State of Idaho
DEPARTMENT OF WATER RESOURCES
322 E Front Street, Suite 648 • PO Box 83720 • Boise ID 83720-0098
Phone: (208) 287-4800 • Fax: (208) 287-6700
Website: idwr.idaho.gov • Email: idwrinfo@idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

February 27, 2019

KEVIN LAKEY, WATERMASTER
WATER DISTRICT 37
107 W 1ST
SHOSHONE ID 83352

Re: Curtailment Order and Watermaster Instruction to Curtail Diversions for Failing to Install and Maintain a Measuring Device

Dear Mr. Lakey,

The Director ("Director") of the Idaho Department of Water Resources ("Department") issued the attached *Curtailment Order In the Matter of Installing and Maintaining Measuring Devices for Ground Water Diversions in Water District 37* ("Curtailment Order") on February 25, 2019. **The Curtailment Order directs you, as Water District 37 Watermaster, to curtail water rights at points of diversion listed in Table 1 of the Curtailment Order, beginning April 15, 2019.** Curtailment at each diversion shall be enforced until an acceptable measuring device is installed or the owner of the diversion receives Department approval of a request for variance or extension.

As watermaster you should implement the following protocol with respect to curtailment:

- Contact the owner or operator of each diversion or well listed in Table 1 of the Curtailment Order either by phone or in person prior to April 15, 2019. Coordinate shut off with the owner or operator present if possible.
- Shut off and lock the diversion using security seals, locks or cables on electrical disconnects or close and lock supply pipe control valves. If the diversion control cannot be shut off and locked, identify a method by which water use may be monitored (e.g. use of dedicated power meter readings).
- Attach a Curtailment Notice at or near the diversion in a visible location. Document curtailment location and posting of notice with photos.
- Do not delay curtailment based on the owner's or operator's schedule.
- If the owner or operator is uncooperative or refuses access to the diversion, contact Department Compliance Bureau staff.
- If circumstances encountered suggest an enforcement action pursuant to Idaho Code § 42-1701B is preferable to curtailment (e.g. curtailing a domestic or livestock use), refer the matter to Department Compliance Bureau staff.
- If applicable, document all attempts to curtail the diversions and reasons why physical curtailment cannot be achieved.

Please contact Department Compliance Bureau staff members Tim Luke, Rob Whitney or Cherie Palmer regarding any questions you may have about the Curtailment Order and associated instructions or procedures.

Sincerely,

Rob Whitney
Water Compliance Bureau

Enclosure(s)

cc: Corey Skinner, IDWR Southern Region Manager

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BRAD LITTLE
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February 27, 2019

Re: Curtailment Order In the Matter of Installing and Maintaining Measuring Devices for Ground Water Diversions in Water District 37

Dear Water User,

You are receiving this letter because your ground water diversion is not being measured as required by previous orders issued by the Director ("Director") of the Idaho Department of Water Resources ("Department").

Enclosed is a *Curtailment Order In the Matter of Installing and Maintaining Measuring Devices for Ground Water Diversions in Water District 37* ("Curtailment Order") issued by the Director on February 25, 2019. **The Curtailment Order instructs the Water District 37 Watermaster to curtail water rights at points of diversion listed in Table 1 of the Curtailment Order beginning April 15, 2019.** The watermaster will curtail diversion of ground water until an acceptable measuring device is installed or a request for variance or extension is approved by the Department. The watermaster will initiate contact the water user prior to April 15, 2019, by phone or in person, regarding the curtailment.

Please contact the Department or the Water District 37 Watermaster if you have questions concerning this matter.

