prior appropriation doctrine as established by Idaho law.” *Id.* Idaho law is clear that hydrologically connected surface and ground water sources must be managed conjunctively. *Clear Springs Foods, Inc. v. Spackman*, 150 Idaho 790, 808 (2011).

3. The control and measurement of diversions is necessary in WD 29-H for the Director to comply with his “clear legal duty to distribute water” according to decreed water rights and to be able to conjunctively administer Basin 29 water rights with the rest of the water rights in the basin, including the mainstem of the Snake River. Adequate control and measurement of surface water diversions ensures:

- i. The regulation of diversions within the water district consistent with the legal requirements of prior appropriation doctrine, thereby protecting senior priority rights during times of regularly occurring water scarcity;
- ii. The diversion of water in association with a decreed water right does not exceed the legal diversion limits of the decree; and
- iii. That individual water district assessments are based on “actual deliveries” consistent with I.C. §§42-612(3) and 42-615.

4. The Director should require the installation of suitable, lockable headgates and controlling works and measuring devices within WD 29-H.

ORDER

IT IS HEREBY ORDERED AS FOLLOWS:

1. The holders of surface water rights in WD 29-H, except those water rights, uses and diversions identified in item 2 below, shall install and maintain on each point of diversion lockable headgates and controlling works and measuring devices of a type acceptable to the Department.

Owners of non-irrigation diversions shall comply with this order by January 1, 2021, and owners of irrigation diversions shall comply with this order by the start of the 2021 irrigation season.

2. The installation of lockable headgates and controlling works and measuring devices required by this order is waived until further notification by the Department for the following water uses and diversions:

- a. Domestic and stockwater uses as defined by Idaho Code §§ 42-111 and 42-1401A(11);
- b. Surface water diversions irrigating less than or equal to five acres¹; and

¹ A common point of diversion used for multiple irrigation rights where each individual right is five (5) acres or less must be measured and controlled if the sum of the irrigated acres under the rights exceeds five (5) acres.

- c. Surface water diversions for any purpose other than irrigation that divert less than or equal to 0.24 cfs (approximately 108 gallons per minute)².

3. Lockable headgates and controlling works and measuring devices shall be installed and maintained sufficiently for the watermaster to control, measure and report the amount of water delivered at each diversion.

4. Measuring devices acceptable to the Department for diversions requiring measurement, shall be devices identified in the Department's *Minimum Acceptable Standards and Requirements for Open Channel and Closed Conduit Measuring Devices* ("Minimum Acceptable Standards" enclosed).

5. The Department will consider a request for variance from the requirement to install measuring devices listed in the *Department's Minimum Acceptable Standards* upon submittal of a written request to the watermaster. Variance requests must include sufficient information for the watermaster and the Department to determine whether a variance is acceptable. Acceptable variances may include the following methods or devices:

- Use of an hour meter (time clock) for qualifying diversions only, usually in-stream electric pumps that operate at a consistent rate of flow; or
- Use of an acceptable non-standard closed conduit flow meter, for flow meters installed on diversions prior to this order.

6. Requests for variance from the measuring device requirement must be received by the watermaster by July 1, 2019. The watermaster and the Department will consider requests on a case-by-case basis. Variance requests proposing use of an existing flow meter will be denied unless the existing meter is tested and meets the Department's established standards for accuracy and the manufacturer installation specifications. Existing meters not meeting the established standard for accuracy or manufacturer specifications must be replaced with a flow meter from the Department's *List of Approved Closed Conduit Flow Meters (most current version)*, which is available for download at the Department's webpage at the following URL: <https://idwr.idaho.gov/files/water-measurement/approved-flow-meter-list.pdf>.

7. The Department may exempt a diversion from the requirements of this order or may allow deferred compliance for a diversion. To be considered, the watermaster must receive requests for exemption or deferral by July 1, 2019. The watermaster and the Department will consider requests for exemption or deferral on a case-by-case basis. Conditions that may result in exemption or deferral include, but are not limited to, the following:

- Abandonment, non-use, or consolidation that results in a diversion being unused, or reduces the total diversion rate to 0.24 cfs or less or results in the irrigation of five (5) acres or less; or
- Delays caused by requirements of other government entities.

² A common point of diversion serving multiple non-irrigation uses must be measured if the total diversion rate is greater than 0.24 cfs.

