Re: Curtailment Order In the Matter of Requiring Measuring Devices for Ground Water Diverisons in Water Districts Nos. 31, 34, 100, 110, 120, 130 and 140

Dear Water User,

You are receiving this letter because your ground water diversion(s) 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 Requiring Measuring Devices for Ground Water Diverisons in Water Districts Nos. 31, 34, 100, 110, 120, 130 and 140 ("Curtailment Order") issued by the Director on July 31, 2018.

The Curtailment Order directs watermasters to curtail water rights at points of diversions listed in Attachment A of the Curtailment Order beginning August 6, 2018. One or more of your wells is included on this curtailment list. Watermasters will curtail diversions of ground water until an acceptable measuring device is installed or until an acceptable request for variance or extension is submitted to the Department, or watermaster, and is approved. Watermasters will contact users in their water district beginning August 6, either by phone or in person, to confirm when curtailment will take place.

Please contact the Department or your water district watermaster if you have questions concerning this matter.

Idaho Department of Water Resources
Tim Luke, Brian Ragan or Rob Whitney, 208-287-4800
Brian.ragan@idwr.idaho.gov

Water Districts 100, 110 and 120:
James Cefalo, Watermaster, or Blake Jordan, Assistant (208)-525-7161
James.cefalo@idwr.idaho.gov or blake.jordan@idwr.idaho.gov

Water District 130
Nathan Erickson, Watermaster, (208)-733-3033
Nathan.erickson@idwr.idaho.gov

Water District 140
Brian Higgs, Watermaster, or Jaxon Higgs, Assistant (208) 604-1281
brian@waterwellconsultants.com or jaxon@waterwellconsultants.com

Sincerely,
Gary Spackman
Director

Enclosure(s)

Cc: IDWR Eastern and Southern Regional Managers
July 31, 2018

James Cefalo, Watermaster  
Water Districts 100, 110 and 120  
900 N. Skyline Dr. Suite A  
Idaho Falls, ID 83402

Brian Higgs, Watermaster  
Water District 140  
355 W. 500 South  
Burley, ID 83318

Nathan Erickson, Watermaster  
Water District 130  
650 Addison Ave West  
Suite 500  
Twin Falls, ID 83301

Re: Curtailment Order and Watermaster Guidance to Curtail Diversions that are not Compliant with ESPA Measurement Order

Dear Watermasters,

The Director ("Director") of the Idaho Department of Water Resources ("Department") issued the attached Curtailment Order 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") on July 31, 2018. The Curtailment Order directs watermasters to curtail water rights at points of diversions listed in Attachment A of the Curtailment Order beginning August 6, 2018. Curtailment at each diversion shall be enforced until an acceptable measuring device is installed or the owner of the diversion submits to the Department or watermaster a request for variance or extension and the Department approves such request.

Watermasters shall adopt the following guidance with respect to curtailments:

- Contact the owners or operators of each diversion or well listed in Attachment A of the Curtailment Order either by phone or in person to confirm when curtailment will take place.

- Watermasters shall shut off and lock or seal each well subject to curtailment, even if the well may be off for the rest of the irrigation season. If the well cannot be locked or sealed, identify the method in which water use may be monitored during the remaining season (i.e. use of dedicated power meter or other options). Locking or sealing may be accomplished using security seals, locks or cables on electrical switch controls or by closing and locking/sealing main pipe valves. A Curtailment Notice card ("Red Card") should be placed at each diversion in a noticeable location. Document any curtailment with photos that show method of closure.

- The watermaster or watermaster’s assistants should coordinate shut-off and locking with the owner or operator present if possible. The watermaster should not delay curtailment based on the owner’s or operator’s schedule.

The Director of the Idaho Department of Water Resources
• When feasible the regulation of water users and enforcement action should be carried out by the watermaster. If the watermaster is unable to regulate all non-compliant water users by him/herself, staff assisting the watermaster in enforcement should coordinate closely with the watermaster prior to taking action. If site visits by supporting staff are required, staff should enforce curtailment requirement in teams of two. In the event an owner/operator is uncooperative or refuses access or entry to the well, the watermaster should consult with Department staff (contact Tim Luke, Rob Whitney or Brian Ragan).

• If physical curtailment of the well is not possible, watermasters should refer to Department staff to initiate a Notice of Violation action. If a formal administrative enforcement action becomes necessary, please coordinate with appropriate Department Compliance Bureau staff (either Tim Luke, Rob Whitney, Brian Ragan or Cherie Palmer). Please document all attempts to curtail the well and the obstacles or reasons why physical curtailment cannot be achieved.

Please contact Department Compliance Bureau staff members Tim Luke, Rob Whitney or Brian Ragan regarding any questions you may have about the Curtailment Order and any subsequent curtailment procedures. Successful implementation of this Curtailment Order is currently one of the Department’s highest priorities.

Sincerely,

[Signature]
Gary Spackman
Director

Enclosure(s)
Cc: IDWR Eastern and Southern Regional Managers
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

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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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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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

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