

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

**DRAFT**

IN THE MATTER OF REQUIRING MEASURING )  
DEVICES AND CONTROLLING WORKS ON COLD )  
SPRINGS CREEK, WATER NO. 61E )  
\_\_\_\_\_ )

**PRELIMINARY  
ORDER**

**FINDINGS OF FACT**

1. Diversions of water from Cold Springs Creek and its tributaries are controlled and regulated by the watermaster of Water District no. 61E, Cold Springs Creek.

2. The water rights authorizing diversion of water from Cold Springs Creek were decreed in the case of Stanfield v. McGinnis, (4<sup>th</sup> Judicial District, 1903). The rights authorizing diversion of water from Cold Springs Creek have been or will soon be decreed by the Snake River Basin Adjudication Court.

3. Not all of the waterusers owning water rights authorizing the diversion of water from Cold Springs Creek and its tributaries have installed, constructed, and maintained adequate measuring devices and controlling works for the administration by the watermaster and delivery of water to the waterusers.

5. The watermaster of Water District no. 61E has been required, in some cases, to determine water deliveries by estimating diversion rates based on imprecise methods of measurement or control.

**CONCLUSIONS OF LAW**

1. 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.

2. An order should be issued again requiring the water users of Cold Springs Creek and its tributaries to install, construct, and maintain adequate measuring devices and controlling works.

### ORDER

IT IS HEREBY ORDERED that on or before April 1, 2001, the water users diverting water from Cold Springs Creek and its tributaries shall install, construct, and maintain measuring devices and lockable controlling works of a type acceptable to IDWR, unless expressly exempted by IDWR after a showing by a water right holder that the structures are unnecessary.

IT IS FURTHER ORDERED that, after April 1, 2001, the watermaster of Water District no. 61E shall shut off and refuse to deliver water from Cold Springs Creek and its tributaries to any water user authorized to divert water from Cold Springs Creek and its tributaries who has not installed, constructed, and properly maintained adequate lockable controlling works and measuring devices.

Dated this \_\_\_\_\_ day of March, 2001.

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GARY SPACKMAN  
Western Regional Manager