8. If a user cannot comply with the deadlines in item 1 of this order, the Department may grant an extension of time. To be considered, the watermaster must receive requests for an extension of time by July 1, 2019. The watermaster and the Department will considered requests for extensions on a case-by-case basis.

9. This order is effective immediately for any new diversion(s) authorized after the date of this order, except water right diversions described in items 2(a) through 2(c) of this order.

10. The WD 29-H watermaster will shut off and refuse to deliver water to any diversion subject to this order, if the user fails to comply with the requirements of this order; 1) after January 1, 2021, for non-irrigation diversions; or 2) after the start of the 2021 irrigation season for irrigation diversions, unless an extension or exemption has been granted by the Department.

11. Pursuant to Section 42-1701A(3), Idaho Code, any person aggrieved by this order may, within fifteen days after receipt of written notice of the order or receipt of actual notice, file with the Director a written petition stating the grounds for contesting the order and requesting a hearing.

Dated this 3 day of July 2018.



MAT WEAVER
Deputy Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of July 2018, the above and foregoing document was served on each individual or entity on the service list for this matter on file at the Idaho Department of Water Resources, 322 East Front Street, Boise, Idaho and www.idwr.idaho.gov. Each individual or entity on the service list was served by placing a copy of the above and foregoing document in the United States mail, postage prepaid and properly addressed.

Documents served: **Preliminary Order Requiring Controlling Work and Measuring Devices in Water District No. 29-H**

A handwritten signature in cursive script, appearing to read "Sarah Shaul", is written over a horizontal line.

Sarah Shaul
Technical Records Specialist
Idaho Department of Water Resources

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES (IDWR)

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

The water source, diversion structure and conveyance system must be adequately evaluated prior to selection of a measuring device. Surface water sources such as streams, springs and drains are commonly diverted into open channels, ditches or canals. Closed conduits such as pipes or culverts are also used to convey surface water. Ground water is more commonly diverted into pipes (closed conduits) which convey water from the well to system discharge points such as irrigation sprinkler systems. Ground water may also discharge from a well through a short section of pipe to open channels, ditches or ponds. When required by IDWR, measuring devices must be installed at or very near the point of diversion to ensure the watermaster can accurately determine the amount of water diverted from the public water source. The standards below are intended to qualify measuring devices that are “acceptable to the Department”, and to assist water users and watermasters in the proper selection and installation of such devices when required pursuant to Section 42-701, Idaho Code.

I. MEASUREMENT IN OPEN CHANNELS

The following requirements are applicable to diversions from surface water sources. Measurement of a ground water diversion with an open channel measuring device must be specifically approved by IDWR.

A. Industry Standard Open Channel Measuring Devices

All open channel surface water diversions must be measured using one of the following industry standard (standard) open channel flow measuring devices:

- **Weirs:** contracted or suppressed rectangular weirs, Cipolletti weir, 90 degree V-notch weir
- **Flumes:** Parshall flume, trapezoidal flume, ramped flume (ramped, broad-crested weir)
- **Submerged Orifices:** submerged rectangular orifice, constant head orifice
- **Current Meter/Acoustic Profiler:** acoustic Doppler flow meter (ADFM), acoustic Doppler current profiler

Construction, installation and operation of these devices must be consistent with water measurement guidelines, published by the United States Bureau of Reclamation¹ or the United States Geological Survey². Measuring devices, associated rating tables and specifications contained in these publications are considered by IDWR to be industry standard.

B. Non-Standard Open Channel Devices Including Rated Structures or Rated Sections

Any weir, flume or other measuring device that has not been constructed, installed or maintained to measure flow consistent with industry standard rating tables or curves shall be considered non-standard. IDWR may authorize the use of non-standard devices or rated channel sections on a case by case basis, upon the submittal and approval of a measurement plan. A measurement plan must contain an acceptable proposal, using industry standard procedures for developing a rating curve, or document that a rating curve has been fully developed for the device or section. Proposed rating plans must include provisions for periodic re-measurement and maintenance of the rating. The established rating must achieve the desired accuracy standard of plus or minus ten percent ($\pm 10\%$), the equivalent accuracy of a standard open channel device. All rating measurements must be conducted by a qualified individual (eg. engineer, hydrologist, certified examiner), using a standard portable open channel measuring device. If a measurement plan is not approved by IDWR, a standard device must be installed and maintained.

