

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF THE)
APPOINTMENT OF A LATERAL)
MANAGER FOR GRAYS CREEK) PRELIMINARY ORDER
DITCH)
_____)

This matter having come before the Department of Water Resources (“IDWR” or “Department”) as a result of the filing of a petition to appoint a lateral manager, the Department makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT AND PROCEDURAL HISTORY

1. On May 10, 2012, the Department received a petition (“petition”) from the Legg Family Trust (“petitioner”), a water right holder for water delivered through the Grays Creek Ditch, requesting appointment of a lateral manager for the ditch.
2. The water users on the Grays Creek Ditch, diverting from the Little Weiser River located east of Cambridge in Adams County, have been unable to select a lateral manager as provided by law.
3. The petitioners own water right nos. 67-431 and 67-4454 for irrigation use on their property. Water is delivered through the Grays Creek Ditch to their property at or near the end of the Grays Creek Ditch.
4. The petitioners allege that, for many years, water has not been apportioned and distributed properly among all the users along the entire length of the Grays Creek Ditch and the rights of certain users have been and are being injured.
5. The petitioner requests that the Department appoint Norma Ratcliff as a lateral manager for the entire Grays Creek Ditch.
6. On, May 18, 2012 the Department provided written notice of the petition to water users from Grays Creek Ditch, to the Little Weiser Irrigation District, and to the watermaster of Water District 67A and provided 14 days for written response to the petition.

7. On May 30, 2012, the Department received a letter from the Little Weiser Irrigation District (“LWID”) in support of the petition. The LWID provides storage water to users, including users on the Grays Creek Ditch. In its letter, the LWID said that “...virtually every year for many years, there have been conflicts on this ditch over water delivery.” The LWID believes that headgates and weirs will be required for a lateral manager to satisfactorily perform the job. The LWID opined that Norma Ratcliff is well qualified and recommended her for the lateral manager position.
8. On May 31, 2012, the Department received a letter from Scott L. Campbell, attorney, on behalf of the Grays Creek Canal Association (“GCCA”), responding to the petition (“response”). In its response, the GCCA indicates it was established on April 1, 2012 and that it conducted its affairs as an informal ditch association prior to that date. The purpose of GCCA is reported to be for construction of a dam on the Little Weiser River and to distribute water to the lateral ditches from the Grays Creek Canal.
9. The GCCA argues that there is no legitimate basis for the petition. In its response, GCCA states that “... the Grays Creek Canal/Ditch has only assessed and been responsible for delivery of water from the Little Weiser River to the Concrete Splitter, designated as Location No. 13 on the SPF map.” Location No. 13 is identified on Exhibit D of GCCA’s response. GCCA further alleges that “...actions of the Trust are an attempt to force the entire group of water users benefitting from the Grays Creek Canal/Ditch to pay for and assure the delivery of water through the individual lateral ditch which supplies the water to the Trust property.” GCCA requests that the Department deny the petition.
10. On June 4, 2012, the Department received a letter from Bob and Whitney Voermans supporting the petition. Their letter refers to the inability (of others) to receive water and gain access to clean ditches due to pivot lines on or near ditches.
11. On June 1, the Department received a letter from Joe Stippich, watermaster of Water District No. 67A, responding to the petition. Mr Stippich indicates that there has been a lot of unrest on the ditch during the past several years. He believes weirs and headgates on everyone’s ditch would be beneficial for the correct delivery of water, but is concerned about the cost to users. He also believes that keeping the ditches clean needs to be a high priority for users to get their appropriate amount of water.

