

JUSTIN R. SEAMONS

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Department of Water Resources

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April 5, 1994

Department of Water Resources of the state of Idaho
Attn: Tim Luke
1301 North Orchard Street
Boise, ID 83706-2237

Re: Request for Delivery of Water

Dear Mr. Luke:

I have prepared this letter to confirm our telephone conversation on April 5, 1994. As you recall, I represent Devil Creek Ranch, Inc. Its predecessor, Jerome Helsey, obtained the right to use three cubic feet of water per second from Deadwood Creek on April 1, 1886. The right pertained to a parcel of property, located in Owyhee County, Idaho. Mr. Helsey had the right to use the water whenever he could beneficially use it, irrespective of the time of the year. See McGinness v. Stanfield, 6 Idaho 372, 55 P. 1020 (1898).

In 1915, the district court in Owyhee County, Idaho, adjudicated Mr. Helsey's water right. The case was entitled Helsey v. Turner, (3rd Jud. District of Idaho August 14, 1915). A copy of the decree is attached hereto as Exhibit A. The date of priority of Mr. Helsey's water right was April 1, 1886. Mr. Helsey's immediate successor was Karl D. Patrick; its current successor is Devil Creek Ranch, the President of which is Mr. Patrick's son, Rolland.

In 1920, the Grand View Irrigation District filed a claim to adjudicate its right to 150 cubic feet of water per second in the Bruneau River. Deadwood Creek is a tributary of the East Fork of the Bruneau River, which, in turn, is a tributary of the Bruneau River. The Grand View Irrigation District named Mr. Patrick as a defendant, as well as many other people and/or entities, such as the Idaho Farm Development Company.

The court entered a decree on February 16, 1925. See Grand View Irrigation District v. Bruneau Buckaroo Co-operative Ditch Co., (3rd Jud. District of Idaho Feb. 16, 1925). With respect to the Idaho Farm Development Company, the decree stated that it could store the water from Deadwood Creek from October 1 to May 15. The dates of priority of the underlying water rights were January 29 and November 19, 1915. The Idaho Farm Development Company's current successor is Cedar Mesa Reservoir and Canal Company.

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Devil Creek Ranch filed a complaint against Cedar Mesa Reservoir and Canal Company in the district court of Owyhee County, Idaho, on June 18, 1991. The complaint alleged, in pertinent part, that the decree in 1925 was invalid and unenforceable with respect to Devil Creek Ranch, and that Devil Creek Ranch had the right to use the water whenever it could beneficially use it pursuant to the decree in 1915.

The court entered a judgment on August 23, 1993, stating that the decree in 1925 was "invalid, unenforceable, void, and non-binding with respect to Devil Creek Ranch"; however, the court did not state whether Devil Creek Ranch or Cedar Mesa Reservoir and Canal Company could use the water. The reason: The court stated that it did not possess the subject matter jurisdiction to determine which party could use the water because of the Snake River Basin Adjudication.

The foregoing issue is on appeal. The purpose of this letter is not to speculate about the outcome of the appeal, but to request the delivery of the water to Devil Creek Ranch in the meantime. As you know, Idaho Code Section 42-602 states, in pertinent part, the following:

It shall be the duty of the director of the department of water resources to have immediate direction and control of the distribution of water from all of the streams . . . in the state to the canals, ditches, pumps and other facilities diverting therefrom. . . . The director **MUST** execute the laws relative to the distribution of water in accordance with rights of prior appropriation as provided in section 42-106, Idaho Code.

(Emphasis added.)

The director's duty to deliver the water to Devil Creek Ranch is due to the fact that the duly adjudicated date of priority of Devil Creek Ranch's water right is prior to the duly adjudicated dates of priority of Cedar Mesa Reservoir and Canal Company's water rights. As previously stated, the date of priority of Devil Creek Ranch's water right is April 1, 1886, and the dates of priority of Cedar Mesa Reservoir and Canal Company's water rights are January 29 and November 19, 1915. The provisions of Idaho Code Section 42-106 are dispositive:

As between appropriators, the first in time is first in right.

Deadwood Creek is located in Water District No. 47-C. As you know, Idaho Code Section 42-604 states that water districts, including Water District No. 47-C, are "instrumentalities of the state of Idaho for the purpose of performing the essential governmental function of distribution of water among appropriators under the laws of the state of Idaho." As you also know, Idaho Code Section 42-602 states the distribution of water "shall be accomplished . . . by watermasters."

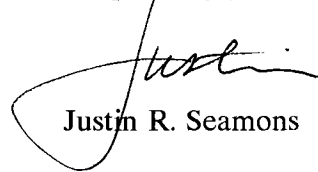
The watermaster of Water District No. 47-C is Jack Eastman. Idaho Code Section 42-607 confirms that Mr. Eastman has the "duty . . . to distribute the waters of the public stream or water supply comprising a water district among the several ditches taking water therefrom according to the prior rights of each respectively."