¹ The BOR guidelines can be found at: <https://idwr.idaho.gov/files/water-measurement/2001-Bureau-of-Reclamation-Water-Measurement-Manual.pdf>

² The USGS guidelines can be found at: <https://pubs.er.usgs.gov/>

II. CLOSED CONDUIT MEASURING DEVICES

The following requirements are applicable to measurement of diversions from any water source that conveys water through a full pipe or conduit. Full pipe means that water within the pipe is under at least some positive pressure and contains insignificant amounts of air or gas.

A. Standard Closed Conduit Measuring Devices

Standard closed conduit measuring devices are flow meters that have been approved for use by IDWR based on independent third party testing. IDWR has developed and published a list of meters that have been tested and approved for use³. Tests were conducted for both accuracy and repeatability on all submitted models. The lab tested accuracy standard for flow rate is plus or minus two percent ($\pm 2\%$). The *IDWR List of Approved Closed Conduit Flow Meters* (approved list) may be found at: <https://idwr.idaho.gov/files/water-measurement/approved-flow-meter-list.pdf>

Approved full profile magnetic flow meters and spooled ultrasonic flow meters must be installed with a minimum straight pipe length equivalent of three (3) pipe diameters upstream and two (2) pipe diameters downstream measured from the center of the meter spool. Approved clamp-on and wetted ultrasonic flow meter transducers must be located with a minimum straight pipe equivalent of ten (10) pipe diameters upstream and five (5) pipe diameters downstream of the nearest transducer. All other manufacturer installation specifications (excepting up and down spacing) must be met. *Installation of an approved meter inconsistent with the requirements noted above, may be cause for IDWR to require reinstallation of the meter.*

B. Requests for Variance to Use Power Consumption, Hour Meter or Existing Meter

Requests for variance will be considered for qualifying diversions on a case by case basis only upon submittal of the appropriate "Request for Variance" form. If a water user can demonstrate that an existing flow meter or other method of measurement meets an equal standard of accuracy when compared to meters on the approved list, a variance may be granted. If a variance request is not granted, an approved meter will be required.

The following alternate measurement methods may be considered:

- Development of a Power Consumption Coefficient (PCC), which is a ratio of power usage to water withdrawal,
- Use of an hour meter (time clock), or
- Use of a flow meter that was *installed prior* to the date a measurement order was issued and *is not* on the IDWR approved list.

Any alternate measurement method will require field testing using a portable ultrasonic flow meter or other meter tested and accepted by IDWR (testing meter). Field testing may be performed by any of the following:

- IDWR staff,
- a water district watermaster,
- a ground water district hydrographer,
- an irrigation district hydrographer,
- a certified field examiner, or
- as otherwise approved by IDWR

Existing flow meters must be operational and installed consistent with applicable specifications. If the testing margin of error of an installed meter when compared to the testing meter exceeds plus or minus ten percent ($\pm 10\%$) for mechanical type meters, or plus or minus five percent ($\pm 5\%$) for magnetic or ultrasonic type meters, the installed meter must be replaced with a new meter from the approved list. The owner or operator of any diversion system which requires a field measurement must provide a testing section of unobstructed straight pipe 15 pipe diameters in length.

³ Testing was conducted at the Utah Water Research Laboratory (UWRL), a National Institute of Standards and Technology (NIST) traceable lab in Logan, Utah.

