



IDAHO DEPARTMENT OF  
**WATER RESOURCES**

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Governor Brad Little

Director Gary Spackman

October 8, 2021

**RE: Preliminary Order Requiring Measuring Devices and Controlling Works in Water District 11F**

Dear Water User,

The Idaho Department of Water Resources (“Department”) has issued the enclosed Preliminary Order (“Order”) requiring the installation of headgates, controlling works, and measuring devices for certain surface water diversions in Water District 11F, Thomas Fork and tributaries (“WD11F”). Pursuant to Idaho Code § 42-1701A(3), any person aggrieved by the Order may, within fifteen days after receipt of written notice of the Order or receipt of actual notice, file with the Director of the Department a written petition stating the grounds for contesting the Order and requesting a hearing.

**The diversions and uses specified by the Order must be equipped with headgates, controlling works, and measuring devices by the start of the 2022 irrigation season.**

The Order excludes measurement of certain small diversions and uses, but shared diversions serving multiple water rights must be measured if the sum of the irrigated acres is greater than five (5) acres or if the sum of the diversion rates of non-irrigation uses is greater than 0.24 cfs.

Additionally enclosed are the Department’s *Minimum Acceptable Standards and Requirements for Open Channel and Closed Conduit Measuring Devices* and *List of Approved Closed Conduit Flow Meters*. These documents and related information are available on the Department’s web site at the following address: <https://idwr.idaho.gov/water-data/water-measurement/>

If you have questions concerning the Order, please contact the Department’s Water Distribution Section (208-287-4800) or the WD11F watermaster, Joel Teuscher (208-847-2067).

Respectfully,

Rob Whitney  
Manager, Water Distribution Section

Enclosures: *Preliminary Order Requiring Measuring Devices and Controlling Works in Water District 11F.*  
*Minimum Acceptable Standards and Requirements for Open Channel and Closed Conduit Measuring Devices.*  
*List of Approved Closed Conduit Flow Meters*

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

IN THE MATTER OF REQUIRING MEASURING )  
DEVICES AND CONTROLLING WORKS ON )  
DIVERSIONS WITHIN WATER DISTRICT 11F, )  
THOMAS FORK AND TRIBUTARIES )  
\_\_\_\_\_ )

**PRELIMINARY ORDER**

**BACKGROUND**

The Director (“Director”) of the Idaho Department of Water Resources (“Department”) shall have direction and control of the distribution of water from all natural water sources within a water district. The distribution of water within a water district shall be accomplished by the elected and appointed watermaster.

Water District 11F, Thomas Fork and Tributaries (“WD11F”) administers the delivery of surface water rights within the Thomas Fork drainage in Bear Lake County, Idaho. The WD11F watermaster is responsible for distributing water according to water right priority dates and consistent with other water right elements, conditions, and limitations.

The installation and maintenance of suitable headgates, controlling works, and acceptable measuring devices within WD11F are necessary for the 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 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.*

Idaho Code § 42-701(7) states:

*All domestic uses, as defined in section 42-111, Idaho Code, and all stock watering uses, as defined in section 42-1401A, Idaho Code, shall be exempt from the measuring device installation and maintenance, measuring and reporting requirements of this section.*

## **ORDER**

### **IT IS HEREBY ORDERED THAT:**

1. Prior to the start of the 2022 irrigation season, the holders of surface water rights in WD11F, except as described in item 2 below, shall install and maintain on each point of diversion from the Thomas Fork or tributaries, lockable headgates, controlling works, and measuring devices of a type acceptable to the Department.

2. The installation of headgates, controlling works and measuring devices is not required for the following water uses and diversions:

- Domestic and stockwater uses as defined by Idaho Code §§ 42-111 and 42-1401A(11);
- Surface water diversions irrigating less than or equal to five acres<sup>1</sup>; and
- Surface water diversions for non-irrigation uses that divert less than or equal to 0.24 cfs (approximately 108 gallons per minute)<sup>2</sup>.

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<sup>1</sup> A common point of diversion used for multiple irrigation rights must be measured and controlled if the sum of the irrigated acres under the rights is greater than five (5) acres.

<sup>2</sup> A common point of diversion used for multiple non-irrigation rights must be measured and controlled if the sum of the diversion rates is greater than 0.24 cfs.

3. Lockable headgates and controlling works shall be installed and maintained sufficiently for the watermaster to control the amount of water delivered at each diversion.

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

5. Closed conduit flow meters installed prior to the date of this order that are not on the Department's *List of Approved Closed Conduit Flow Meters* (enclosed) may remain in place until the flow meter becomes inoperable or inaccurate as determined by the Department.

6. 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.

7. The requirements of this order shall be effective immediately on any new diversion(s) subsequently authorized by a valid water right after the date of this order, except as described in item 2 above.

