



## State of Idaho

# DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098  
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: [www.idwr.state.id.us](http://www.idwr.state.id.us)

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

June 1, 2001

Re: Order Requiring Installation of New Measuring Devices

Dear Water User,

The Department of Water Resources (the Department) has issued the enclosed preliminary order requiring installation of measuring devices on the Miller and Nuffer Ditches. Please note the deadline for complying with this order. Pursuant to Section 67-5243, Idaho Code, it can and will become a final order without further action of the Department unless a party petitions for reconsideration or files an exception and/or brief as described in the enclosed information sheet. The records of the Department and Water District 11, Bear River, indicate that you are a water right holder on either the Miller Ditch or Nuffer Ditch near Peagram, Idaho. A copy of the order and this letter is being sent to those users identified in Attachment A of the order.

Department staff made a recent tour and inspection of diversions in the water district with the watermaster, Pete Peterson. During this tour staff had the opportunity to inspect the headgate and measuring devices for the Miller and Nuffer ditches. The watermaster advised me that flows in these ditches are measured using a rating chart that was developed more than 15 years ago based on measurements made with a deflection meter. A deflection meter is a portable vane with a bubble and scale that is placed in a rectangular box installed in the ditch. The box is sized appropriately for the particular size vane used in the ditch. The wooden boxes in these ditches are still visible but appear to be in poor or dilapidated condition. The flow ratings for both ditches are suspect since the boxes have deteriorated over time.

On May 10, 2001, Department staff current metered the Nuffer Ditch and obtained a flow measurement of 12.3 cfs. This flow was nearly 3 cfs lower than what the watermaster measured or estimated using the existing rating table for that ditch. Unfortunately, staff did not have time to make a calibration measurement on the Miller Ditch. However, given that the old rating boxes in the Miller and Nuffer are about equal in condition, we believe that the Miller Ditch rating is also outdated and probably underestimating the actual flow by several cfs. We believe that it is in the interest of users on both ditches to update their measuring devices to assure that they are getting the water that is demanded and protect them from being charged for water that they are not actually receiving. Moreover, improving the measuring devices will provide more accurate measurements and assist in allocating the scant water supply among Bear River users in Idaho and Wyoming. As of about May 3, water use in Idaho and Wyoming has been allocated pursuant to the Central Division emergency provisions of the Bear River Compact.

The Department and Water District will appreciate your cooperation and prompt attention to this matter. Please contact me at the above address or call me directly at 208-327-7864 if you

have questions regarding this matter. You may also contact me by E-mail at [tluke@idwr.state.id.us](mailto:tluke@idwr.state.id.us)

Sincerely,

A handwritten signature in black ink, appearing to read 'Tim Luke', written over a horizontal line.

Tim Luke  
Water Distribution Section

Cc: Mailing List  
Pete Peterson, Watermaster  
IDWR Eastern Region

Enclosure

D:\Data\MS Word 97\WtrDistricts\WD11Miller.doc

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF REQUIRING MEASURING DEVICES )  
ON THE MILLER AND NUFFER DITCHES, DIVERSIONS ) PRELIMINARY  
FROM THE BEAR RIVER, PART OF WATER DISTRICT 34 ) ORDER

On or about May 3, 2001, water rights on the Bear River in Idaho and Wyoming became subject to interstate regulation pursuant to the Central Division emergency provisions of the interstate Bear River Compact. The emergency provisions have been triggered by the extreme drought and low flow conditions that exist this year in the Bear River basin. Due to concerns about proper measurement and allocation of water in Idaho in accordance with the Compact, and after consultation with the watermaster of Water District 11 and a field inspection by Idaho Department of Water Resources staff, the Department finds that inadequate measuring devices presently exist for certain diversions from the Bear River in Water District 11.

Section 42-701, Idaho Code, provides:

**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) 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.

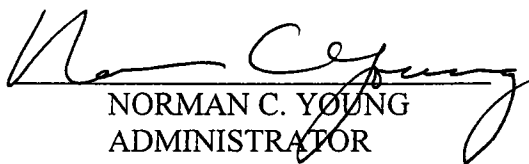
(3) The appropriators or users of the public waters of the state of Idaho shall be given a reasonable time within which to complete construction of such headgates, controlling works or measuring devices, depending upon the size and extent thereof, when due diligence has been used in the prosecution of such work.

THEREFORE IT IS HEREBY ORDERED THAT:

1. Those water users identified in Attachment A of this order diverting water to the Miller and Nuffer Ditches from the Bear River shall install measuring devices of a type acceptable to the Department prior to June 19, 2001.

2. After June 19, 2001, the watermaster shall shut off and refuse to deliver water from the Bear River to the Miller and Nuffer Ditches if adequate measuring devices are not installed.

