

11/10/99

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF REQUIRING MEASURING DEVICES, )  
AND CONTROLLING WORKS ON BIG TIMBER AND ) PRELIMINARY  
TEXAS CREEKS, PART OF WATER DISTRICT 74-W ) ORDER

After consultation with the watermaster of Water District 74-W, and a field inspection by IDWR staff, the Department finds that inadequate measuring devices and lockable controlling works presently exist on Big Timber and Texas Creeks in Water District 74-W. 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.

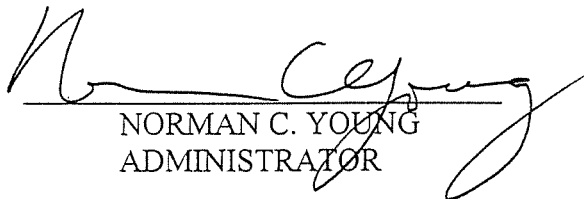
(4) The appropriators or users of the public waters of the state of Idaho shall be given a reasonable time within which to complete construction of such headgates, controlling works or measuring devices, depending upon the size and extent thereof, when due diligence has been used in the prosecution of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

THEREFORE IT IS HEREBY ORDERED THAT:

1. Those water users identified in Attachment A of this order diverting water from Big and Texas Creeks shall install measuring devices and lockable controlling works of a type acceptable to the Department prior to July 1, 2000.

2. The watermaster shall shut off and refuse to deliver water from Big Timber and Texas Creeks to any water user identified in Attachment A who does not have adequate lockable controlling works and a measuring device after July 1, 2000.

