



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

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

July 6, 2001

Joan Johnson
6244 Bartlett Point Rd
Mackay, Id 83251

Re: Preliminary Order to Install Measuring Devices

Dear Water Right Holder:

The Department of Water Resources (the department) has issued the enclosed preliminary order requiring installation of measuring devices and lockable controlling works. Please note the compliance dates provided in the 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.

You should have received a notice from the department dated June 18, 2001 concerning your diversions on the Big Lost River above Mackay Reservoir. That letter provided notice that diversions above the Chilly Bridge would require more immediate installation of measuring devices. Please note that the department has previously issued an order requiring measuring devices in this same area. The last order was issued in March of 1991. Since sending the June 18th letter, the watermaster has advised the department to proceed with ordering installation of measuring devices for your diversion(s) above the Chilly Bridge. The order also requires installation of adequate lockable controlling works. Please contact the watermaster with specific questions about the adequacy of your controlling works and/or specific questions about measuring devices.

If you have any other questions, please call me directly at (208)327-7864.

Sincerely,

Tim Luke
Water Distribution Section
Water Allocation Bureau

Enclosures

Cc: Doug Rosenkrance, Watermaster
Regional Office

Copy to S. Shoff
2/15/01



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

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

July 6, 2001

Sally Johnson & Diane Hatmaker
6244 Bartlett Point Rd
Mackay, Id 83251

Re: Preliminary Order to Install Measuring Devices

Dear Water Right Holders:

The Department of Water Resources (the department) has issued the enclosed preliminary order requiring installation of measuring devices and lockable controlling works. Please note the compliance dates provided in the 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.

You should have received a notice from the department dated June 18, 2001 concerning your diversions on the Big Lost River above Mackay Reservoir. That letter provided notice that diversions above the Chilly Bridge would require more immediate installation of measuring devices. Please note that the department has previously issued an order requiring measuring devices in this same area. The last order was issued in March of 1991. Since sending the June 18th letter, the watermaster has advised the department to proceed with ordering installation of measuring devices for your diversion(s) above the Chilly Bridge. The order also requires installation of adequate lockable controlling works. Please contact the watermaster with specific questions about the adequacy of your controlling works and/or specific questions about measuring devices.

If you have any other questions, please call me directly at (208)327-7864.

Sincerely,

Tim Luke
Water Distribution Section
Water Allocation Bureau

Enclosures

Cc: Doug Rosenkrance, Watermaster
Regional Office

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF REQUIRING MEASURING)
DEVICES AND CONTROLLING WORKS ON THE) PRELIMINARY
BIG LOST RIVER ABOVE MACKAY RESERVOIR,) ORDER
PART OF WATER DISTRICT 34)
_____)

On June 7, 2001 the Idaho Department of Water Resources (Department) received a petition from water right holders on the Big Lost River requesting the Department to enforce installation of measuring devices for irrigation diversions in Water District 34 located upstream of Mackay Reservoir. On June 18, 2001 the Department sent notice to water users with diversions above Mackay Reservoir and the Chilly Bridge regarding the need to install measuring devices and headgates. After consultation with the watermaster of Water District 34, the Department finds that inadequate measuring devices and lockable controlling works presently exist for certain diversions on the Big Lost River in Water District 34.

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. ...

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. Those water users identified in Attachment A of this order diverting water from the Big Lost River above Mackay Reservoir and above Chilly Bridge shall install measuring devices and lockable controlling works of a type acceptable to the Department prior to July 23, 2001.

2. The watermaster is authorized to shall shut off and refuse to deliver water from the Big Lost River and tributaries to any water user identified in Attachment A who does not have adequate lockable controlling works and a measuring device after July 23, 2001.

Dated this 6th day of July, 2001.


NORMAN C. YOUNG
for ADMINISTRATOR

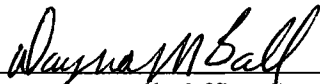
Attachment A

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 6th day of July, 2001, the attached 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:

Sally Johnson & Diane Hatmaker
6244 Barlett Point Rd.
Mackay, Id 83251

Joan Johnson
6244 Barlett Point Rd.
Mackay, Id 83251



Dayna M. Ball, Office Specialist II
Water Distribution Section

**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

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Sally Johnson & Diane Hatmaker
6244 Bartlett Point Rd
Mackay Id 83251

2. Article Number (Copy from service label)

7099 3220 0006 2688 0211

PS Form 3811, July 1999

Domestic Return Receipt

102595-99-M-1789

Postage \$

Certified Fee

Return Receipt Fee
(Endorsement Required)Restricted Delivery Fee
(Endorsement Required)

Total Postage & Fees \$

Postmark
Here

100000-0 300

Name (Please Print Clearly) (To be completed by mailer)

IDWR - Dayna

Street, Apt. No., or PO Box No.

83720

Id 83720-0098

1999 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Joan Johnson
6244 Bartlett Point Rd
Mackay, Id 83251

2. Article Number (Copy from service label)

7099 3220 0006 2688 0228

PS Form 3811, July 1999

Domestic Return Receipt

102595-99-M-1789

Certified Fee

Return Receipt Fee
(Endorsement Required)Restricted Delivery Fee
(Endorsement Required)

Total Postage & Fees \$

Postmark
Here

Name (Please Print Clearly) (To be completed by mailer)

IDWR - Dayna

Street, Apt. No., or PO Box No.

PO Box 83720

City, State, ZIP+4

Id 83720-0098

PS Form 3800, July 1999

See Reverse for Instructions

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

07-13-01

C. Signature

X

Joan Johnson

☐ Agent☒ Addressee

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

al Service

ED MAIL RECEIPT

ic Mail Only; No Insurance Coverage Provided)

at To:

Johnson & Diane Hatmaker

7/6/01