

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF REQUIRING MEASURING DEVICES,)
AND CONTROLLING WORKS ON THE LITTLE WEISER)
RIVER, WATER DISTRICT 67A)

**PRELIMINARY
ORDER**

FINDINGS OF FACT

On January 29, 2001, the Advisory Committee for Water District No. 67A, Little Weiser River, sent a letter to the Idaho Department of Water Resources (IDWR) asking IDWR to require all water users holding water rights authorizing diversion of water from the Little Weiser River to install headgates and measuring devices. A copy of the letter is attached as Attachment "A". Enclosed with the letter was a notice mailed by the Little Weiser Irrigation District to water users of water stored in C. Ben Ross Reservoir. A copy of the notice is attached as Attachment "B".

An order requiring lockable headgates and measuring devices for diversions from the Little Weiser River and its tributaries was issued by IDWR on July 31, 1979. The order required the completion of the installation no later than June 1, 1980.

The January 29, 2001 letter from the Water District 67A Advisory Committee asserts that not all headgates and measuring devices have been installed as required by the July 31, 1979 order. Department staff coordinating with past watermasters and officers of Water District 67A confirms that some waterusers have not installed adequate headgates and measuring devices, or have not adequately repaired and maintained existing diversion works and measuring devices for administration of the water in the Little Weiser River by the watermaster.

CONCLUSIONS OF LAW

Idaho Code § 42-701 states, in part:

- (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.

An order should be issued again requiring the water users of the Little Weiser River and its tributaries to install, construct, and maintain adequate measuring devices and controlling works.

ORDER

IT IS HEREBY ORDERED that on or before May 1, 2001, the water users diverting water from the Little Weiser River and its tributaries shall install, construct, and maintain measuring devices and lockable controlling works of a type acceptable to the Department.

IT IS FURTHER ORDERED that, after May 1, 2001, the watermaster shall shut off and refuse to deliver water from the Little Weiser River and its tributaries to any water user authorized to divert water from the Little Weiser River and its tributaries who has not installed, constructed, and properly maintained adequate lockable controlling works and measuring devices.

Dated this 21st day of February, 2001.


GARY SPACKMAN
Western Regional Manager



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

February 7, 2001

Mike Bishop
PO Box 34
Indian Valley, ID 83632

RE: Watermaster for Little Weiser River #67A

Dear Mr. Bishop:

At the annual Little Weiser River Water District meeting you were elected Watermaster for the 2001 irrigation season. This season will mark the beginnings of water measurement for the District. Enclosed is a copy of the Department Watermaster Handbook, which is can be utilized for reference in you duties. The Department will assist you in becoming familiar with the diversions and delivery procedures/duties later in the spring. Record keeping is one of the Watermaster's many responsibilities; outlined below are these responsibilities:

-Before the Watermaster can perform duties, a completed oath must be submitted to the Department. Please return this to the Department as soon as possible. A "Certificate of Appointment" will then be issued (this places the Watermaster under the State Surety Bond.). An oath form is enclosed.

-Keep a detailed diary of calls, dates, activity, and measurements if taken. The diary should be submitted to the Department at conclusion of the irrigation season. The diary format is up to the Watermaster's digression. Several daily record books are enclosed for recording measurements.

-Prepare a year end Watermaster Report to be submitted to the Department and the water district secretary. The report should provide the amount and time period of deliveries to users. The Department will provide forms and instructions later this fall.

At present, the Department is in the process considering Watermaster training options, and will contact you once plans are confirmed.

Should you have any questions or need assistance, please contact me or Lori Graves at the Western Regional Office, phone 334-2190.

Sincerely,

John Westra
Western Region

Little Weiser Irrigation District 67A
Whitney Voerman, Secretary
PO Box 57 Indian Valley, Idaho 83632

RECEIVED
JAN 29 2001
WATER RESOURCES
WESTERN REGION

Mr. Gary Stackman
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705

January 25, 2001

Dear Mr. Stackman;

The water users in irrigation District 67A, acting through their Advisory Committee and elected officers, are hereby requesting the Idaho Department of Water Resources to issue a notification to all water users who divert water from the Little Weiser River that headgates and measuring devices are required on such diversions.

The Idaho Department of Water Resources has previously issued an order requiring headgates and measuring devices on all diversions from the Little Weiser River (7-31-79) but full compliance has not occurred. Water delivery problems during the 2000 irrigation season prompts this request. It should be noted that the Board of Directors for Irrigation District 67 (C. Ben Ross Reservoir) issued a similar notice to their water users on October 7, 2000.