Dated this 4<sup>TH</sup> day of JUNE, 2001

  
NORMAN C. YOUNG  
ADMINISTRATOR

**Attachment A**

**CERTIFICATE OF SERVICE**

I DO HEREBY CERTIFY that on this 4<sup>th</sup> day of June, 2001, the above PRELIMINARY ORDER was served upon the following individuals by placing a copy of the same in the United States Mail, postage prepaid, certified with a return receipt and properly addressed as follows:

Lavoy Esterholt  
C/O Emmaus Fund  
1734 Millbrook Rd.  
Salt Lake City, Ut 84106

Grant Esterholt  
160 S 2<sup>nd</sup>  
Montpelier, Id 83254

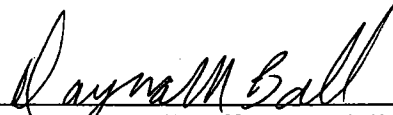
Henry Rigby  
49 Canal Ln.  
Montpelier, Id 83254

Larry Butler  
C/O Linda Secrist  
1001 Fort Canyon Rd.  
Alpine, Ut 84004-1111

Demar Romrell  
6000 Pegram Rd  
Montpelier, Id 83254

Lavoy Taylor  
C/O Emmaus Fund  
1734 Millbrook Rd  
Salt Lake City, Ut 84106

Kay Rigby  
C/O Rulon Wistisen  
1180 Old Hwy 30  
Bancroft, Id 83217

  
\_\_\_\_\_  
Dayna M. Ball, Office Specialist II  
Water Distribution Section

● **SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. (Extra charge) 2. ☐ Restricted Delivery (Extra charge)

3. Article Addressed to: *Montpelier, Id 83254*

*Grant Esterholt*  
*160 S. 2nd*  
*Montpelier, Id 83254*

4. Article Number

*7099 3220 0006 2687 9840*

Type of Service:

- ☐ Registered ☐ Insured  
☒ Certified ☐ COD  
☐ Express Mail ☐ Return Receipt for Merchandise

Always obtain signature of addressee or agent and **DATE DELIVERED**.

5. Signature — Address

X *Marcia Singleton*

6. Signature — Agent

X

7. Date of Delivery

*6-18-01*

8. Addressee's Address (ONLY if requested and fee paid)

PS Form 3811, Mar. 1988

\* U.S.G.P.O. 1986-212-865

DOMESTIC RETURN RECEIPT

State Allocation Bureau  
 Department of Water Resources  
 1301 N. Orchard St.  
 Boise, ID 83706

RECEIVED

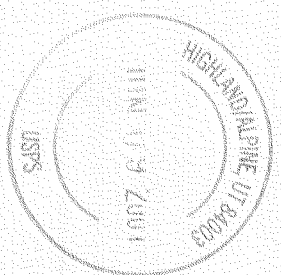
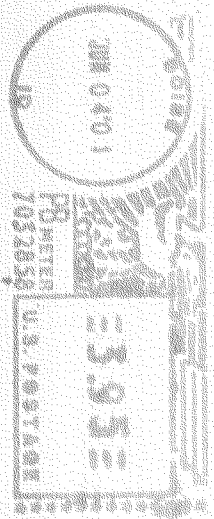
JUN 25 2001

Department of Water Resources

NAME JUN - 9 2001  
 1st Name JUN 14 2001  
 2nd Name JUN 23 2001  
 Return JUN 23 2001

RETURNED TO SENDER  
 PLACE STICKER AT TOP OF ENVELOPE  
 TO RETURN ADDRESS.

ATTEMPTED NOT KNOWN  
 NO SUCH NUMBER  
 FORWARD EXPIRED  
 ROUTE NO. R17 DATE 6-18-01  
 CARRIANTIALS



Becklin 10311  
 2801

Is your RETURN ADDRESS  
 completed on the reverse side?

● **SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4. Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered and the date of delivery. For additional fees the following services are available. Consult postmaster for fees.

☐ **1. Restricted Delivery** (Extra charge)  
☐ **2. Show to whom delivered** (Extra charge)  
☐ **3. Restricted Delivery** (Extra charge)

3. Article Addressed to: Wesley A. Butler  
Larry Butler  
C/O Linda Secrist  
1001 Fox Canyon Rd.  
Alpine, UT 84004-1111

4. Article Number 7099 3220 0006 2687 9888

Type of Service: ☐ Registered ☐ Insured  
☒ Certified ☐ COD ☐ Return Receipt for Merchandise  
☐ Express Mail

8. Addressee's Address (ONLY if requested and fee paid)  
 Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Address X

6. Signature — Agent X

7. Date of Delivery

Thank you for using  
 Return Receipt Service.