8. Following the start of the 2022 irrigation season, the watermaster 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 an extension has been granted by the Department.

9. 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 7<sup>th</sup> day of October, 2021

  
\_\_\_\_\_  
Mat Weaver, Deputy Director

I HEREBY CERTIFY that on this 8<sup>th</sup> day of October 2021, a true and correct copy of the foregoing was served by the method indicated below, and addressed to the following:

RODNEY BOEHME  
1250 RAYMOND ROAD  
GENEVA, ID 83238

ROBERT D BOEHME  
1250 RAYMOND RD  
GENEVA, ID 83238

DEREK, PATSY AND SHAWNEE BOEHME  
42145 US HWY 89  
GENEVA, ID 83238

EUGENE M AND PATSY BOEHME  
42145 US HIGHWAY 89  
GENEVA, ID 83238-5021

MAHOGANY RIDGE DAIRY FARM LLC  
PO BOX 14  
GENEVA, ID 83238

BRYCE BOEHME  
PO BOX 13  
MONTPELIER, ID 83254

RODNEY BOEHME  
1250 RAYMOND RD  
GENEVA, ID 83238

GARTH BOEHME  
PO BOX 14  
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GENE BOEHME  
42153 US HWY 89  
GENEVA, ID 83238

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JOHN CARRICABURU  
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FIVE SQUARE RANCH LLC  
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HUNTINGTON BEACH, CA 92648

GENEVA RANCH LLC  
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SALT LAKE CITY, UT 84107

HALF CIRCLE RANCH LLC  
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GENEVA, ID 83238-0047

L MARC HIRSCHI  
710 S 2ND W  
PRESTON, ID 83263

HARVEY HIRSCHI  
461 WIDMER LN  
GENEVA, ID 83238

HIRSCHI ACRES LLC  
C/O STEVE HIRSCHI  
1477 E BUDDING CIR  
SANDY, UT 84092

HIRSCHI ACRES LLC  
C/O STEVE HIRSCHI  
9858 SOUTH BLOSSOM DR  
SANDY, UT 84092

JOHN G MAKOFF & JUSTINE MARIE  
MAKOFF FAMILY TRUST  
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GENEVA, ID 83238

JIM AND RICHARD LOERTSCHER AND  
LOERTSCHER CHILDREN TRUST  
38456 HWY 89  
GENEVA, ID 83238

MAHOGANY RIDGE DAIRY FARM LLC  
C/O GARTH BOEHME  
799 THOMAS FORK LN  
PO BOX 14  
GENEVA, ID 83238

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CARSON K AND JANEENE PRICE  
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C & K PRICE  
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KEITH PRICE  
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LAYTON, UT 84040

KENNETH H AND TAMRA RIGBY  
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BURLEY, ID 83318

HENRY W RIGBY  
RT 1  
MONTPELIER, ID 83254

KENNETH RIGBY  
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FRUIT HEIGHTS, UT 84037

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TAYLOR CANAL CO INC  
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PO BOX 34  
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SYLVIA TEUSCHER  
39917 US 89  
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TAYLOR CANAL CO INC  
1012 RAYMOND RD  
GENEVA, ID 83238

THOMAS FORK IRRIGATION COMPANY  
1037 RAYMOND RD  
GENEVA, ID 83238



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Kensie Thorneycroft

**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 Reclamation<sup>1</sup> or the United States Geological Survey<sup>2</sup>. 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.

<sup>1</sup> The BOR guidelines can be found at: <https://idwr.idaho.gov/files/water-measurement/2001-Bureau-of-Reclamation-Water-Measurement-Manual.pdf>

<sup>2</sup> 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 use<sup>3</sup>. 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/files/water-measurement/approved-flow-meter-list.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.

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<sup>3</sup> Testing was conducted at the Utah Water Research Laboratory (UWRL), a National Institute of Standards and Technology (NIST) traceable lab in Logan, Utah.



## Idaho Department of Water Resources List of Approved Closed Conduit Flow Meters

The tables below list flow meters (meters) that have been independently tested and subsequently approved by the Idaho Department of Water Resources (IDWR) for use in closed conduit measurement applications. These meters were tested by the Utah Water Research Laboratory at Utah State University using NIST\* traceable instrumentation. Meters on this list performed at or above the standard established by IDWR for: 1) accuracy of +/- 2% of flow rate over the entire range of tested flows; and 2) repeatability of +/- 0.5% defined as the percent deviation of flow rate from average accuracy at each data point. More details on IDWR minimum acceptable standards can be at the following URL:

<https://idwr.idaho.gov/files/water-measurement/Measuring-Devices-Minimum-Acceptable-Standards.pdf>

