

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF REQUIRING MEASURING)
DEVICES AND CONTROLLING WORKS ON) **PRELIMINARY ORDER**
DIVERSIONS FROM THE CROOKED RIVER)
IN ADMINISTRATIVE BASIN 69)
_____)

BACKGROUND

On April 16, 2025, the Presiding Judge of the Snake River Adjudication Court (“SRBA”) issued *Order Granting Motion for Order of Interim Administration of Water Rights that Divert from Crooked River in Basin 69* (“Interim Administration Order”). The Interim Administration Order authorizes the Idaho Department of Water Resources (“Department”) to conduct the interim administration of water rights that divert from Crooked River in Basin 69 for the 2025 irrigation season pursuant to Chapter 6, Title 42, Idaho Code.

The Director (“Director”) of the Department is required to “divide the state into water districts in such manner that each public stream and tributaries, or independent source of water supply, shall constitute a water district.”¹ Further, the Director “shall have direction and control of the distribution of water from all natural water sources within a water district” and “[d]istribution of water within water districts . . . shall be accomplished by watermasters.”² No water district has been created to administer the partially decreed water rights that divert from the Crooked River in Basin 69. The Interim Administration Order authorizes the Department to administer water rights in the absence of a water district.

Water rights are administered by reading measuring devices and adjusting head gates or other controlling works to deliver the authorized flow rate to the water right holder.

The installation and maintenance of suitable headgates, controlling works, and acceptable measuring devices on the diversions from the Crooked River is necessary for the Department and any future water district watermaster to properly quantify and regulate the amount of water delivered to water users.

LEGAL PROVISIONS

Idaho Code § 42-701(1) states:

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

¹ Idaho Code § 42-604

² Idaho Code § 42-602

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.

Idaho Code § 42-701(3) states:

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.

ORDER

IT IS HEREBY ORDERED THAT:

1. On or before July 15, 2025, the holders of the water rights listed in the table below, shall install and maintain on each point of diversion described in the table below, lockable headgates, controlling works, and measuring devices of a type acceptable to the Department.

Right Number	Owner	Source	Priority Date	Diversion Description	Diversion Common Name*
69-4103A	CROOKED RIVER RANCHES LLC	CROOKED RIVER	4/1/1888	T18N R03W Section 15, NENE	Clifton Ditch
				T18N R03W Section 11, NWSW	Crooked River Ranch #2
				T18N R03W Section 11, NESW	Crooked River Ranch #3
69-4122	RUBELT, AVA E; RUBELT, JACK	CROOKED RIVER	5/6/1901	T18N R03W Section 15, NWNE	Rubelt Upper
				T18N R03W Section 15, NENE	Rubelt #2
				T18N R03W Section 10, SESE	Rubelt #3
				T18N R03W Section 10, SESE	Rubelt #4
69-4103B	MOONSHINE VENTURES LLC	CROOKED RIVER	4/1/1955	T18N R03W Section 15, NWNE	Scism Gated Pipe

* The Department assigned descriptive names where local names were not previously used in Department records. Ascending numbers are used to denote diversions in a downstream direction.

2. Measuring devices acceptable to the Department are listed in the Department's *Minimum Acceptable Standards for Open Channel and Closed Conduit Measuring Devices* (enclosed).

3. The Department may consider a specific written request from the water right holder for an extension of the installation deadline on a case-by-case basis. Conditions that may qualify a diversion for an extension include, but are not limited to, the following:

- Abandonment or non-use of a diversion.
- Delays caused by requirements of other government entities.

4. The holder of any water right who is requesting delivery of water by the Department pursuant to the Interim Administration Order, or by a watermaster elected and appointed to deliver water to users on Crooked Creek, must first install controlling works and a measuring device approved by the Department prior to delivery of water by the Department or watermaster. The Department may also require installation of controlling works and measuring devices on other points of diversion prior to regulation if the Department determines installation is necessary for delivery to the holder of a water right who is requesting delivery of water.

