

**BEFORE THE DEPARTMENT OF WATER RESOURCES**

**FOR THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION )  
TO APPROPRIATE WATER NO. ) **PRELIMINARY ORDER**  
65-22766 IN THE NAME OF ANTHONY )  
F. YEAMANS )  
\_\_\_\_\_ )

On February 6, 2003, Anthony Yeamans (Yeamans) filed with the Idaho Department of Water Resources (IDWR) an application to appropriate water from Warm Springs Creek in Boise County. The application was assigned a water right number of 65-22766. Protests were filed against the application and a hearing was conducted on August 6, 2003. After considering the evidence presented at the hearing, the hearing officer finds, concludes, and orders as follows:

**FINDINGS OF FACT**

1. Application to appropriate water no. 65-22766 proposes the following:

<b>Flow Rate:</b>	0.04 cfs
<b>Purpose:</b>	Domestic
<b>Season of Use:</b>	March 15 to Nov. 15
<b>Source:</b>	Warm Springs Creek, tributary to Middle Fork of the Payette River
<b>Point of Diversion:</b>	NW1/4SE1/4, Sec. 33, T10N, R4E
<b>Place of Use:</b>	NW1/4SE1/4, Sec. 33, T10N, R4E

2. The primary use of surface water will be for irrigation of a yard associated with a domestic residence. The potable water for the residence is supplied separately by a well.

3. A single protest was filed by several landowners who claim ownership of water rights describing Warm Springs Creek as a source of water. Protestants assert there is insufficient water in Warm Springs Creek in the summer to supply the quantities of water authorized for diversion by water rights naming Warm Springs Creek as a source of water.

4. In May 2003, IDWR distributed to the parties a summary of water rights naming Warm Springs Creek as a source of supply. The summary distributed to the parties is attached to this decision as Attachment A.

5. The IDWR summary identifies water rights owned by some of the individuals who signed the protest. The individuals shown in the summary also signing the protests are: Richard Davis Trust & Thelma Davis Trust, Joanne & Roger Belau, and Jeffrey and Linda Bass.

All of these water rights authorize diversion from Warm Springs Creek and bear priority dates earlier than 1900. Other persons signing the single protest may also own water rights, but their ownership of the rights wasn't current at the time the summary was printed.

6. An IDWR memorandum in the file transmitting the water right information to the parties also totaled the individual flow rates authorized by each water right naming Warm Springs Creek as a source. The memorandum states that the "total amount of water that can be delivered by a watermaster is 6.56 cfs at this time."

7. Water rights for Warm Springs Creek were decreed in 1906. A water district for Warm Springs Creek was created by IDWR. Records of delivery date back to 1919. The district has been inactive, however, and a watermaster has not regulated the deliveries of water from Warm Springs Creek in recent years.

8. Warm Springs Creek was recognized in the Payette River Adjudication and subsequently in the Snake River Basin Adjudication as a stream that should be separately administered from the larger Payette River.

9. On the day of the hearing, IDWR received a Petition to Intervene from Cathy Goff representing the Buzzell Estate. Attachment A lists four water rights in the name of the Dean Buzzell Trust.

10. Because of the late filing of the petition to intervene, the hearing officer denied the petition to intervene at the hearing. Cathy Goff appeared at the hearing, however, and the hearing officer allowed Cathy Goff to testify as a public witness.

11. Yeamans testified that his proposed diversion of water would not injure other water rights because his proposed diversion of 0.04 cfs would be less than 1% of the total flow rate authorized for diversion by IDWR's summary of water rights.

12. Yeamans testified that the water supply is plentiful in Warm Springs Creek, and that he had seen water running in lower Warm Springs Creek during low periods of flow.

13. Yeamans did not present any evidence of measured flows in Warm Springs Creek or dates, times, and places of observed flow. Furthermore, the proposed point of diversion described in the Yeamans application would be located upstream from many points of diversion described by earlier in time priority water rights. If Yeamans diverts water from Warm Springs Creek at his proposed point of diversion, and there is insufficient water to satisfy all earlier in time water rights, he could injure other water users.