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MARSH CREEK WATER CO
C/O CALVIN CRIDDLE
23274 8TH E
DOWNEY ID 83234

MARSH VALLEY CATTLEMANS CORP
C/O WILLIAM EGAN
3019 W ARIMO RD
ARIMO ID 83214

MARSH VALLEY JOINT SCHOOL DISTRICT #21
PO BOX 180
ARIMO ID 83214

GERALDINE B MC NEE
3214 E WOODLAND RD
DOWNEY ID 83234

MEADOWBROOK RANCH
C/O RALPH WHEATLEY
10053 S MARSH CREEK RD
MCCAMMON ID 83250

MARILYN MIKKELSON
2433 E HAWKINS RD
DOWNEY ID 83234

LOIS H MORRILL
1118 10TH ST
OGDEN UT 84404

SHERRILL S AND WAYNE C MORRIS
55 E MERRILL RD
MCCAMMON ID 83250

BARBARA L AND RANDAL L MORRIS
PO BOX 49
ARIMO ID 83214

KIP MORRISON
1829 E BIG HOLLOW RD
DOWNEY ID 83234

MOUNT OXFORD RANCH CO
PO BOX 185
DOWNEY ID 83234

DIANE MOYER AND VELMA CHRISTINA BULLOCK FAMILY
LIVING TRUST
5347 S MARSH CREEK RD
MCCAMMON ID 83250

C LYNNE AND THOMAS MULLICAN
3558 S MARSH CREEK RD
MCCAMMON ID 83250

DENNIS M AND KATHY A MURRAY
10034 S MARSH CREEK RD
MCCAMMON ID 83250

DEBRA AND HAL OVERDORF
9446 S MARSH CREEK RD
MCCAMMON ID 83250-1695

DERYL G AND ZOLA J PARRIS
18746 S WASHINGTON ST
DOWNEY ID 83234

NANCY L AND RONALD C PECK
2424 S MARSH CREEK RD
MCCAMMON ID 83250

ARTHUR AND LORI POWELL
9718 MARSH CREEK RD
MCCAMMON ID 83250

NORMAN RADEMACHER
2464 S MARSH CREEK RD
MCCAMMON ID 83250

REED & DORIS HARTVIGSEN FAMILY TRUST
649 E CENTER ST
BOUNTIFUL UT 84010

KENT AND MARY JO RHEAD
PO BOX 50
ARIMO ID 83214

ROCK CHUCK RANCH LP
PO BOX 299
MCCAMMON ID 83250

E D AND EVA M SAXTON
3527 E NEIGH & BRAY LN
DOWNEY ID 83234

ELOISE A SCOTT
442 RANDOLPH
POCATELLO ID 83201

SEJMK LAND LLC
10464 MARSH CREEK RD
MCCAMMON ID 83250

CLIFF AND NICOLE SERMON
1121 PACKER DR
BLACKFOOT ID 83221

KATHY L SHULTZ
PO BOX 357
INKOM ID 83245

JOHN A SHULTZ
PO BOX 757
LAVA HOT SPRINGS ID 83246

BONNIE H SIMMONS
3005 E CHAUCER PL
SALT LAKE CITY UT 84108

SANDRA AND T CRAIG SMITH
1827 E ARIMO RD
ARIMO ID 83214

KURTTIS B AND SUZAN K SMITH
9562 S MARSH CREEK RD
MCCAMMON ID 83250

KATHLEEN M SPIEGEL
9866 S MARSH CREEK RD
MCCAMMON ID 83250

GRADYN D STALEY
PO BOX 13
INKOM ID 83245

ALICE K STALEY
PO BOX 23
INKOM ID 83245

JOHN J STATHIS
705 E ROSEWOOD LN
LAYTON UT 84041

ALLIDA AND K V STEPHENSON
192 N 400 W
BLACKFOOT ID 83201

THE LOUIS BLOXHAM FAMILY TRUST
824 E BIG HOLLOW RD
DOWNEY ID 83234-1701

THE LYNN & UNA BULLOCK FAMILY PARTNERSHIP LLC
8466 S MARSH CREEK RD
MCCAMMON ID 83250

DENNIS OWEN THOMPSON
20757 S SIMPSON RD
DOWNEY ID 83234

THOMPSON FAMILY INVESTMENTS LLC
536 TERRACE DR
BURLEY ID 83318

CHARLES E AND JOAN THOMSEN
2599 S MARSH CREEK RD
MCCAMMON ID 83250

UNITED STATES OF AMERICA ACTING THROUGH
USDI BUREAU OF LAND MANAGEMENT
IDAHO STATE OFFICE
1387 S VINNELL WAY
BOISE ID 83709-1657

MICHAEL AND SHELLEY VAUGHAN
PO BOX 266
DOWNEY ID 83234

ROBERT M WARDLE
2652 S MARSH VALLEY CREEK RD
MCCAMMON ID 83250

CORY M AND JILL T WEBSTER
24359 S HWY 91
DOWNEY ID 83234

RALPH O WHEATLEY
10053 S MARSH CREEK RD
MCCAMMON ID 83250

A LIN AND DAVID L WHITWORTH
PO BOX 183
INKOM ID 83245

BETTY TIPPETS WINDLEY
3388 S SHARON CIR
MAGNA UT 84044

GENE M AND JENNIFER A WISE
2712 S MARSH CREEK RD
MCCAMMON ID 83250

DONALD H AND MURIEL L WORTHYLAKE
9856 S MARSH CREEK RD
MCCAMMON ID 83250