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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

Department of Water Resources
Eastern District Office

IN THE MATTER OF REQUIRING MEASURING DEVICES AND)
ORDERING WATERMASTER CONTROL OVER ALL HEADGATES)
AND CONTROLLING WORKS ON DEMPSEY CREEK AND) ORDER
TRIBUTARIES WITHIN WATER DISTRICT 29)

The Department finds that a number of the diversions from Dempsey Creek and tributaries in Water District 29 have inadequate measuring devices and lockable controlling works. Section 42-701, Idaho Code, provides in pertinent part:

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, 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 sections 42-311, 42-350 and 42-351, Idaho Code, to enforce the requirement to construct, install or maintain such devices.

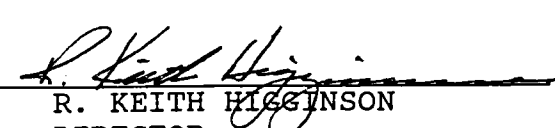
(4) The appropriators or users of the public waters of the state of Idaho shall be given a reasonable time within which to complete construction of such headgates, controlling works or measuring devices, depending upon the size and extent thereof, when due diligence has been used in the prosecution of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

THEREFORE IT IS HEREBY ORDERED THAT:

1. Those water users identified in Attachment A of this order diverting water from Dempsey Creek and its tributaries shall install and permanently maintain measuring devices and lockable controlling works of a type acceptable to the Department on or before April 15, 1995.

2. The watermaster shall shut off and refuse to deliver water from Dempsey Creek and its tributaries to any water user identified in Attachment A who does not have adequate permanent lockable controlling works and a measuring device after April 15, 1995. In addition, the Department can take action to seek civil penalties of up to \$100 per diversion per day for those diversions which are not in compliance with this order.

Dated this 1st day of MARCH, 1995


R. KEITH HIGGINSON
DIRECTOR

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 3rd day of March, 1995, I mailed a true and correct copy, postage prepaid, of the foregoing ORDER to the following:

RICHARD ANDREASEN
P O BOX 75
SHOSHNOE ID 83352

THOMAS J ARCHIBALD
P O BOX 338
LAVA HOT SPRINGS ID 83246

LELAND AVERY
12200 S DEMPSEY
LAVA HOT SPRINGS ID 83246

REX L BAKER
11716 S DEMPSEY CREEK RD
LAVA HOT SPRINGS ID 83246

FRANCIS G FAGNANT
P O BOX 644
LAVA HOT SPRINGS ID 83246

RUTH ANN OLSON
P O BOX 644
LAVA HOT SPRINGS ID 83246

AFTON T ROBERTS
P O BOX 355
LAVA HOT SPRINGS ID 83246

CAVIN A ROWSELL
BOX 183
LAVA HOT SPRINGS ID 83246

EARL H SMITH
9689 E MAUGHN RD
LAVA HOT SPRINGS ID 83246

KIT TILLOTSON
P O BOX 701
LAVA HOT SPRINGS ID 83246

RONNIE D TILLOTSON
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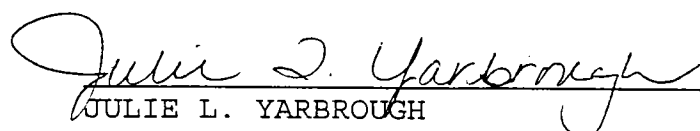
TOPAZ IRRIGATION COMPANY
C O GENE FAGNANT
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ELSIE M WILSON
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GEORGE DERAY HOBSON
12788 S DEMPSEY RD
LAVA HOT SPRINGS ID 83246

I GLENN PERKINS
P O BOX 638
POCATELLO ID 83204

FARRELL & SHIRLEY ROSWELL
P O BOX 335
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JULIE L. YARBROUGH
Senior Secretary