

OF THE

STATE OF IDAHO

**IN THE MATTER OF REQUIRING MEASURING
DEVICES AND CONTROLLING WORKS ON COLD
SPRINGS CREEK, WATER DISTRICT 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, (4th 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

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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.

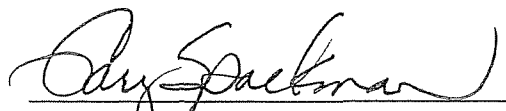
2. An order should be issued again requiring the water users of Cold Springs Creek and its tributaries to install, construct, and maintain adequate measuring devices and controlling works.

ORDER

IT IS HEREBY ORDERED that on or before February 15, 2002, the water users diverting water from the main stem of Cold Springs Creek 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 February 15, 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.

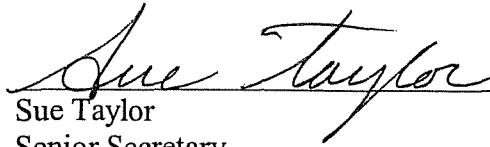
Dated this 18th day of January, 2002.


GARY SPACKMAN
Western Regional Manager

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CERTIFICATE OF MAILING

I hereby certify that on this 18th day of January, 2002, I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER to those listed below:


Sue Taylor
Senior Secretary

ANNABETH N BEAN
315 S HARDING ST
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6874 FAIRVIEW AVE
BOISE, ID 83704

CHARTER MOUNTAIN RANCH INC
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GLENN'S FERRY, ID 83623

JOE BLACK & SONS
PO BOX 67
HAMMETT, ID 83627

DOUBLE ANCHOR RANCH INC
LYNN OR ELSIE RIGGS
RT 1 BOX 445
GLENN'S FERRY, ID 83623

BARBER CAVEN RANCHES
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OTTO NEUER
COLD SPRINGS RANCH
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CERTIFICATE OF MAILING

I hereby certify that on this 23rd day of January, 2002, I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER to those listed below:


Sue Taylor
Senior Secretary

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