*Prior to selecting a meter, review this list completely and consult the manufacturer's installation requirements to ensure that all installation specifications for the specific model can be achieved. The specific models listed below must also be installed consistent with IDWR installation requirements (below) and any applicable notes (see page 4).* This list is subject to change as additional meters are added or removed. The most current list can be found here:

<https://idwr.idaho.gov/files/water-measurement/approved-flow-meter-list.pdf>

**Straight Pipe Length** - The required minimum length of straight pipe immediately upstream and downstream of the meter or meter transducers. Straight pipe lengths must be free of flow disturbers and be in-line with the meter or transducer location. For spooled (flanged) meters, this pipe length must be the same nominal diameter as the meter. ***Chemical injection ports must not be located upstream of a meter or meter transducer location.***

**Flow Disturber** - Any fitting or appliance in the piping that may disturb flow through the meter or meter transducer locations. Flow disturbers may include but are not limited to: pump discharges, elbows, check, butterfly or gate valves, pipe reducers, couplings, intrusions, bells or reducers.

### ***IDWR Installation Requirements:***

***Magnetic meters and spooled ultrasonic meters must be installed with a minimum straight pipe length equivalent of three (3) pipe diameters upstream and two (2) pipe diameters downstream from the center of the meter. Ultrasonic meters with remote mount transducers require a minimum straight pipe length equivalent of ten (10) pipe diameters upstream and five (5) pipe diameters downstream of the nearest transducer. These straight pipe spacing requirements must be maintained regardless of the manufacturer specifications, unless a variance has been approved by IDWR. All other manufacturer installation specifications must be met.***

### **Notice to Meter Installers:**

Installation of flow meters included on this list may require a permit from a local electrical authority or the Idaho Division of Building Safety (DBS). Please contact DBS or your local electrical authority if you need information regarding electrical permitting requirements that may be associated with your specific application.

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\* NIST - National Institute of Standards and Technology

<b>Approved Full Profile Magnetic Flow Meters</b>				
<b>Manufacturer</b>	<b>Model/Specifications</b>	<b>Power Supply</b>	<b>IDWR-accepted Pipe Applications (Nominal Pipe Size)</b>	<b>NOTES</b>
ABB	WaterMaster	AC	3/8" to 96"	See note 1, page 4
ABB	AquaMaster 3 with FER Series Transmitter	INTERNAL	½" to 24"	See note 1 and 8 (page 4 & 5)
Badger	M2000 Amplifier with M2000 Detector	AC	1/4" to 54"	See note 1, page 4
Burkert	8054/8055 with Magflow Transmitter	AC	1" to 80"	See note 1, page 4
Endress+Hauser	ProMag L400	AC	1" to 90"	See note 1, page 4
Endress+Hauser	ProMag W400	AC	2" to 78"	See note 1, page 4
FloCat	MFE	AC	¾" to 24"	See note 1, page 4
GloTech	GEM	INTERNAL	2" to 80"	See note 1, page 4
Growsmart by Lindsay	IM3000	INTERNAL	2" to 12"	See note 1, page 4
Hidroconta	Hidromag	INTERNAL	2" to 16"	See note 1, page 4
Krohne	Enviromag 2100 C/F	AC	3/8" to 80"	See note 1, page 4
Krohne	Waterflux 3100 C/F	AC	1" to 24"	See note 1, page 4
Krohne	Waterflux 3070 C/F	INTERNAL	1" to 24"	See note 1, page 4
McCrometer	Dura Mag	DC	4" to 12"	See notes 1 and 7 (page 4 & 5)
McCrometer	Ultra Mag with M-Series Converter	AC	2" to 48"	See note 1, page 4

### Approved Full Profile Magnetic Flow Meters (continued)

Manufacturer	Model/Specifications	Power Supply	IDWR-accepted Pipe Applications (Nominal Pipe Size)	NOTES
Rosemount	8705 with 8732E Transmitter	AC	1/2" to 36"	See note 1, page 4
Rosemount	8750W with 8732 or 8712 Transmitter	AC	1/2" to 48"	See note 1, page 4
<b>Seametrics</b>	<b>AG 2000 (retired)</b>	<b>DC</b>	<b>4" to 10"</b>	<b>See note 2, page 4</b>
Seametrics	AG 3000	DC	4" to 12"	See notes 1 and 3, page 4
Seametrics	iMag 4700	DC	4" to 12"	See notes 1 and 3, page 4
Siemens	Sitrans Mag5100W w/ Mag5000 Transmitter	AC	1" to 78"	See note 1, page 4
Siemens	Sitrans Mag8000	INTERNAL	1" to 24"	See note 1, page 4
Sensus	iPerl	INTERNAL	5/8" to 1"	See note 1, page 4
<b>Sparling</b>	<b><del>TigermagEP FM656</del> (Flanged)</b>	<b>AC</b>	<b><del>3/8" to 48"</del></b>	<b>See notes 5 and 9 (page 4 &amp; 5)</b>
Valmont	Valley 3000	DC	4" to 12"	See notes 1 and 3, page 4
Zotexa	600	AC	2" to 32"	See note 1, page 4

