

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF REQUIRING MEASURING)	
)	
DEVICES AND CONTROLLING WORKS ON)	FINAL ORDER
)	
DIVERSIONS FROM THE BIG LOST RIVER)	
)	
AND TRIBUTARIES IN WATER DISTRICT No. 34)	
<hr/>		

On August 14, 2013, the Director of the Idaho Department of Water Resources (“Director” or “Department”) issued an *Order Denying Petitions for Reconsideration in the Matter of Water Distribution in Water District No. 34 (The Big Lost River)*, regarding the Department’s *Final Order Requiring Measuring Devices for Ground Water Diversions*. In that order, the Director found that an order requiring measuring devices for surface water diversions in Water District No. 34 is needed to supersede previously issued surface water measurement orders in Water District No. 34 and institute measurement device requirements in parts of Water District No. 34 that were not addressed by prior surface water measurement orders.

Staff from the Department working in coordination with the Water District No. 34 watermaster determined that some water diversions from the Big Lost River or tributaries of the Big Lost River either have no measuring devices and controlling works (head gates) or lack sufficient measuring devices and controlling works.

A primary purpose of a water district is the administration of water rights within the water district by a watermaster. A watermaster administers water rights by reading measuring devices and adjusting head gates or other controlling works to deliver the authorized flow rates to the water right holders within the water district.

Rule 35 of the *Idaho Department of Water Resources Water Distribution Rules – Water District 34* (“Water District 34 Rules”) states in relevant part:

...Each water user, except small domestic and stock water users from ground water, shall, at the water user’s expense, install and maintain measuring devices and control works of a type acceptable to the director, at all points of diversion and any other points, as determined necessary by the director for the proper

administration of the use of water. The director may prohibit or prevent the diversion of water by a water user who refuses or fails to comply with this rule in accordance with the provisions of Chapter 7, Title 42, Idaho Code.

The Water District 34 watermaster administers water rights from both surface water and ground water sources within the district. The watermaster normally administers water rights from the following surface water sources in Water District 34: the Big Lost River and tributaries above Mackay Reservoir including the main channel of the Big Lost River, the Back Channel of the Big Lost River, Parsons Creek, Warm Springs Creek, and Pole Stackyard Creek; the Big Lost River and tributaries below Mackay Reservoir including the Big Lost River, Antelope Creek and tributaries, Alder Creek, and Pass Creek.

Section 42-701, Idaho Code, states 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.

2. If an appropriator determines that installation and maintenance of a measuring device required by the director would be burdensome for his diversion, the appropriator may, upon approval of the director, execute an agreement with the director and submit to the director such information and technical data concerning the diversion and pumping facilities as the director determines necessary to establish the relationship of power usage to water withdrawal by any pump used to divert public water.

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 the diversion of water for the 2015 irrigation season, acceptable measuring devices and controlling works shall be installed and functional on each diversion from the following surface water sources:

A. Big Lost River and Tributaries above Mackay Reservoir

Main Channel of the Big Lost River
Back Channel of the Big Lost River
Parsons Creek
Warm Springs Creek and tributaries, including tributary springs
Pole Stackyard Creek

B. Big Lost River and Tributaries below Mackay Reservoir

Big Lost River
Antelope Creek and tributaries
Alder Creek
Pass Creek


2. The watermaster shall shut off and refuse to deliver water to any diversion of water from a source listed in Order item 1A or 1B above that does not have an adequate measuring device and/or lockable controlling works at any and all times after the start of the 2015 irrigation season.

3. **On or before April 1, 2015**, the name and contact information of a representative from each diversion or ditch from the sources of water listed in Order item 1A and 1B above must be provided to the Water District 34 watermaster. The representative of the diversion may be contacted by the watermaster and/or the Department to conduct a site visit and review measuring device and controlling works requirements or improvements. The Big Lost River Irrigation District general manager shall be the contact for all of the diversions or ditches from the Big Lost River that re-divert storage water below Mackay Reservoir.

4. Water rights used only for domestic and stock water purposes, or other de-minimis purposes as defined by Idaho Code § 42-111 are exempt from the requirements of this Order unless the watermaster or the Director determines at some future date that measuring devices and controlling works are necessary to address water delivery disputes or conflicts among holders of different priority water rights diverted from the same source of water.

5. Water right diversions from surface water sources not listed in Order item 1A or 1B above may not yet be regulated by the watermaster. The watermaster may provide individual notice to water right holders diverting water from sources other than those listed in Order item 1A and 1B to install measuring devices and controlling works on or before a date specified by the watermaster.

Dated this 18th day of March, 2015.


GARY SPACKMAN
DIRECTOR, IDWR