

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF REQUIRING MEASURING)	
)	
DEVICES AND CONTROLLING WORKS ON)	
)	ORDER REQUIRING
WATER DIVERSIONS FROM ANTONE CREEK)	MEASURING DEVICES AND
)	CONTROLLING WORKS
AND TRIBUTARIES, AND SPRING CREEK AND)	
)	
TRIBUTARIES, WATER DISTRICT 45F)	
_____)	

Water District 45F is composed of the entire Marsh Creek drainage basin which includes Antone Creek and Spring Creek. In 2016 Transfer #80620 under the name of Fred Hawker was protested. During the prehearing conference relating to transfer #80620 it was determined measuring devices should be installed on diversions from Antone Creek or tributaries to Antone Creek. In recent years Spring Creek has also been a source of complaints related to delivery of surface water. Staff from the Idaho Department of Water Resources (Department), working in coordination with the Water District 45F watermaster, have determined that measuring devices and controlling works should be installed on Spring Creek or tributaries to Spring Creek. The purpose of a water district is to provide administration and delivery of water within the water district by the watermaster. The watermaster must deliver water according to water right priorities and administer water rights by measuring diversions and adjusting controlling works to provide the authorized flow rate and/or volume to water right holder(s). Measurement and control of diversions is necessary to ensure the proper delivery of water in accordance with authorized water rights.

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.

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 THAT:

1. The holders of water rights included in Attachment A of this order, diverting from Antone Creek, Spring Creek, or sources tributary to Antone and Spring Creeks, within Water District 45F, shall install on each point of diversion a measuring device of a type acceptable to the Department. Such measuring devices shall be installed on or before the start of the 2018 irrigation season. The water rights listed in Attachment A exclude water rights for domestic and stock water purposes as defined by Idaho Code §§ 42-111 and 42-1401A(11), and water rights used for in-stream watering of livestock as defined by Idaho Code § 42-113.

2. The holders of water rights included in Attachment A of this order shall install lockable controlling works of a type acceptable to the Department and which allow the watermaster to adequately control the delivery of water at authorized point(s) of diversion from their respective sources. Controlling works shall be installed on or before the start of the 2018 irrigation season.

3. Measuring devices acceptable to the Department are listed in the Department's *Minimum Acceptable Standards for Open Channel and Closed Conduit Measuring Devices* (copy attached). These specifications apply to both irrigation and non-irrigation water uses.

4. The Department may consider a specific written request from the water right holder for exemption or deferral on a case-by-case basis. Conditions that may qualify a diversion for exemption or deferral include, but are not limited to, the following:

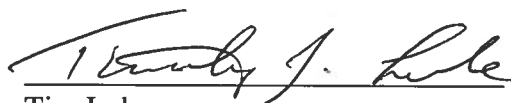
- Abandonment or non-use of a diversion.
- Delays caused by requirements of other government entities.

5. This Order shall be effective immediately on any new diversion(s) authorized after the date of this Order, except water rights used for domestic and stock water purposes as defined by Idaho Code §§ 42-111 and 42-1401A(11), and water rights used for in-stream watering of livestock as defined by Idaho Code § 42-113.

6. The watermaster shall shut off and refuse to deliver water to any water right holder or water user with a diversion from Antone Creek or Spring Creek, or tributary sources to Antone or Spring Creeks in Water District 45F who fails to install and maintain an adequate measuring device and/or lockable controlling works for the irrigation season following the date of the required installation.

7. Any person aggrieved by this action may request a hearing pursuant to Idaho Code § 42-1701A(3) within fifteen (15) days after receipt of written notice of this action.

Dated this 13th day of JUNE, 2017



Tim Luke
Water Compliance Bureau Chief

Attachment A

Water Rights Subject to Measurement Order, Water District 45F

Owner	Water Right No.	Basis	Priority Date	Source	Diversion Rate	Usage
ALBION 12 INVESTMENTS LLC	45-517D	Decreed	8/31/1874	SPRING CREEK	0.200	IRRIGATION
ALBION 12 INVESTMENTS LLC	45-14452	Decreed	4/12/1892	ANTONE CREEK, HOWELL CREEK, PINE CREEK	0.420	IRRIGATION
CLARK, GRANT; EVERHEART CLARK, DENISE	45-256A	Decreed	4/12/1892	ANTONE CREEK, HOWELL CREEK, PINE CREEK	2.930	IRRIGATION
HAWKER, FRED	45-517C	Decreed	8/31/1874	SPRING CREEK	0.100	IRRIGATION
HAWKER, FRED	45-256B	Decreed	4/12/1892	ANTONE CREEK, HOWELL CREEK, PINE CREEK	4.700	IRRIGATION
SMYER, BENNIE	45-7605	Application	8/26/1986	ANTONE CREEK, SUMMIT CREEK	4.000	IRRIGATION FROM STORAGE, IRRIGATION STORAGE, IRRIGATION
SMYER, DELORES J; SMYER, NORMAN L	45-12906	Decreed	8/31/1874	SPRING CREEK, UNNAMED STREAM	0.100	IRRIGATION
SMYER, KEVIN	45-10480	Decreed	3/18/1910	SPRING CREEK, UNNAMED STREAM	1.050	IRRIGATION
WARTHEN, EARL L	45-10502	Decreed	5/26/1964	SPRING CREEK	0.400	IRRIGATION
WARTHEN, EARL L	45-13991	Decreed	3/18/1910	SPRING CREEK	0.200	IRRIGATION