12. On June 4, 2012, the Department received a letter from LWID responding to GCCA's response. In summary, LWID reiterated its position that appointment of a lateral manager and installation of headgates and weirs for the entire Grays Creek Ditch is required to resolve the conflicts.
13. On June 4, 2012, the Department received the petitioner's *Motion to Strike Grays Creek Canal Association's Response to Petition for Appointment of Lateral Manager and Memorandum in Support* ("Motion to Strike"). In their Motion to Strike, the petitioners asked the Department to strike the GCCA's response on the basis that the GCCA is not a legal entity duly established pursuant to law and can have no standing to participate in this matter.
14. The Department has reviewed the petition, responses and other available information, including a site visit to view the location of the various ditches and/or laterals making up the Grays Creek Ditch delivery system.
15. The Grays Creek Ditch diverts water from the Little Weiser River in Township 14N, Range 1W, Section 23, NW1/4. Department records list approximately 46 water rights and approximately 20 different property owners receiving water through the Grays Creek Ditch for irrigation purposes.
16. The Grays Creek Ditch flows north from the Little Weiser River serving a few users, and then splits into two parts about a mile from the river. One split flows generally northeast and serves users on the east side of the system. The other split continues north serving several users along the way and splits again about 2 miles from the river. This split is identified as Location No. 13 by GCCA in Findings of Fact No. 9 and is located in Township 14N, Range 1W, Section 11, NWSW. At that point it splits again with one split flowing generally north, serving some users along the way, and then generally northwest to the petitioners place of use about 4 miles from the river. The other split flows generally northwest serving a couple of users before reaching a 3-way splitter located about 3 miles from the river. The eastern leg of the 3-way splitter serves the petitioner's place of use.

ANALYSIS

Current problems on the Grays Creek Ditch appear to be concerns about the distribution of water at the lower end of the system, and specifically about water available to the petitioner's place of use. There have been reports of problems in past years throughout the entire Grays Creek Ditch system, but the Department is not aware of specific problems in recent years, other than the allegations of injury by the petitioner.

Present and past problems with distribution of water on the ditch are likely caused by lack of measurement and control of water, misunderstandings of appropriate allocations, conveyance losses (or gains), and ditch maintenance. Ideally, to reduce disputes over distribution of water, every diversion from the Grays Creek Ditch system to each individual user would have a controllable headgate and measuring device and someone responsible for proper distribution of water to all users. The Department recognizes the financial burden that this would impose on water users. However, some level of measurement and control is necessary and should be a goal for all water users in the coming years to avoid future disputes up and down the ditch.

In the current case, it would not be fair to require all water users on the Grays Creek Ditch system to install measurement and control devices and support the costs of a lateral manager, especially when the cause of the alleged injury is not fully understood and the location and extent of the distribution ditches and laterals at the lower end of the system is not fully understood. Appointment of a lateral manager for the lower part of the Grays Creek Ditch system is necessary to assist water users with their current problems.

Installation of measurement and control devices during the current irrigation season is not practical because it is not yet clear where measuring devices are the most critical and because it would interrupt irrigation of crops at a time when water needs are greatest. Appointment of a lateral manager for the lower part of the Grays Creek Ditch system is necessary to provide someone who can begin to understand the system and the issues and who can assist water users in developing a plan for future measurement and control where needed.

Motion to Strike

The Motion to Strike filed by the petitioner alleges that the GCCA is not a legal entity duly established pursuant to law and can have no standing to participate in this matter. The Department sent notice to water users on the Grays Creek Ditch system seeking comment on the

appointment of a lateral manager. The GCCA's response should be considered by the Department as comments from a group of water users on the ditch. The determination of whether or not the GCCA is a legal entity or an informal group is not relevant to this matter and not for the Department to decide.

CONCLUSIONS OF LAW

1. Idaho Code § 42-1301 provides in pertinent part:

Where three (3) or more parties take water from the same canal or reservoir at the same point to be conveyed to their respective premises for any distance through a lateral or distributing ditch or laterals or distributing ditches such parties shall constitute a water users' association known as "Water Users Association of Lateral or Laterals."