We believe that efficient and fair delivery of irrigation water within District 67A requires compliance with IDWR order of 7-31-79 and therefore we are requesting your assistance.

Sincerely,

James W. Stone Chairman

Whitney Voerman
Whitney Voerman, Secretary

Larry Anderson Advisory Member
Ryan A. Schup Advisory Member
Guilherme Burkhardt Advisory Member

Attachment A

LITTLE WEISER IRRIGATION DISTRICT
852 INDIAN VALLEY ROAD
INDIAN VALLEY, IDAHO 83632

OCTOBER 7, 2000

TO: ALL WATER USERS OF THE LITTLE WEISER IRRIGATION DISTRICT
FROM: LITTLE WEISER IRRIGATION DISTRICT BOARD OF DIRECTORS

YOUR BOARD OF DIRECTORS HAS BEEN UPGRADING THE SYSTEM TO ENABLE US TO STORE AND DISTRIBUTE WATER TO THE BENEFITTED LANDS MORE EFFICIENTLY. WE HAVE REBUILT THE HEADGATES AT THE INLET CANAL AND THE OUTLET CANALS WHERE THEY SPLIT. THIS FALL WE WILL BE BUILDING A STRUCTURE TO MAKE IT EASIER TO PUT IN THE TWO-FOOT COFFER DAM TO INCREASE OUR CAPACITY.

OUR DISTRIBUTION SYSTEM IS THE TWO OUTLET CANALS AND THE LITTLE WEISER RIVER. THE WATER USERS MAINTAIN THEIR OWN DIVERSIONS FROM THE RIVER. MANY OF THESE DIVERSION SYSTEMS ARE NOT ADEQUATE TO ENABLE THE WATER MASTER TO MAKE AN EQUITABLE DISTRIBUTION OF THE WATER TO THE BENEFITTED LANDS.

THE NEED TO BRING THESE SUBSTANDARD DIVERSIONS UP TO PAR WAS AGAIN BROUGHT TO OUR ATTENTION WITH A SHORT WATER YEAR. IN RESPONSE TO THE PROBLEMS ENCOUNTERED IN DISTRIBUTION OF RESERVOIR WATER DURING THIS PAST SEASON, YOUR BOARD OF DIRECTORS HAS DECIDED TO IMPLEMENT THE FOLLOWING REQUIREMENTS FOR THE 2001 IRRIGATION SEASON.

- ✓ 1. ALL DIVERSIONS MUST HAVE AN ADJUSTABLE, LOCKABLE, HEADGATE AND A MEASURING DEVICE IN PLACE.
- ✓ 2. HEADGATE AND MEASURING DEVICE DESIGN AND LOCATION MUST BE APPROVED BY SCS AND/OR THE WATER MASTER.
- ✓ 3. THE WATER MASTER MUST HAVE 24 HOUR ADVANCE NOTICE BEFORE DIVERSION DAMS ARE PLACED IN THE RIVER. THIS ENABLES HIM TO MAINTAIN THE FLOW TO OTHER WATER USERS. ALL DIVERSION DAMS MUST HAVE A SPILLWAY APPROVED BY THE WATER MASTER.

THERE IS TECHNICAL ADVICE AND DESIGN ASSISTANCE AVAILABLE THROUGH THE SOIL CONSERVATION SERVICE AT 208-549-4280. THERE MAY ALSO BE SOME FINANCIAL ASSISTANCE AVAILABLE THERE AS WELL. ANOTHER SOURCE OF SOME POSSIBLE FINANCIAL ASSISTANCE IS THE DEPARTMENT OF WATER RESOURCES. JOHN WESTRA IS THE PERSON TO CONTACT THERE.

THE BEST TIME FOR CONSTRUCTION OF HEADGATES AND MEASURING DEVICES WILL PROBABLY BE THIS FALL. WE HOPE THIS NOTICE IS TIMELY FOR YOU. IF YOU HAVE ANY QUESTIONS, CONTACT WAYNE, ISAAC, OR MYSELF. WE WOULD PREFER NOT TO HAVE TO DO THIS, BUT IT IS NECESSARY FOR THE SYSTEM TO OPERATE EQUITABLY.

JERRY JAEGER, CHAIRMAN
LITTLE WEISER IRRIGATION DISTRICT

**EXPLANATORY INFORMATION
TO ACCOMPANY A
PRELIMINARY ORDER**

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 Idaho Water Resource Board (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.