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Department of Water Resources

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April 6, 1995

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

Re: Application for Use and Control of Water

Dear Mr. Luke:

I represent Devil Creek Ranch, Inc. The predecessor of Devil Creek Ranch, Inc. was Jerome Helsey. Mr. 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 that is 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).

A court adjudicated Mr. Helsey's right in 1915. The name of the case was Helsey v. Turner, (3rd Jud. District of Idaho Aug. 14, 1915). A copy of the decree is attached to the letter that I sent to you on April 5, 1994. The date of priority of Mr. Helsey's right was April 1, 1886. Mr. Helsey's immediate successor was Karl D. Patrick; its current successor is Devil Creek Ranch, Inc., the President of which is Mr. Patrick's son, Rolland.

The Grand View Irrigation District filed a complaint in 1920, seeking the adjudication of its right to use 150 cubic feet of water per second from 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 several 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 each year from October 1 to May 15. The dates of priority of its 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, Inc. filed a complaint against Cedar Mesa Reservoir and Canal Company on June 18, 1991. See Devil Creek Ranch, Inc. v. Cedar Mesa Reservoir & Canal Co., (3rd Jud. District of Idaho June 18, 1991). The complaint alleged, in pertinent part, that the decree in 1925 was invalid and unenforceable with respect to Devil Creek Ranch, Inc. and that Devil Creek Ranch, Inc. 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, Inc. or Cedar Mesa Reservoir and Canal Company had the right to use the water. The reason was straightforward: The court stated that it did not possess the requisite jurisdiction to determine whether Devil Creek Ranch, Inc. or Cedar Mesa Reservoir and Canal Company had the right to use the water because of the Snake River Basin Adjudication.

The court in the Snake River Basin Adjudication has not yet determined whether Devil Creek Ranch, Inc. or Cedar Mesa Reservoir and Canal Company has the right to use the water; in fact, the Department of Water Resources of the state of Idaho has not yet issued its report of the applicable basin--that is, Basin No. 51. The purpose of this letter is not to speculate about the outcome of this determination, but to request the delivery of the water to Devil Creek Ranch, Inc. in the meantime.

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 streams . . . in the state to the canals, ditches, pumps and other facilities therefrom The director **MUST** execute the laws relative to the water in accordance with rights of prior appropriation as provided in s Idaho Code.

(Emphasis added.)

NOTE: This section amended somewhat in 1994

The director's duty to deliver the water to Devil Creek Ranch, Inc. is _____ the date of priority of Devil Creek Ranch, Inc.'s right is prior to the dates of priority of Cedar Mesa Reservoir and Canal Company's rights. As previously stated, the date of priority of Devil Creek Ranch, Inc.'s right is April 1, 1886, and the dates of priority of Cedar Mesa Reservoir and Canal Company's 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. Idaho Code Section 42-604 states that water districts, including Water District No. 47-C, are "instrumentalities of the state of Idaho

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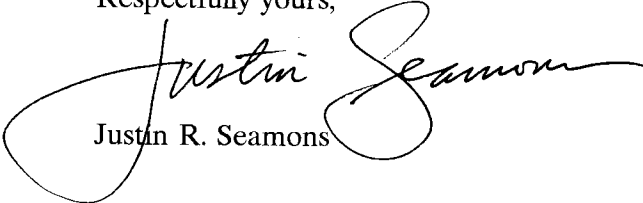
for the purpose of performing the essential governmental function of distribution of water among appropriators under the laws of the state of Idaho." Idaho Code Section 42-602 states that the distribution of water "shall be accomplished . . . by watermasters."

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."

Devil Creek Ranch, Inc. respectfully requests that the Department of Water Resources of the state of Idaho instruct Mr. Eastman to deliver the water to Devil Creek Ranch, Inc. The basis of this request is the "necessity for the use and control of the waters" of Water District No. 47-C. See Idaho Code Section 42-608. Please note that Devil Creek Ranch, Inc. needs the water for purposes of irrigation. Although Devil Creek Ranch, Inc. has the right to use the water whenever it can beneficially use it, Devil Creek Ranch, Inc. is willing to accept the delivery of the water for 1995 in accordance with the prospective Season of Use in the Snake River Basin Adjudication for Basin No. 51--that is, April 15 to October 15.

Please let me know if you have any questions or comments.

Respectfully yours,


Justin R. Seamons

cc: Devil Creek Ranch, Inc.

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