2. Idaho Code § 42-1308(1) provides in pertinent part:

- (1) In the event that the water users or the board of directors of any lateral or ditch association do not meet and elect a lateral manager as provided for in this chapter or a lateral manager is not selected as otherwise provided by law, then, the director of the department of water resources may appoint and fix the compensation of a lateral manager, upon the written petition of a water user alleging that water is not being apportioned and distributed properly among the users from the ditch or lateral and that the rights of the water user are being injured thereby.
- (2) If the water users also have failed to elect association officers, the lateral manager appointed by the director may exercise the duties of the association officers, including the making and collection of assessments, but not the borrowing of money, as is necessary to achieve the proper allocation and distribution of water from the ditch or lateral and without regard to the statutory dates of the performance of these duties.
- (3) The lateral manger appointed by the director shall hold office only for the period

(4) of time fixed by the order of appointment and in no event beyond the remainder of the year in which appointed.

* * *

(6) Based upon a review of the petition, the responses thereto, the recommendations of the watermaster, if any, and any investigation by the department of water resources, the director shall issue an order with findings either appointing a lateral manager or declining to appoint a lateral manager. Any person aggrieved by the order of the director shall be entitled to request a hearing before the director pursuant to section 42-1701A, Idaho Code.

3. The Department should appoint a lateral manager for water right holders on the Grays Creek Ditch beginning at the point identified as the concrete splitter at Location No. 13 described in Findings of Fact Nos. 9 and 16 and continuing through all distribution ditches or laterals serving three (3) or more parties. The lateral manager's oversight will not extend beyond any point from a distribution ditch or lateral that is used as conveyance to a single user. The water right holders served by the lateral manager will constitute a water users association that will be referred to as the Water Users Association of the Lower Grays Creek Ditch Laterals.

ORDER

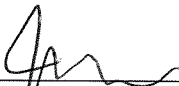
NOW THEREFORE, pursuant to Idaho Code § 42-1308, the Department does HEREBY ORDER and APPOINT Norma Ratcliff, to serve as lateral manager of the Water Users Association of the Lower Grays Creek Ditch Laterals until October 31, 2012.

The lateral manager shall have the authority to act as established under Title 42, Section 13, Idaho Code to provide for the proper distribution of valid water rights for each party within the Water Users Association of Lower Grays Creek Ditch Laterals.

IT IS FURTHER ORDERED that the lateral manager be compensated for services as follows: An amount of \$15.00 per hour plus mileage at 55 cents per mile. The lateral manager's time shall not exceed 40 hours per month unless the users provide written consent for additional hours. Compensation to the lateral manager shall be divided evenly among the users and payable on a monthly basis as determined by the lateral manager.

IT IS FURTHER ORDERED that the Motion to Strike filed by Dana Hofstetter on behalf of the petitioner on June 4, 2012 is DENIED.

Dated this 13 day of June, 2012.



Jeff Peppersack, Chief
Water Allocation Bureau

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of June, 2012, I mailed a true and correct copy, of the foregoing PRELIMINARY ORDER to the persons listed below:

ALLRED, DAVID VON; ALLRED,
RAMONA L
926 GRAYS CRK RD
INDIAN VALLEY ID 83632

BREST, BRIDGETTA L & LOREN R
2280 MUNDY GULCH
INDIAN VALLEY ID 83632

BUCHANAN, ALLEN M; BUCHANAN,
VIVIAN L
1367 W 2ND ST
WIESER ID 83672

DUNHAM, BETTY & RONALD
852 INDIAN VALLEY RD
INDIAN VALLEY ID 83632

GRAHAM, DEZARAE A
GREEN, THOMAS A
PO BOX 15
INDIAN VALLEY ID 83632

GROSSEN, NORMA & TOM L
PO BOX 72
INDIAN VALLEY ID 83632

HOLMES, JOAN H
1009 GRAYS CRK RD
INDIAN VALLEY ID 83632

HOLMES, JOHN W
1924 COVE RD
WEISER ID 83672

HOLMES, PHILIP J
973 GRAYS CRK RD
INDIAN VALLEY ID 83632

HUEY, BARBARA & MICHAEL
2273 MORITZ LN
INDIAN VALLEY ID 83632

HUST, ADRIAN R & JAMES D
2290 MUNDY GULCH RD
INDIAN VALLEY ID 83632

J W HOLMES AND SONS
948 GRAYS CRK RD
INDIAN VALLEY ID 83632

JOHNSON, LILIANA & RICHARD E
2922 OWYHEE LN
CALDWELL ID 83605

KRETTEN, RICHARD A
350 SCHOOL RD
MIDVALE ID 83645

LEGG FAMILY TRUST
PO BOX 118
CAMBRIDGE ID 83610

MC DANIEL, DARCY
PO BOX 229
NEW MEADOWS ID 83654

RAY, ESTHER L & RONALD J
785 INDIAN VALLEY RD
INDIAN VALLEY ID 83632

SHAW, JAMES B & PATRICIA M
914 GRAYS CRK RD
INDIAN VALLEY ID 83632

VOERMANS, ROBERT & WHITNEY
PO BOX 57
INDIAN VALLEY ID 83632

WALLACH IX LLC
PO BOX 5667
INCLINE VILLAGE NV 89450

WARD, VICTOR
PO BOX 77
INDIAN VALLEY ID 83632

WINFREE, GEORGIA & NEWTON
PO BOX 7
INDIAN VALLEY ID 83632

YANTIS, RALPH & SCOTTI
685 INDIAN VALLEY RD
INDIAN VALLEY ID 83632

ADAMS, JOE
2268 MUNDY GULCH RD
INDIAN VALLEY ID 83632

DUNHAM, DEAN & PAULA
PO BOX 2
INDIAN VALLEY ID 83632

BAUER, BRIAN
PO BOX 7
INDIAN VALLEY ID 83632

CRAIG, SHELLY
350 SCHOOL RD
MIDVALE ID 83645

MOTT, ORVEL
797 INDIAN SCHOOL RD
INDIAN VALLEY ID 83632

BAKER, ED
1821 CANYON RD
COUNCIL ID 83612

VESELKA, DAVE
2381 S GRAYS CRK RD
INDIAN VALLEY ID 83632

CLARK, DON
24535 FARMWAY RD
CALDWELL ID 83607

WIDNER, PHYLLIS
PO BOX 222
MIDVALE ID 83645

NEWTON, WINFREE
GEORGIA WINFREE
790 INDIAN VALLEY RD
INDIAN VALLEY ID 83632

DUNHAM, BETTY & RONALD
852 INDIAN VALLEY RD
INDIAN VALLEY ID 83632

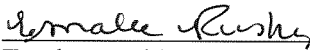
DANA L HOFSTETTER
HOFSTETTER LAW OFFICE LLC
608 WEST FRANKLIN ST
BOISE ID 83702

JOE STIPPICH, WATERMASTER
WATER DISTRICT 67A
2195 HANTHORNE RD
INDIAN VALLEY ID 83632-5003

J WAYNE BURKHARDT
LITTLE WEISER IRRIGATION DIST
2410 LITTLE WEISER RD
INDIAN VALLEY ID 83632

SCOTT L CAMPBELL
MOFFATT THOMAS BARRETT
ROCK & FIELDS CHTD
PO BOX 829
BOISE ID 83701

NORMA J RATCLIFF
1491 SHAW LN
COUNCIL ID 83612



Emalee Rushing
Administrative Assistant II

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

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. **Note: the petition must be received by the department within this fourteen (14) day period.** 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 Water Resource 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 service date 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.



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

June 13, 2012

RE: Preliminary Order Appointing Lateral Manager for Grays Creek Ditch

Dear Water User:

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 described in the enclosed information sheet.

Sincerely,

Jeff Peppersack, Chief
Water Allocation Bureau

Enclosures

C: Joe Stippich, Water District 67A Watermaster
Little Weiser Irrigation District
IDWR Western Region
Norma J. Ratcliff
Dana L. Hofstetter, Hofstetter Law Office LLC
Scott L. Campbell, Moffatt Thomas Barrett Rock & Fields Chartered