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Demand is respectfully made that the Department of Water Resources of the state of Idaho instruct Mr. Eastman to deliver the water to Devil Creek Ranch. Although Devil Creek Ranch has the right to use the water whenever it can beneficially use it, Devil Creek Ranch is willing to accept the delivery of the water for 1994 in accordance with the recommended Season of Use in the Snake River Basin Adjudication for Basin No. 51--that is, April 15 to October 15.

Thank you in advance for your cooperation. Please let me know if you have any questions or comments.

Respectfully yours,



Justin R. Seamons

Enclosures

cc: Devil Creek Ranch, Inc.

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51-B

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF OWYHEE

-----:-----

Jerome N. Helsey,	:	
	:	
Plaintiff,	:	
	:	
vs,	:	
	:	DECREE
William Turner, J. E. Hawes,	:	
	:	
Lincoln Curtiss, Walter Parsons,	:	
	:	
Fannie M. Curtis and George W.	:	
	:	
Curtis,	:	
	:	
Defendants.	:	

WHEREAS, a complaint has been filed in the above entitled court by the above named plaintiff, praying for a decree of this court apportioning the waters of Deadwood Creek to the several users thereof, and summons issued thereon, and

WHEREAS, the parties to said action and the said Fannie M. Curtis and George W. Curtis have appeared in said action and entered into a stipulation in the above entitled action and filed in the above entitled court, wherein and whereby it appears that the said Fannie M. Curtis and George W. Curtis are interested in the waters of said Deadwood Creek and make application to become parties defendants in said action and stipulate therein that they may become parties defendant in said action, and that the complaint and summons may be amended by adding the names of said Fannie M. Curtis and George W. Curtis as defendants therein by interlineation by the clerk of said court, and

WHEREAS, in and by said stipulation it is stipulated by each of the parties to said action by and between each and all of the other parties to said action as to the facts relating to the rights and priorities of each of the parties thereto, and further stipulated that the court may adopt such stipulation and the statements of facts and statements of rights set forth therein as the findings of fact and conclusions of law in the above entitled action, now, therefore, the above entitled matter coming before the court at Chambers upon the complaint and summons and the stipulation aforesaid and all the records and files in said action, and the court being fully advised as to the facts and the law from the records and files therein, and motion having been made by the plaintiff for a decree herein;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that Fannie M. Curtis and George W. Curtis are hereby made parties defendants in the above entitled action, and the

EXHIBIT A

...k of the above entitled court is hereby ordered to add their names to the summons and complaint herein as such parties, as an amendment thereof.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the stipulation on file herein, signed by all of the parties to said action including the said Fannie M. Curtis and George W. Curtis, stipulating as to the facts and legal rights of the respective parties involved herein, be, and the same is hereby adopted as the findings of fact and conclusions of law of the court in the above entitled action.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that Jerome N. Helsley, the plaintiff herein, be, and he is hereby given the right to the use for irrigation and domestic purposes of three cubic second feet of the waters of Deadwood Creek, during each irrigation season for the irrigation of one hundred and fifty acres of land lying within the following legal subdivisions, to-wit: The Southeast quarter of the southwest quarter ($SE\frac{1}{4}SW\frac{1}{4}$) and the southwest quarter of the southeast quarter ($SW\frac{1}{4}SE\frac{1}{4}$) of section eighteen (18); the west half of the northeast quarter ($W\frac{1}{2}NE\frac{1}{4}$) and the north half of the southeast quarter ($N\frac{1}{2}SE\frac{1}{4}$) of section nineteen (19), and the north half of the southwest quarter ($N\frac{1}{2}SW\frac{1}{4}$) of section twenty (20), all in township fifteen (15) south, range twelve (12) east of the Boise Meridian, in Owyhee County, State of Idaho, said water to be diverted at the present point of diversion located 1580 feet north, 68 degrees and 56 minutes east from the quarter corner on the south line of said section twenty, township 15 south, range 12 east of said Boise Meridian, said right of use and priority to date from April 1st, 1886, and to be the first right upon said stream, said water to be measured at the point of diversion aforesaid.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, That said defendants William Turner and J. E. Hawes, be, and they are hereby given the right to the use, for irrigation and domestic purposes, of forty-seven fiftieths of a cubic second foot (47 inches) of the waters of said Deadwood Creek, during each irrigation season, for the irrigation of forty seven acres of land lying on the west side of said creek and within the following legal subdivisions, to-wit: the southwest quarter of the northwest quarter ($SW\frac{1}{4}NW\frac{1}{4}$) and the west half of the southwest quarter ($W\frac{1}{2}SW\frac{1}{4}$) of section twenty-eight (28) and the northwest quarter of the northwest quarter ($NW\frac{1}{4}NW\frac{1}{4}$) of section thirty-three (33). all in township fifteen (15) south, range twelve (12) east of the Boise Meridian in Owyhee County, State of Idaho, said water to be diverted at the present point of diversion located south 20 degrees 50 minutes east 2350 feet from the corner of section 28, 29, 32, 33 in Tp. 15 S. R. 12 east of the

Boise Meridian in said Owyhee County, said right of use and priority to date from September 1st, 1902, said right to be the second right on said Deadwood creek, and said water right to be measured at the point of diversion aforesaid.

