

RECEIVED

BEFORE THE DEPARTMENT OF WATER RESOURCES

JUN 06 1994

OF THE

STATE OF IDAHO

IN THE MATTER OF REQUIRING MEASURING DEVICES)
)
 AND ORDERING WATERMASTER CONTROL OVER ALL)
) ORDER
 HEADGATES, CONTROLLING WORKS AND OUTLET GATE)
)
 CONTROLS ON DEADWOOD, DEVIL AND CEDAR CREEKS)
)
 WHICH COMPRISE WATER DISTRICT 47C.)
)

After consultation with the watermaster of Water District no. 47C, and a field inspection by IDWR staff, the Department finds that inadequate measuring devices and lockable controlling works presently exist in Water District 47C.

Section 42-701, Idaho Code, provides:

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 Deadwood Creek, Devil Creek, Cedar Creek and their tributaries shall install temporary measuring devices and temporary controlling works of a type acceptable to the Department not later than 15 days from the mailing date of this order.

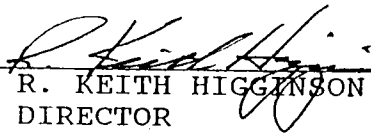
2. Those water users identified in Attachment A of this order diverting water from Deadwood Creek, Devil Creek, Cedar Creek and their tributaries shall install permanent measuring devices and permanent lockable controlling works of a type acceptable to the Department prior to the 1995 irrigation season.

3. If adequate temporary measuring devices are not installed pursuant to this order for the 1994 irrigation season, the watermaster shall estimate diversion flows, and then adjust and lock any temporary or permanent controlling works from Deadwood, Devil and Cedar Creeks according to these estimates and rights of prior appropriation. If adequate controlling works are not installed in 1994, the Department may take action to seek civil

penalties of up to \$100 per diversion per day.

4. The watermaster shall shut off and refuse to deliver water from Deadwood Creek, Devil Creek, Cedar Creek and their tributaries to any water user identified in Attachment A who does not have adequate permanent lockable controlling works and a measuring device after the start of the 1995 irrigation season. 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 26TH day of MAY, 1994


R. KEITH HIGGINSON
DIRECTOR

ATTACHMENT A

Devil Creek Ranch, Inc.
c/o Roland Patrick
Rogerson, ID 83302

William and Mary Drown
P.O. Box 1174
Lamoille, NV 89828

Swan Land & Livestock Co.
House Creek Ranch
Rogerson, ID 83302

Morris Guerry
653 E 3800 N
Castleford, ID 83321

Gerald Tews
Rt. 1
Filer, ID 83328