5. Following July 15, 2025, the Department, acting under the Interim Administration Order, or a watermaster elected and appointed to deliver water to users on Crooked Creek, shall shut off and refuse to deliver water to any diversion that has not been equipped with headgates, controlling works, or measuring devices required by this order, unless the Department has approved an extension.

Dated this 9th day of June, 2025



Steven Visosky
Manager, Water Distribution Section

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

IN THE MATTER OF REQUIRING
MEASURING DEVICES AND
CONTROLLING WORKS ON
DIVERSIONS FROM THE CROOKED
RIVER IN ADMINISTRATIVE BASIN 69

**DECLARATION OF PROOF OF
SERVICE**

I, Kensie Thorneycroft, declare under penalty of perjury pursuant to the laws of the State of Idaho, that the following is true and correct:

1. I am over the age of 18 years and competent to testify to the matters contained herein. I make this declaration pursuant to Idaho Code § 9-1406 and based on my own personal knowledge.
2. I am currently an employee of the Idaho Department of Water Resources.
3. On June 09, 2025 I caused to be served a true and correct copy of the *Preliminary Order in the Matter of Requiring Measuring Devices and Controlling Works on Diversions from the Crooked River in Administrative Basin 69*, filed in this case matter with the Idaho Department of Water Resources on June 09, 2025 upon each individual or entity named in the attached service list, by placing a copy of the aforementioned document in the United States mail, postage prepaid.

DATED this 9th day of June 2025



Kensie Thorneycroft
Technical Records Specialist II
Idaho Department of Water Resources

AVA E AND JACK RUBELT
2280 OLD HORNET RD
COUNCIL, ID 83612

JULIE KLEIN FISCHER
MORROW AND FISCHER PLLC
4 OGDEN AVE
NAMPA, ID 83651

CROOKED RIVER RANCHES LLC
1820 JONES RD
WEISER, ID 83672-5536

CHRIS BROMLEY
MCHUGH BROMLEY, PLLC
PO BOX 107
BOISE, ID 83701

MOONSHINE VENTURES LLC
PO BOX 44
COUNCIL, ID 83612

MICHAEL P LAWRENCE
GIVENS PURSLEY LP
PO BOX 2720
BOISE, ID 83701-2720

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/wp-content/uploads/sites/2/water-measurement/Water-Measurement-Manual-3rd-Ed-2001.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/wp-content/uploads/sites/2/water-measurement/Approved-flow-meter-list-v4.1_7_1_2024.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.

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was **not** held.)

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

PETITION FOR RECONSIDERATION

(See Idaho Code § 67-5243(3))

Any party may file a petition for reconsideration of this preliminary order with the Department within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The presiding officer 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.

PETITION FOR REVIEW (EXCEPTIONS)

(See Idaho Code § 67-5245)

Within fourteen (14) days after: (a) the service date of this preliminary order, (b) the service date of a denial of a petition for reconsideration of this preliminary order, or (c) the failure within twenty-one (21) days of the presiding officer to act on a petition for reconsideration of this preliminary order, any party may petition the Director in writing to review any part of this preliminary order by filing exceptions, and any supporting brief, with the Department.¹ Any parties opposing the exceptions shall have fourteen (14) days from the service date of the exceptions to file a brief. If the Director determines that oral argument is to be heard, the Director will provide reasonable notice to the parties of the place, date, and hour for the argument.

The Director will issue a final order on exceptions within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless extended for good cause. The Director may remand the matter for or hold an evidentiary hearing if further factual development of the record is necessary before issuing a final order.

REQUEST FOR HEARING

(See Idaho Code § 42-1701A(3))

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 Idaho Code § 42-1701A(3). A written petition to the Director contesting the preliminary order and requesting a hearing must be filed with the Department

¹ The Director may decide to review this preliminary order upon his own motion. Should the Director decide to do so, the Director will provide written notice to the parties within the period the parties are allowed to petition the director for review of the preliminary order.

by any aggrieved person **within fifteen (15) days after service of this preliminary order.**

CERTIFICATE OF SERVICE

(*See* IDAPA 37.01.01.053, 37.01.01.202)

All documents filed with the Department in connection with a petition for reconsideration, petition for review, or a request for hearing of this preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 53 and 202.