



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

*Harold Jones
Eastern*

January 22, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

Calvin A Rowsell
PO Box 183
Lava Hot Springs, ID 83246

RECEIVED

Kit Tillotson
PO Box 701
Lava Hot Springs, ID 83246

Farrell and Shirley Rowsell
PO Box 335
Lava Hot Springs, ID 83246

JAN 27 1999
Department of Water Resources
Eastern Region

Elsie M Wilson
PO Box 96
Lava Hot Springs, ID 83246

Dear Water Users,

PENDING NOTICE OF VIOLATION AND CEASE & DESIST ORDER

A tour of Portneuf River diversions was conducted with local water users on October 8, 1998. This tour was requested by McCammon Ditch Co. and the water district advisory committee. The tour included a visit of some diversions on Dempsey Creek.

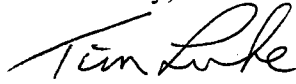
While inspecting some diversions on Dempsey Creek I specifically asked the watermaster, Arlin Olson, if any measuring device had been installed for the Rowsell Ditch diversion. Mr. Olson indicated that no measuring device had been installed. The Department's order dated March 1, 1995 required installation of a measuring device for this and certain other diversions on Dempsey Creek.

The records of the Department and/or the Water District 29 watermaster indicate that you are the current owner or claimant of water rights diverting water from Dempsey Creek to the diversion known as the Rowsell Ditch, located in T9S, R38E, Section 33. These water rights are identified by the Department as 29-00158 and 29-00159. Additional rights which may be diverted through this ditch are 29-00160 and 29-00162.

The purpose of this notice is to advise you that your diversion is not in compliance with the requirements as set forth in the Department's Order of March 1, 1995. You are further advised to comply with this order and install an adequate measuring device for the Rowsell Ditch diversion prior to diverting any water in 1999. IF AN ADEQUATE MEASURING DEVICE IS NOT INSTALLED PRIOR TO DIVERTING WATER IN 1999, THE DEPARTMENT SHALL ISSUE A NOTICE OF VIOLATION AND CEASE AND DESIST ORDER. The order will seek a monetary penalty as provided in Section 42-1701B, Idaho Code. This section provides for a "civil penalty not to exceed ten thousand dollars (\$10,000) per violation or one-hundred fifty dollars (\$150) per day for a continuing violation..."

If you feel our records are incorrect or you have questions, please contact me directly at (208)327-7864.

Sincerely,

A handwritten signature in cursive script that reads "Tim Luke".

Tim Luke, Manager
Water Distribution Section

cc: Arlin Olson, Watermaster
Harold Jones, Eastern Region
Howard Hall, McCammon Ditch Co.

Enc.

TL/rl

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

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.

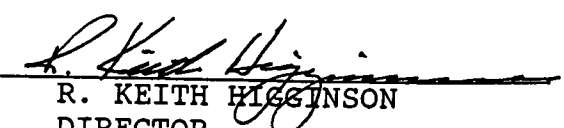
(4) The appropriators or users of the public waters of the state of Idaho shall be given a reasonable time within which to complete construction of such headgates, controlling works or measuring devices, depending upon the size and extent thereof, when due diligence has been used in the prosecution of 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
P O BOX 261
LAVA HOT SPRINGS ID 83246

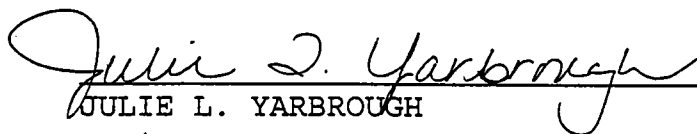
TOPAZ IRRIGATION COMPANY
C O GENE FAGNANT
P O BOX 293
LAVA HOT SPRINGS ID 83246

ELSIE M WILSON
P O BOX 96
LAVA HOT SPRINGS ID 93246

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
LAVA HOT SPRINGS ID 83246


JULIE L. YARBROUGH
Senior Secretary

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720
Boise, Idaho 83720-0098

Return Service Requested

RECEIVED

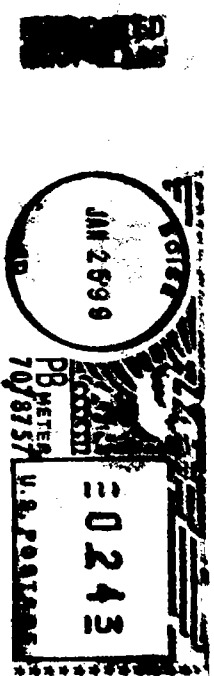
FEB 01 1999

Department of Water Resources

ROWS 335

FARRELL AND SHIRLEY ROWSELL
PO BOX 335
LAVA HOT SPRINGS ID 83246

ROWS335 T032463007 1898 05 01/26/99
RETURN TO SENDER
TEMPORARILY AWAY
RETURN TO SENDER



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83246