Dated this 16<sup>TH</sup> day of NOVEMBER, 1999

  
NORMAN C. YOUNG  
ADMINISTRATOR

## IWRB DWORSHAK PROJECT

## ESTIMATED REVENUES AND COSTS

6/29/00

YEAR	AVE MWHR	MILL LEVY	FACTOR	ACTUAL MILL LEVY	TOTAL REVENUE	PLANT OPERAT.	MAINT. REPLACE.	INSUR.	WHEELING CHARGE	FERC CHARGE	TOTAL OPER.	AVE. DEBT	DEBT SERV PLUS	UNOBLIGATED REVENUE
			1.03		(2% Increase - plant, maint, ins)				(fixed)	(fixed)	COST	SERVICE	O&M	
2000	11500	38.9		38.9	\$ 447,350	\$ 25,500	\$ 32,500	\$ 5,000	\$ 10,000	\$ 11,500	\$ 84,500	\$ 283,378	\$ 367,878	\$ 79,472
2001	23000	38.9	1.03	40.1	\$ 921,541	\$ 51,000	\$ 65,000	\$ 10,000	\$ 20,000	\$ 23,000	\$ 169,000	\$ 566,757	\$ 735,757	\$ 185,784
2002	23000	38.9	1.06	41.3	\$ 949,187	\$ 52,020	\$ 66,300	\$ 10,200	\$ 20,000	\$ 23,000	\$ 171,520	\$ 566,757	\$ 738,277	\$ 210,910
2003	23000	38.9	1.09	42.5	\$ 977,663	\$ 53,060	\$ 67,626	\$ 10,404	\$ 20,000	\$ 23,000	\$ 174,090	\$ 566,757	\$ 740,847	\$ 236,815
2004	23000	38.9	1.13	43.8	\$ 1,006,993	\$ 54,122	\$ 68,979	\$ 10,612	\$ 20,000	\$ 23,000	\$ 176,712	\$ 566,757	\$ 743,469	\$ 263,524
2005	23000	38.9	1.16	45.1	\$ 1,037,203	\$ 55,204	\$ 70,358	\$ 10,824	\$ 20,000	\$ 23,000	\$ 179,386	\$ 566,757	\$ 746,143	\$ 291,059
2006	23000	38.9	1.19	46.4	\$ 1,068,319	\$ 56,308	\$ 71,765	\$ 11,041	\$ 20,000	\$ 23,000	\$ 182,114	\$ 566,757	\$ 748,871	\$ 319,447
2007	23000	38.9	1.23	47.8	\$ 1,100,368	\$ 57,434	\$ 73,201	\$ 11,262	\$ 20,000	\$ 23,000	\$ 184,896	\$ 566,757	\$ 751,653	\$ 348,715
2008	23000	38.9	1.27	49.3	\$ 1,133,379	\$ 58,583	\$ 74,665	\$ 11,487	\$ 20,000	\$ 23,000	\$ 187,734	\$ 566,757	\$ 754,491	\$ 378,888
2009	23000	38.9	1.30	50.8	\$ 1,167,381	\$ 59,755	\$ 76,158	\$ 11,717	\$ 20,000	\$ 23,000	\$ 190,629	\$ 566,757	\$ 757,386	\$ 409,994
2010	23000	38.9	1.34	52.3	\$ 1,202,402	\$ 60,950	\$ 77,681	\$ 11,951	\$ 20,000	\$ 23,000	\$ 193,582	\$ 566,757	\$ 760,339	\$ 442,063
2011	23000	38.9	1.38	53.8	\$ 1,238,474	\$ 62,169	\$ 79,235	\$ 12,190	\$ 20,000	\$ 23,000	\$ 196,593	\$ 566,757	\$ 763,350	\$ 475,124
2012	23000	38.9	1.43	55.5	\$ 1,275,628	\$ 63,412	\$ 80,819	\$ 12,434	\$ 20,000	\$ 23,000	\$ 199,665	\$ 566,757	\$ 766,422	\$ 509,206
2013	23000	38.9	1.47	57.1	\$ 1,313,897	\$ 64,680	\$ 82,436	\$ 12,682	\$ 20,000	\$ 23,000	\$ 202,798	\$ 566,757	\$ 769,555	\$ 544,342
2014	23000	38.9	1.51	58.8	\$ 1,353,314	\$ 65,974	\$ 84,084	\$ 12,936	\$ 20,000	\$ 23,000	\$ 205,994	\$ 566,757	\$ 772,751	\$ 580,563
2015	23000	38.9	1.56	60.6	\$ 1,393,913	\$ 67,293	\$ 85,766	\$ 13,195	\$ 20,000	\$ 23,000	\$ 209,254	\$ 566,757	\$ 776,011	\$ 617,902
2016	23000	38.9	1.60	62.4	\$ 1,435,731	\$ 68,639	\$ 87,481	\$ 13,459	\$ 20,000	\$ 23,000	\$ 212,579	\$ 566,757	\$ 779,336	\$ 656,394
2017	23000	38.9	1.65	64.3	\$ 1,478,803	\$ 70,012	\$ 89,231	\$ 13,728	\$ 20,000	\$ 23,000	\$ 215,971	\$ 566,757	\$ 782,728	\$ 696,075
2018	23000	38.9	1.70	66.2	\$ 1,523,167	\$ 71,412	\$ 91,016	\$ 14,002	\$ 20,000	\$ 23,000	\$ 219,430	\$ 566,757	\$ 786,187	\$ 736,979
2019	23000	38.9	1.75	68.2	\$ 1,568,862	\$ 72,841	\$ 92,836	\$ 14,282	\$ 20,000	\$ 23,000	\$ 222,959	\$ 566,757	\$ 789,716	\$ 779,146
2020	23000	38.9	1.81	70.3	\$ 1,615,928	\$ 74,297	\$ 94,693	\$ 14,568	\$ 20,000	\$ 23,000	\$ 226,558	\$ 566,757	\$ 793,315	\$ 822,613
TOTAL UNOBLIGATED REVENUE (20 yr)														\$ 9,505,543
2021	23000	38.9	1.86	72.4	\$ 1,664,406	\$ 75,783	\$ 96,587	\$ 14,859	\$ 20,000	\$ 23,000	\$ 230,229	0	\$ 230,229	\$ 1,434,176
2022	23000	38.9	1.92	74.5	\$ 1,714,338	\$ 77,299	\$ 98,518	\$ 15,157	\$ 20,000	\$ 23,000	\$ 233,974	0	\$ 233,974	\$ 1,480,364
2023	23000	38.9	1.97	76.8	\$ 1,765,768	\$ 78,845	\$ 100,489	\$ 15,460	\$ 20,000	\$ 23,000	\$ 237,793	0	\$ 237,793	\$ 1,527,974
2024	23000	38.9	2.03	79.1	\$ 1,818,741	\$ 80,422	\$ 102,498	\$ 15,769	\$ 20,000	\$ 23,000	\$ 241,689	0	\$ 241,689	\$ 1,577,052
2025	23000	38.9	2.09	81.4	\$ 1,873,303	\$ 82,030	\$ 104,548	\$ 16,084	\$ 20,000	\$ 23,000	\$ 245,663	0	\$ 245,663	\$ 1,627,640
2026	23000	38.9	2.16	83.9	\$ 1,929,502	\$ 83,671	\$ 106,639	\$ 16,406	\$ 20,000	\$ 23,000	\$ 249,716	0	\$ 249,716	\$ 1,679,786
2027	23000	38.9	2.22	86.4	\$ 1,987,387	\$ 85,344	\$ 108,772	\$ 16,734	\$ 20,000	\$ 23,000	\$ 253,851	0	\$ 253,851	\$ 1,733,537
2028	23000	38.9	2.29	89.0	\$ 2,047,009	\$ 87,051	\$ 110,948	\$ 17,069	\$ 20,000	\$ 23,000	\$ 258,068	0	\$ 258,068	\$ 1,788,941
2029	23000	38.9	2.36	91.7	\$ 2,108,419	\$ 88,792	\$ 113,167	\$ 17,410	\$ 20,000	\$ 23,000	\$ 262,369	0	\$ 262,369	\$ 1,846,050
2030	23000	38.9	2.43	94.4	\$ 2,171,672	\$ 90,568	\$ 115,430	\$ 17,758	\$ 20,000	\$ 23,000	\$ 266,756	0	\$ 266,756	\$ 1,904,915
TOTAL UNOBLIGATED REVENUE (30 yr)														\$ 16,600,435
														\$ 26,105,978

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November 17, 1999

RE: In the matter of requiring measuring devices, and controlling works on Big Timber and Texas Creeks, Part of Water District 74-W

Dear Interested Parties:

The accompanying order 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 unless a party petitions for reconsideration within fourteen (14) days after issuance as further described below:

#### **PETITION FOR RECONSIDERATION**

Any party may file a petition for reconsideration of a preliminary order with the Director within fourteen (14) days of the service date of this order. The Director 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 twenty-one (21) 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 on the proceeding to the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to a preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

### 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 matter filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with 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 it issuance if a party has not filed a petition for reconsideration. If a party has file 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

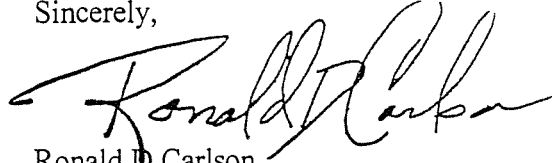
Pursuant to section 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district 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.

Sincerely,



Ronald D Carlson  
Eastern Region Manager

Enclosure

c: IDWR - Tim Luke /  
IDWR - Bob Foster