



State of Idaho

DEPARTMENT OF WATER RESOURCES

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COPY

October 16, 2008

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

Cub River Irrigation Company
c/o Howard D Nelson
5433 S 800 E
Preston, ID 83263

Franklin Cub River Pumping Company
c/o Chris Allen
1216 N 1200 E
Cove, UT 84320

Preston Whitney Irrigation Company
c/o Maxine Waddoups, Farm Bureau Insurance
33 S 100 E
Preston, ID 83263

CERTIFIED MAIL

Re: Order Requiring Measuring Devices and Controlling Works in Water District 13-A

Dear Gentlemen,

The Idaho Department of Water Resources (Department) has issued the enclosed preliminary order requiring installation of measuring devices prior to the 2009 irrigation season for certain diversions in Water District No. 13-A, Cub River. Pursuant to Section 67-5243, Idaho Code, the preliminary order 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 explained in the enclosed information sheet.

This order requires users receiving the order to submit plans for measuring devices to the Department on or before January 31, 2009. The order only applies to the control and measurement of water at the head of the main canal, pumps, or points of diversions from the Cub River listed in the order, not the points of re-diversion or laterals from those main ditches or main pipelines. Please refer to the enclosed document "*Minimum Acceptable Standards for Open Channel and Closed Conduit Measuring Devices*" for information on types of measuring devices acceptable to IDWR. This document and other information on the topic are available on the Department's web site as follows:
http://www.idwr.idaho.gov/water/districts/water_measurement.htm

The written plans that are to be submitted to the Department by January 31, 2009 should include a written description and diagram of the devices and diversion works, and show the locations of planned installations.

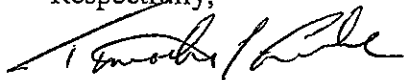
We would also like to remind Cub River Irrigation Company and Preston-Whitney Irrigation Company to continue to pursue the required water rights changes of ownership and water right transfers suggested by the Department in its' August 28, 2008 correspondence sent to Mr. Eldon Golightly and carbon copied to the companies. A copy of this letter was sent to both Cub River Irrigation Company and Preston-Whitney Irrigation Company.

The Franklin Cub River Pumping Company may also need to update the ownership and address of its water rights. We note that the Franklin Cub River Pumps is described as the point of diversion for water right 13-2092 under the name of Franklin Cub River Pumping Company and also the point of diversion for water right 13-4 under the name of Franklin Cub River Canal Company. We understand that Franklin Cub River Pumping Company and the Franklin Cub River Canal Company may be the same entity. If so, then a *Notice of Change in Water Right Ownership* form for right 13-4 should be completed to correct the ownership of that right. Additionally, either a *Change in Address* form or a letter to the Department may need to be filed if the address or contact information listed on right 13-2092 needs to be updated. The Franklin Cub River Pumps is also listed as a point of diversion location for water right 13-44 which is owned by the Franklin Maple Creek Pioneer Irrigation Company. We understand this latter company to be a separate entity but that a previously approved water right transfer allows for right 13-44 to be diverted at the pumps to benefit "second class" stockholders in that company. The transfer requires that up to 2.0 cfs authorized for right 13-44 must be available at Franklin Maple Creek Pioneer Irrigation Company's point of diversion from Maple Creek in order for the right to be diverted at the Franklin Cub River Pumps. It is not clear if these "second class" stockholders in Franklin Maple Creek Pioneer Irrigation Company remain in that company or if they are now within the Franklin Cub River Pumping Company. We ask that Franklin Cub River Pumping Company please clarify these questions regarding right 13-44.

Cub River Irrigation Company and Preston-Whitney Irrigation Company were both asked to review the current borders of their respective companies and file transfers to prevent a situation where they are providing irrigation water to lands outside the borders described by their water rights. Cub River Irrigation Company was asked to file a transfer to correct the point of diversion for water right 13-2 to ensure that the water right accurately describes all of the points where water is diverted under this water right. Preston Whitney was asked to file a transfer that would allow them to use Spring Creek as part of their delivery system. Both companies were advised to either discontinue certain exchanges of water that have occurred between the companies or file a water right exchange application with the Department in order to continue such exchanges. All of these issues should be addressed and the proper water right transfers filed prior to the 2009 irrigation season.

