BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF REQUIRING MEASURING DEVICES FOR GROUND WATER DIVERSIONS IN WATER DISTRICTS NOS. 31, 34, 100, 110, 120, 130, AND 140

CURTAILMENT ORDER

BACKGROUND

On June 17, 2016, the Director ("Director") of the Idaho Department of Water Resources ("Department") issued a Final Order In the Matter of Requiring Measuring Devices for Ground Water Diversions in the Portions of Water Districts Nos. 31, 34, 100, 110, 120, 130, and 140 Overlying the Eastern Snake Plain Aquifer to assist watermasters in the administration of water rights within the boundaries of the water districts affected by the order.

On July 1, 2016, the Surface Water Coalition ("SWC") filed with the Department the SWC’s Petition for Reconsideration and Request for Hearing. On July 22, 2016, the Director issued a Final Order on Reconsideration ("Measurement Order").

In the Measurement Order, the Director ordered as follows:

Holders of ground water rights within Water District Nos. 34, 100, 110, 120, 130, and 140, except those ground water rights, uses and diversions identified below, and ground water rights in Water District 31 subject to the Mud Lake Agreement, shall install and maintain on each point of diversion or well, a measuring device of a type acceptable to the Department. Installation of measuring devices will assist the watermasters of Water District Nos. 31, 34, 100, 110, 120, 130, and 140 in reporting the amount of water withdrawn from each well. Owners of irrigation wells or diversions that are required to be measured shall install acceptable measuring devices by the start of the 2018 irrigation season. Owners of non-irrigation diversions that are required to be measured shall install acceptable measuring devices by January 1, 2018.

Measurement Order at 13. The Director specified that measuring devices acceptable to the Department are flow meters identified in the Department’s List of Approved Closed Conduit

1 The SWC consists of the following seven surface water delivery organizations: A&B Irrigation District, American Falls Reservoir District No. 2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and the Twin Falls Canal Company.

2 The measurement and reporting required by the Measurement Order are waived for the following ground water uses and diversions:
The Director explained that the Department would consider a request for variance of the Department approved flow meter requirement upon submittal of a written plan to the Department. *Id.* at 13-14. The Director also explained that, if a water user could not comply with the specified deadlines (“start of the irrigation season” for irrigation diversions or “January 1, 2018” for non-irrigation diversions), the Department would consider requests for extension submitted to the Department in writing. *Id.* at 14.

On March 2, 2018, the Department sent a letter to owners of non-irrigation diversions who were required to install acceptable measuring devices by January 1, 2018, but who, according to the Department’s records and communications with water district staff, had not installed the required measuring device or requested a variance. The letter informed the owners that, to avoid potential curtailment by the watermaster, they had to either: 1) within fifteen days of the letter, submit documentation that the required measuring device had been installed, 2) install an approved measuring device and notify the watermaster by March 15, 2018, or 3) submit a variance or extension request by March 15, 2018.

On March 27, 2018, the Department sent a letter to owners of irrigation diversions who were required to install acceptable measuring devices by the start of the 2018 irrigation season, but who, according to the Department’s records and communications with water district staff, had not installed the required measuring device or requested a variance. The letter informed the owners that, to avoid potential curtailment by the watermaster, they had to install and maintain the required measuring device before diverting water for the 2018 irrigation season. The letter also requested that the owner either: 1) request an inspection if the measuring device had been installed, 2) document any measuring device installation currently underway and the date installation would be complete, or 3) submit a request for variance within fifteen days of the letter.

On March 30, 2018, the Department sent a follow-up letter to owners of non-irrigation diversions who were sent the March 2, 2018, letter described above. The letter informed the owners that, according to the Department’s records and communications with water district staff, the owners still had not installed the required measuring device or requested a variance. The letter informed the owners that, on or after April 9, 2018, and pursuant to Idaho Code § 42-701(3), the watermaster could shut off and refuse delivery of water from each diversion described in the letter unless an acceptable measuring device is installed. The letter also informed the owners that, if an acceptable measuring device is installed, the owner must notify the Department or watermaster on or before April 9, 2018.

On May 17, 2018, the Department sent a follow-up letter to owners of irrigation diversions who were sent the March 27, 2018, letter described above. The letter informed the

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a. Domestic and stockwater uses as defined by Idaho Code § 42-111;
b. Diversions of ground water or water systems with multiple diversions irrigating less than or equal to five (5) acres; and
c. Diversions of ground water or water systems with multiple diversions delivering ground water for any purpose other than irrigation that divert less than or equal to 0.24 cubic feet per second (approximately 108 gallons per minute).


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1 The Measurement Order specifies that requests for variance must be submitted to the Department on the Department’s form “Request for Variance of IDWR Approved Flow Meter Requirement for Irrigation Wells” available on the Department’s website or upon request. *Measurement Order* at 14.
owners that, according to the Department's records and communications with water district staff, the owners still had not installed the required measuring device or requested a variance. The letter informed the owners that, on or after June 1, 2018, and pursuant to Idaho Code § 42-701(3), the watermaster could shut off and refuse delivery of water from each diversion described in the letter unless an acceptable measuring device is installed. The letter also informed the owners that, if an acceptable measuring device is installed, the owner must notify the Department or watermaster on or before May 27, 2018.