Idaho Department of Water Resources
Cherie Palmer or Rob Whitney, 208-287-4800
cherie.palmer@idwr.idaho.gov

Water District 37
Kevin Lakey, Watermaster, 208-886-2451
watermanager@cableone.net

Sincerely,

Rob Whitney
Water Compliance Bureau

Enclosure(s)

cc: Corey Skinner, IDWR Southern Region Manager

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF INSTALLING AND MAINTAINING MEASURING DEVICES FOR GROUND WATER DIVERSIONS IN WATER DISTRICT 37	)))))	**CURTAILMENT ORDER**

The control and measurement of diversions is necessary in Water District 37, Big and Little Wood Drainages Including Ground Water, for the Director ("Director") of the Idaho Department of Water Resources ("Department") to fulfill his clear legal duty to distribute water according to valid priority water rights.

BACKGROUND

On September 21, 2011, the Director issued the *Preliminary Order in the Matter of the Creation of a Water Measurement District for the Measurement and Reporting of Ground Water Rights in the Upper Big and Little Wood River Basins in Administrative Basin 37* ("Measurement Order"). The Measurement Order required owners of ground water rights within the Upper Big and Little Wood River drainages of Administrative Basin 37 to install a measuring device, of a type acceptable to the Director, at each point of diversion or well subject to the Measurement Order. Ground water measuring devices were required to be installed prior to the 2014 irrigation season, or earlier, as described in the Measurement Order.

On September 17, 2013, the Director issued the *Preliminary Order in the Matter of the Proposed Combination of Water District Nos. 37, 37A, 37C and 37M and the Inclusion of Both Surface Water and Ground Water Rights in the Combined Water District; and in the Matter of Abolishing the Upper Wood Rivers Water Measurement District* ("Water Districts Order"). Specifically, the Water Districts Order added ground water rights from the Upper Big Wood River valley above Magic Reservoir and the Silver Creek drainage above Picabo to Water District 37.

On February 16, 2018, the Department sent an *Order to Cease and Desist Use of Ground Water and Pending Notice of Violation* ("Cease and Desist Order") to the known owners of ground water rights who failed to install and maintain measuring devices as required by the order dated September 21, 2011. The Cease and Desist Order notified water right owners that acceptable measuring devices must be installed prior to April 1, 2018, to avoid curtailment by the Watermaster of Water District 37.

ANALYSIS

1. In accordance with Idaho Code § 42-701(1) and pursuant to the Water Measurement Order, the Director has required the installation and maintenance of suitable controlling works and measuring devices at points of diversion where ground water is diverted within Water

District 37, except ground water rights used for domestic and stock water as defined by Idaho Code § 42-111, and non-irrigation ground water rights that authorize diversion less than or equal to 0.24 cubic feet per second.

2. In accordance with Idaho Code § 42-701(3), the Department has provided notice to the known owners of ground water diversions that have failed to install and maintain the required measuring device. The Department's notice gave the owners ten days "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."

3. According to Department and Water District 37 records, the water right owners identified in the list hereto in Table 1 have not installed the required measuring device(s).

4. Pursuant to Idaho Code § 42-701(3), the Director should "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. . . ."

ORDER

IT IS HEREBY ORDERED AS FOLLOWS:

1. The Watermaster of Water District 37 shall, beginning April 15, 2019, curtail those water rights listed in Table 1 until an acceptable measuring device is installed for the associated water right point of diversion or well. Measuring devices acceptable to the Director are shown in the Department's *List of Approved Closed Conduit Flow Meters*, 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

2. Pursuant to Idaho Code § 42-1701A(3), 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 25th day of February 2019.

GARY SPACKMAN
Director

Table 1

Water Right Owner	Water Right	Description	Legal Description (Township Range Section Quarter-Quarter)	WMIS Number
ROBERT N RUTH	37-8427	Irrigation	03N18E07NENE	1000720
ROBERT ROHE	37-21956	Irrigation	Gov. Lot 1; 03N18E06 NENE	1001266
MID-VALLEY VENTURES	37-7672A	Irrigation	03N18E29SWSE	1000747
JAMES DALE MIZER	37-8085	Irrigation	03N18E33NWSW	1000923

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of February, 2019, 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: **In the Matter of Requiring Measuring Devices for Ground Water Diversions in Water Districts No. 37: Curtailment Order**

Sarah Shaul
Technical Records Specialist