If you have questions concerning this order, please contact Tim Luke or Dan Nelson, IDWR Water Distribution Section, Boise (208-287-4800) or the Water District 13-A watermaster, Troy Foster at 208-339-5953.

Respectfully,



Tim Luke
Water Distribution Section Manager

Enclosures: *Preliminary Order Requiring Measuring Devices from Diversions on the Cub River, Water District 13-A, dated October 15, 2008*
Explanatory Information to Accompany a Preliminary Order (2 pages)
Minimum Acceptable Standards for Open Channel Closed Conduit Measuring Devices
Notice of Change in Water Right Ownership & Change in Address forms

Cc: Troy Foster, Watermaster, Water District 13A
Ernie Carlsen, IDWR Eastern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF REQUIRING MEASURING)	
)	
DEVICES ON DIVERSIONS FROM THE CUB)	PRELIMINARY
)	
RIVER, WATER DISTRICT 13-A)	ORDER
)	

During the 2008 irrigation season, staff from the Idaho Department of Water Resources (Department) working in coordination with the Water District No. 13-A watermaster determined that the Middle Ditch and the Franklin Cub River Pumps diversions from the Cub River had no measuring devices. It was determined that the Middle Ditch is co-owned by Cub River Irrigation Company and the Preston-Whitney Irrigation Company, and the Franklin Cub River Pumps are owned by the Franklin Cub River Pumping Company. 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.

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 AS FOLLOWS:

1. Cub River Irrigation Company and Preston-Whitney Irrigation Company shall install a measuring device of a type acceptable to the Department on the Middle Ditch diversion prior to diverting water during the 2009 irrigation season. Franklin Cub River Pumping Company shall install a measuring device or devices of a type acceptable to the Department on the Franklin Cub River Pumps diversion prior to diverting water during the 2009 irrigation season.

2. Cub River Irrigation Company, Preston-Whitney Irrigation Company and Franklin Cub River Pumping Company must submit written plans for measuring devices to the Department no later than January 31, 2009. Plans shall be reviewed by the Department to determine whether proposed measuring devices are of a type acceptable to the Department. If measuring devices are already in place, a written description of the devices or works shall be submitted to the Department by January 31, 2009.

3. The watermaster shall shut off and refuse to deliver water to either the Middle Ditch or the Franklin Cub River Pumps if measuring devices are not installed or adequately maintained at any and all times, beginning in the 2009 irrigation season.

Dated this 16th day of October, 2008.



JEFF PEPPERSACK
WATER ALLOCATIONS BUREAU CHIEF

**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. 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 issuance 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.

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES (IDWR)**

**MINIMUM ACCEPTABLE STANDARDS FOR
OPEN CHANNEL AND CLOSED CONDUIT
MEASURING DEVICES**

The source and means of diversion of water, whether surface or ground water, generally determines the measurement and reporting process. Surface water sources such as streams, springs and waste channels are normally diverted into open channels (ditches or canals), but closed conduits (pipes or culverts) are also used. Ground water is usually diverted into pipes (which may also discharge into open channels).

Measuring devices are required at or near the point of diversion from the public water source.

OPEN CHANNEL

SURFACE WATER DIVERSIONS

I. Flow Measurement

The following discussion is applicable only to diversions from surface water sources. Measurement of a ground water diversion with an open channel measuring device must be pre-approved by the Department.

A. Standard Open Channel Measuring Devices

Standard weirs, flumes and submerged orifices are pre-calibrated devices commonly used for measuring water in open channels. The installation of one of these devices provides a fixed relationship between the stage and flow.

Various size weirs, flumes and submerged orifices are available and each type and size has a separate rating, or relationship between head and flow. Standard designs and information about installation and use of different measuring devices, including rating tables, can be provided by the department. All open channel flow diversions should be measured using one of the following standard open channel flow measuring devices commonly used in Idaho:

- contracted rectangular weir
- suppressed rectangular weir
- Cipolletti weir
- 90 degree V-notch weir
- Parshall flume
- trapezoidal flume
- submerged rectangular orifice
- constant head orifice
- ramped broad crested weir (or ramped flume)

Construction and installation of these devices should follow published guidelines. Additional information is available on the IDWR Internet site at the addresses below. Additional references are available upon request.

http://www.idwr.idaho.gov/water/districts/water_measurement.htm