ANALYSIS

In accordance with Idaho Code § 42-701(3) and as described above, the Department sent letters to the owners of non-irrigation and irrigation diversions listed in Attachment A constituting ten days' notice "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." I.C. § 42-701(3). As of the date of this order, according to Department records, flow meter inspections in June and July 2018, and communications with water district staff, the owners listed in Attachment A have not installed the required measuring devices, did not within ten days' notice from the Department begin "to diligently pursue to completion the construction or installation of the required measuring devices," and have not received an approved variance or extension from the Department. Id. Therefore, pursuant to Idaho Code § 42-701(3), the Director will "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...." Id.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that the watermasters of the water districts responsible for administering water rights listed in Attachment A shall, beginning August 6, 2018, curtail those water rights at the points of diversion listed in Attachment A until an acceptable measuring device is installed as described in the Department’s List of Approved Closed Conduit Flow Meters (Version 2.9 updated 6-6-2016) or the owner submits to the Department or watermaster a request for variance or extension as described in the Measurement Order and the Department approves such request. 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 31st day of July 2018.

GARY SPACKMAN
Director
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<th>Water Right Owner</th>
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st 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: In the Matter of Requiring Measuring Devices for Ground Water Diversions in Water Districts Nos. 31, 34, 100, 110, 120, 130, and 140: Curtailment Order

[Signature]
Sarah Shaul
Technical Records Specialist
L LEIGH BAIR FAMILY TRUST
1954 W TABER RD
BLACKFOOT ID 83221

ALLEN AND MILLIE BATT
3224 E 200 N
RIGBY ID 83442

HARRY BOKMA DAIRY
HARRY B. AND FLORA BOKMA
3919 N 1000 E
BUHL ID 83316
fbokma@magiclink.com

DIXIE BUNDY
PO BOX 522
LANDER WY 82520

CARLSON FIVE A PARTNERSHIP
PO BOX 515
SHELLEY ID 83724

WILLIAM AND CARLENE CARTER
907 S 1500 W
PINGREE ID 83262

CVRH FARM LLC
48 W 1500 N
NEPHI UT 83468
marks@rhgi.org

GARRETT AND ALEXIS EICKLEBERRY
685 S 1400 W
PINGREE ID 83262-1325
eickgarr@isu.edu

CONAN FELD
2781 W 1800 S
ABERDEEN ID 83210

VALATE GARDNER
742 W 100 S
BLACKFOOT ID 83221

CITY OF BASALT
PO BOX 178
BASALT ID 83218

BINGHAM COUNTY
501 N MAPLE #209
BLACKFOOT ID 83221-1700

BROWN ALPHA II
101 MISSION ST STE 505
SAN FRANCISCO CA 94105

KYLE BYBEE
12096 S SNAKE RIVER RD
REXBURG ID 83440

KEVIN AND JENNIFER CARMAN
1518 W 800 S
PINGREE ID 83262

WATERMASTER, WATER DISTRICT 100, 110, 120
JAMES CEFALO
900 N SKYLINE DR STE A
IDAHO FALLS ID 83402-1718
james.cefaloidw.idaho.gov

DOUBLE V, LLC
1587 E 3100 S
WENDELL ID 83355-3254

WATERMASTER, WATER DISTRICT 130
NATHAN ERICKSON
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TWIN FALLS ID 83301-5858
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MONTY FUNK
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AMERICAN FALLS ID 83211

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679 S 1400 W
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BURLEY ID 83318
brian@waterwellconsultants.com

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GARY McINTIRE
2871 N 41 E
IDAHO FALLS ID 83401

GEORGE KELLEY
PO BOX 25
ALBION ID 83311

KEY PROPERTY RENTALS LLC
235 E YELLOWSTONE HWY #B
ST ANTHONY ID 83445
office@uppervalleycpa.net

MAX AND KERI LE FEVRE
1294 W HOFF ROAD
BLACKFOOT ID 83221
maxxm@hotmail.com

DAN MITCHELL
2078 N 1025 E
TERRETON ID 83450

TERI PORTER
1831 TAGHEE LN
POCATELLO ID 83204-7442
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IDAHO FALLS ID 83401

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BLACKFOOT ID 83221

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RICHARD AND CHERYL KOOMPIN
2229 W 1000 S
STERLING ID 83210

BRUCE MITCHELL ESTATE
GEORGEANNA MITCHELL ESTATE
647 E 2400 N
MONTEVIEW ID 83435

BETTY OLSSON
677 S 1400 W
PINGREE ID 83262

FINCH AND Verna ROBERTSON
14 S 1300 W
BLACKFOOT ID 83221

ROBINSON
1560 S 500 W
OAKLEY ID 83346

DALENE SASSER
2221 W 100 S
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SCHULDIES DAIRY
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ST ANTHONY ID 83445
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