1 0141 IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that defendants Lincoln Curtis and Fannie M. Curtis, be, and they are hereby given the right to the use, for irrigation and domestic purposes, of two and fifteen-fiftieths ($2 \frac{15}{50}$) cubic second feet (or 115 inches) of the waters of said Deadwood Creek, during each irrigation season, for the irrigation of one hundred and fifteen acres lying in the following subdivisions, to-wit: Twenty inches to irrigate twenty acres in the west half of the northwest quarter ($W\frac{1}{2}NW\frac{1}{4}$) and thirty five inches to irrigate thirty five acres in the southwest quarter of the southeast quarter of section thirty-two, township fifteen south, range twelve east of the Boise Meridian, and forty inches to irrigate forty acres in the east half of the northeast quarter and twenty inches to irrigate twenty acres in the northwest quarter of the northeast quarter of section five in township sixteen south, range twelve east of the Boise Meridian, all in said Owyhee County, State of Idaho, said water to be diverted at the present point of diversion at said Deadwood Creek, said right of use and priority to date from August 25th, 1908, and be the third right upon said Creek, said water to be measured at the point of diversion aforesaid.

1 0142 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED, That defendant Walter Parsons, be, and he is hereby given the right to the use, for irrigation and domestic purposes, of four-fifths ($\frac{4}{5}$) of one cubic second foot (or forty inches) of the waters of said Deadwood Creek, during each irrigation season, for the irrigation of forty acres of land lying within the following legal subdivisions, to-wit: The south half of the southeast quarter ($S\frac{1}{2}SE\frac{1}{4}$) of section twenty (20), the northeast quarter of the northeast quarter ($NE\frac{1}{4}NE\frac{1}{4}$) of section twenty-nine (29) and the northwest quarter of the northwest quarter ($NW\frac{1}{4}NW\frac{1}{4}$) of section twenty-eight (28), all in township fifteen (15) south, range twelve (12) east of the Boise Meridian, in Owyhee County, State of Idaho, said water to be diverted at the present point of diversion at said Deadwood Creek; said right of use and priority to date from January 21st, 1911, and to be the fourth right upon said Deadwood Creek; such water to be measured at the point of diversion aforesaid.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED, That defendant George W. Curtis, be, and he is hereby given the right to the use, for irrigation and domestic purposes, of four-fifths ($4/5$) of one cubic second foot (or forty inches) of the waters of said Deadwood Creek, during each irrigation season, for the irrigation of forty acres of land lying within the following subdivisions, to-wit: Twenty inches to irrigate twenty acres in the southeast quarter of the southwest quarter; ten inches to irrigate ten acres in the northeast quarter of the southwest quarter; and ten inches to irrigate ten acres in the southeast quarter of the northwest quarter; all in section thirty-two (32), township fifteen south, range twelve (12) east of the Boise Meridian, in said Owyhee County, State of Idaho; said water to be diverted at the present point of diversion at said Deadwood Creek; said right of use and priority to date from August 14, 1914, and to be the fifth right upon said Deadwood Creek; said water to be measured at the point of diversion aforesaid.

IT IS FURTHER ORDERED that no costs shall be assessed against or in favor of any party or parties to this action.

It is further ordered that within three months from the date of this decree, each of the parties to this action having rights to water adjudicated herein, shall construct at the point where the water of each is diverted from said Deadwood Creek, a measuring device for the measurement of such water, to be built of such material and in accordance with such specifications as is provided by the State Engineer of the State of Idaho for such purpose.

Dated this 14th day of August, A. D. 1915.

At Chambers, Boise City, Ada County, Idaho

Charles P. McCarthy,

Judge of the above entitled court.

Indorsement---In the District Court of the Third Judicial District of the State of Idaho, in and for the County of Owyhee. Jerome N. Helsley, Plaintiff, vs. William Turner et al Defenant.---Decree--- Filed Aug 18 1915.---
J. S. St Clair, Clerk.---George Herriott, Attorney for Plaintiff.