### Approved Spooled Ultrasonic Flow Meters

Badger	E-Series	INTERNAL	3/4" to 2"	See note 1, page 4
Hidroconta	Nautilus	INTERNAL	2" to 16"	See note 1, page 4

<b>Approved Spooled Ultrasonic Flow Meters (continued)</b>				
<b>Manufacturer</b>	<b>Model/Specifications</b>	<b>Power Supply</b>	<b>IDWR-accepted Pipe Applications (Nominal Pipe Size)</b>	<b>NOTES</b>
Master Meter	Octave	INTERNAL	2" to 10"	See note 1, page 4
Netafim	Octave	INTERNAL	2" to 12"	See note 1, page 4
<b>Approved Clamp-on and Wetted Transducer Ultrasonic Flow Meters</b>				
Flexim	Fluxus F721 w/ K-series (0.5MHz) or M-series (1MHz) Transducers	AC	14"+	See notes 1 and 4, page 4
Fuji	Time Delta C w/ 1MHz Transducers	AC	14"+	See notes 1 and 4, page 4
GE Panametrics	AT868 w/ 1MHz Transducers	AC	14"+	See notes 1 and 4, page 4
Siemens	Sitrans FUS1010 w/ High Precision Sensor (type H)	AC	14"+	See notes 1, 4 and 6, page 4

**Notes:**

1. Installation must be consistent with manufacturer specifications and IDWR installation requirements.
2. Removed from approved list October, 2016 (retired and replaced by AG 3000). AG 2000 meters installed prior to October, 2016, may continue to be used unless the meter becomes inoperable or fails to meet the required accuracy standard.
3. Seametrics AG3000, iMag 4700, and Valmont Valley 3000 must be installed with external DC power supply. External power supply options may include: AC/DC transformer or external battery with solar panel. Power supplied must meet the manufacturer specification for DC input voltage sufficient to maintain the meter in a continuous sampling mode. A functional internal battery must remain in the meter.
4. Ultrasonic meters with remote transducers may not be used on pipe smaller than 14 inches unless a variance is approved by IDWR.
5. Sparling FM HT-hot tap model was not tested or approved.
6. Sitrans High Precision sensor selection is based on pipe wall thickness and may only be used on steel pipe.

7. McCrometer Dura Mag must be installed with an external DC power supply. External power supply options may include: an AC/DC transformer, external battery with solar panel, or other charging source. Power supplied must meet the manufacturer specification for DC input voltage sufficient to maintain the meter in a continuous sampling mode.
8. Meter may be operated in connection with an external power supply. Consult the manufacturer specifications for external power supply options. A functional internal battery must remain in the meter.
9. Removed from approved list August 10, 2020. Tigermag EP FM656 meters installed prior to August 10, 2020 may continue to be used unless the meter becomes inoperable or fails to meet the required accuracy standard.



IDAHO DEPARTMENT OF  
**WATER RESOURCES**

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**Governor Brad Little**

**Director Gary Spackman**

October 13, 2021

**RE: Explanatory Information to Accompany a Preliminary Order**

Dear Water User,

On October 8, 2021, the Idaho Department of Water Resources (“Department”) served you with a Preliminary Order (“Order”) requiring the installation of headgates, controlling works, and measuring devices for certain surface water diversions in Water District 11F, Thomas Fork and tributaries. With the initial mailing, the Department did not include *Explanatory Information to Accompany a Preliminary Order* required by Rule of Procedure 730.02.

Enclosed is the required explanatory information related to the Order signed on October 7, 2021. The Order can and will become a final order without further action of the Department unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as described in the explanatory information.

If you have questions concerning this letter or the enclosure, please contact me directly at 208-287-4924.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Rob Whitney', written over a light blue horizontal line.

Rob Whitney  
Manager, Water Distribution Section

Enclosure: *Explanatory Information to Accompany a Preliminary Order*

## **EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER**

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

(Required by Rule of Procedure 730.02)

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

### **PETITION FOR RECONSIDERATION**

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department 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. See Section 67-5243(3) Idaho Code.

### **EXCEPTIONS AND BRIEFS**

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

### **REQUEST FOR HEARING**

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 section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

### **ORAL ARGUMENT**

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

## CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

### FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

### APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.



I HEREBY CERTIFY that on this 13<sup>th</sup> day of October 2021, a true and correct copy of the foregoing was served by the method indicated below, and addressed to the following:

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Kensie Thorneycroft