

STATE OF IDAHO

ORDER

FINDINGS OF FACT

1. The rights to the use of the waters of Williams Creek have been determined by a decree of the District Court of the State of Idaho in the case of Utah Power & Light Co. v. The Last Chance Canal Co., dated July 14, 1920.
2. Water District 11, which includes Williams Creek, is an active water district created pursuant to the laws of Title 42, Chapter 6, Idaho Code.
3. During low flow periods, the watermaster of Water District 11 must measure the flows diverted from Williams Creek and regulate all diversions by setting the headgates and/or controlling works.
4. Not all of the diversions from Williams Creek are equipped with adequate measuring devices, headgates and/or controlling works.

CONCLUSIONS OF LAW

Applicable Legal Principles

Section 42-701, Idaho Code, provides in part:

42-701. Maintenance by appropriators--Procedure upon failure to maintain.--The appropriators or users of any public waters of the state of Idaho shall maintain to the satisfaction of the department of water resources suitable headgates and controlling works at the point where the water is diverted, which 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 and such appropriator shall construct and maintain, when required by the department, a rating flume or other measuring device at such point as is most practical in such canal or ditch of the purpose of assisting the watermaster or department in determining the amount of water that may be diverted into said ditch from the stream. Plans for such headgates, rating flumes or other measuring devices shall be approved by the department of water resources: provided, that should any appropriator or user of the public waters of the state of Idaho neglect or refuse to construct or maintain such headgates, controlling works, or measuring devices, upon receiving ten (10) days' notice from the department of water resources within which to begin to remedy such defects as exist in accordance with said notice, then 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 claimed by such appropriator or user until he does construct and maintain such headgates, controlling works or measuring devices or remedy the defects which exist: provided, that such 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 on the size and extent thereof, when due diligence has been used in the prosecution of such work.

Application of Legal Principles

2. To properly distribute the waters of Williams Creek, the watermaster must measure flow and have complete control over all

headgates and controlling works at all diversions on Williams Creek.

3. The watermaster has stated that proper measuring devices, headgates and controlling works have not been installed on all diversions from Williams Creek.

4. Section 42-701, Idaho Code, authorizes the Department to order the installation of measuring devices, headgates and/or controlling works.

ORDER

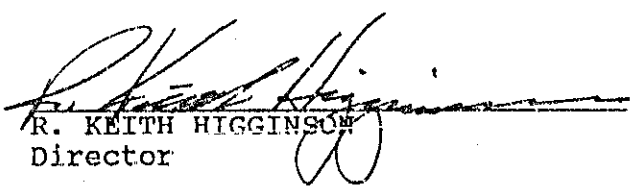
It is therefore, hereby ORDERED:

1. That all waterusers diverting water from Williams Creek shall install measuring devices, headgates and/or controlling works of a type acceptable to the Department on or before August 30, 1990.

2. That the watermaster shall have complete control of all headgates and controlling works at all points of diversion on Williams Creek.

3. That no water from Williams Creek shall be delivered by the watermaster of Water District 11 after August 30, 1990, to any diversion that does not have adequate measuring devices, headgates and/or controlling works as determined by the watermaster.

Dated this 30th day of July, 1990.


R. KEITH HIGGINSON
Director

CERTIFICATE OF MAILING

I hereby certify that on this 31st day of July, 1990, I mailed a true and correct copy of the Order, postage prepaid, to the following individuals:

Reed McGreggor
13495 N. Maple Grove Rd.
Thatcher, ID 83283

Ronald Panter
14085 N. Highway 34
Thatcher, ID 83283

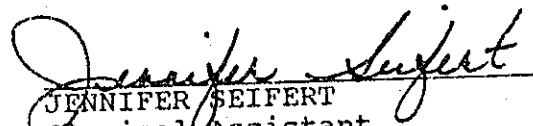
Sheldon Kendall
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Eddie Jensen
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JENNIFER SEIFERT
Clerical Assistant