14. Yeamans testified that he owns an existing single-family residence at the place of use and would irrigate his yard and shrubbery around his home with the water.

15. Yeamans testified that he has spent several thousand dollars in pipe for a delivery system.

16. Yeamans testified that diversion of water from Warm Springs Creek would reduce the water demand from the Terrace Lakes domestic water system. He testified that the Terrace Lakes system is sometimes short of water. Yeamans also testified that his proposal would contribute somewhat to the local economy during the period when his system is being constructed.

17. Yeamans testified that he would minimize the use of water by irrigating his property with a drip irrigation system. He testified that the drip irrigation system is the most efficient method of conserving water when irrigating

18. Dave Nettleton, spokesperson for the protestants, testified that he and the other protestants irrigate approximately 150 acres with water diverted from lower Warm Springs Creek. The points of diversion for these water rights are located downstream from Yeamans' proposed point of diversion. Nettleton testified that other water right holders divert water from Warm Springs Creek between the protestants' points of diversion and Yeamans' proposed point of diversion. He testified that there is plenty of water during spring runoff, but during low water periods, he and the other users cannot divert enough water from Warm Springs Creek to satisfy their water rights.

19. Cathy Goff testified that water is diverted for the Buzzell Estates from a point of diversion located downstream from the proposed Yeamans diversion. She testified that the Buzzell Estates point of diversion is located approximately 200 feet above the point of diversion for delivery of the other protestants' water rights. Goff testified that in past years, the Warm Springs water has irrigated 40 acres on the Buzzell property. She testified that in recent drought years, there wasn't sufficient water to satisfy the Buzzell water rights, and that some of the land has been idle as a result of the water shortages.

19. Cathy Goff testified that the period of time when water is not sufficient is in July, August, and in the fall.

20. Regulation of water rights in the larger Payette system during drought years usually commences on or about July 1.

## **CONCLUSIONS OF LAW**

1. Idaho Code § 42-203A states:

The director of the department of water resources shall find and determine from the evidence presented to what use or uses the water sought to be appropriated can be and are intended to be applied. In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it

will conflict with the local public interest as defined in section 42-202B, Idaho Code, or (f) that it is contrary to conservation of water resources within the state of Idaho, or (g) that it will adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates; the director of the department of water resources may reject such application and refuse issuance of a permit therefore, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions.

2. The applicant bears the burden of proof for the factors IDWR must consider in Idaho Code § 42-203A.
3. Yeamans did not submit evidence that his proposed diversion for irrigation from Warm Springs Creek during low flow periods will not injure other water users or other water rights.
4. Yeamans did not present evidence to show that the water supply is sufficient for the purpose sought during the entire proposed season of use.
5. The protestants testified that water is available during the high flow run-off, but that the water supply is insufficient after the spring run-off is complete.
6. Because a home is already constructed on Yeamans' property and Yeamans has already invested in a delivery system, his application to appropriate water is not speculative.
7. Yeamans has sufficient financial resources to construct the project.
8. Using available surface water from Warm Springs Creek and reducing diversions of ground water through the Terrace Lakes system is in the local public interest.
9. Irrigation with a drip system will conserve the amount of water diverted and used.

### **ORDER**

IT IS HEREBY ORDERED that application to appropriate water no. 65-22766 is **Approved**, subject to the following conditions:

1. Proof of application of water to beneficial use shall be submitted on or before September 1, 2005.
2. During any irrigation season when a watermaster is not regulating diversions of water from Warm Springs Creek, the right holder shall cease diversion and irrigation on July 1.
3. Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the

time of this approval, the water right is within State Water District No. 65 L, Warm Springs Creek.

4. Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works.

5. The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary for this purpose will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to the permit.

DATED this 30th day of December, 2003.

    /Signed/      
Gary Spackman  
Hearing Officer