C E R T I F I C A T E

State of Idaho, :
: --33.
County of Owyhee :

I, J. S. ST Clair, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Owyhee, do hereby certify that the foregoing writing (Decree in re: Jerome N. Helsley, Plaintiff, vs. William Turner et al., Defendants,) has been carefully compared by me with the original of the same remaining on file in my office, whereof it purports to be a copy, and that it is a true and exact copy thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 27th day of August, 1915.

/s/ J. S. St Clair

Clerk.

FILED
A.M. 4:30 P.M.
AUG 23 1993
BARBARA JAYO, CLERK
~~JOANN McDANIEL~~
Deputy Clerk

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2 JOHN S. RITCHIE
3 COLEMAN, RITCHIE & ROBERTSON
4 Attorneys at Law
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7 Twin Falls, ID 83303-0525
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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF OWYHEE

DEVIL CREEK RANCH, INCORPORATED
an Idaho corporation,

Case No. 5032

Plaintiff,

vs.

JUDGMENT

CEDAR MESA RESERVOIR AND CANAL
COMPANY, an Idaho corporation,

Defendant.

This matter came on regularly for hearing by telephone conference call on Friday, July 2, 1993, at 1:15 o'clock p.m., on the Motion to Dismiss filed by the defendant. Oral argument was presented to the Honorable Jim R. Doolittle, District Judge, in support of the Motion to Dismiss by John S. Ritchie of the firm of Coleman, Ritchie & Robertson, attorney for the defendant, and in opposition to the Motion to Dismiss by Justin R. Seamons of the firm of Rosholt, Robertson & Tucker, attorney for the plaintiff. The

1 Court took the matter under advisement and subsequently entered an
2 Order on Motion to Dismiss on July 14, 1993.

3 NOW, THEREFORE, in consideration of the files and records
4 contained in this action and in conformance with the Order on Motion
5 to Dismiss;

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

7 1. The defendant's Motion to Dismiss is denied as to that
8 part of the claim set out in paragraph 25 of the plaintiff's
9 Verified Complaint, and paragraph 1 of the Requested Relief in the
10 Verified Complaint, alleging that the February 16, 1925, Decree in
11 the Owyhee County case of Grandview Irrigation District, plaintiff,
12 v. Bruneau Buckaroo Cooperative Ditch Company, defendant, et al.,
13 "is invalid, unenforceable, void, and non-binding with respect to
14 Devil Creek Ranch". That claim of the plaintiff is not barred by
15 the doctrine of res judicata and Declaratory Judgment that the
16 plaintiff is not bound by that Decree is hereby entered in favor of
17 the plaintiff and against the defendant.

18 2. The Motion to Dismiss is granted as to all other
19 issues in the plaintiff's Verified Complaint because the Court does
20 not have subject matter jurisdiction of those claims based upon the
21 June 16, 1993, decision of the Idaho Supreme Court in the case of
22 Young Harvey Walker v. Big Lost River Irrigation District, Supreme
23 Court No. 19792. Specifically dismissed are the plaintiff's claims
24 contained in paragraph 25 of the Verified Complaint that "Devil
25 Creek Ranch is legally and lawfully entitled to use its water from
26 Deadwood Creek at any time that it can put the water to beneficial

1 use, irrespective of the foregoing May 15th irrigation start date
2 . . ." and claims contained in paragraph 2 of the Requested Relief
3 in the Verified Complaint wherein the plaintiff seeks "Judgment that
4 Devil Creek Ranch is legally and lawfully entitled to use its
5 decreed right to three cubic feet of water per second of time from
6 Deadwood Creek at any time that it can put the water to beneficial
7 use". The Answer of the defendant and specifically the Second
8 Affirmative Defense, collateral estoppel, and the Third Affirmative
9 Defense, laches, asserted by the defendant in its Answer denied
10 those claims and put them at issue. The Verified Complaint is
11 hereby dismissed as to those claims given the Court's lack of
12 subject matter jurisdiction to adjudicate the claims and the
13 defenses to the claims.

14 3. Since both parties have prevailed as to some, but not
15 all, of their claims, neither party is entitled to, or awarded,
16 costs or attorney's fees.

17 DATED this 30th day of August, 1993.

18
19 JIM R. DOOLITTLE
20 JIM R. DOOLITTLE, District Judge
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1
2 CERTIFICATE OF MAILING

3 I hereby certify that on the 18th day of
4 August, 1993, I served the foregoing proposed JUDGMENT by
5 causing to be deposited a copy thereof in the post office at Twin
6 Falls, Idaho, enclosed in an envelope with postage prepaid,
7 addressed to the following:

8 Justin R. Seamons
9 Rosholt, Robertson & Tucker
10 Attorneys at Law
11 PO Box 1906
12 Twin Falls ID 83303-1906

13 
14 _____
15 JOHN S. RITCHIE
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