

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, CONTROLLING WORKS AND OUTLET GATE ) ORDER REQUIRING  
CONTROLS ON THE BEAR RIVER AND ITS TRIBUTARIES ) MEASURING  
WHICH COMPRISE WATER DISTRICT 11. ) DEVICES

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This matter having come before the Idaho Department of Water Resources (Department) as a result of a request from the watermaster of Water District 11, the Department finds as follows.

FINDINGS OF FACT

1. On April 30, 1992 the Department issued an order requiring measuring devices and lockable controlling works be installed on or before May 10, 1992 on Bear River diversions commonly known as the Sorensen and Lloyd Ditches. Both ditches are included within Water District 11.

2. On May 8, 1992 the Department received a request from Mr. A. Bruce Larson, attorney for the water right holder who uses the Sorensen and Lloyd Ditches, for an extension of time to install the required devices. The petition claimed that the extension was needed because the diversion works were in a state of disrepair due to the neglect of the current owner; that the Department's order did not allow petitioner sufficient time in which to construct a device as required by the Department; and that petitioner had been singled out from other users in the same area and required to construct measuring devices that are not on other ditches in the same area.

3. On May 8, 1992, the Department contacted the watermaster of Water District 11 concerning the petitioners current use of water in the Sorensen and Lloyd Ditches and petitioners claim that other diversions in the area did not have suitable measuring devices. The watermaster stated that the petitioner is currently diverting water through the Sorensen and Lloyd Ditches and that there is no means in which to measure water in these diversions. The watermaster further stated that the water diverted under the water rights currently being diverted into the Sorensen and Lloyd Ditches needed to be regulated due to the limited supply of natural flow within this reach of the Bear River. Furthermore, the watermaster stated that other diversions in the nearby area and this reach of the Bear River are equipped with suitable measuring devices.

4. Records of the Department confirm that the natural flow of the Bear River reach containing the Sorensen and Lloyd Ditches is limited. These records also show that all of the natural flow in this reach is presently being used and that water rights in this reach are being regulated according to priority.

5. Installation of measuring devices for all diversions on the Bear River is essential for control and regulation of water rights according to priority dates.

#### CONCLUSIONS OF LAW

1. Section 42-701, Idaho Code, provides in part:

**42-701. Maintenance by appropriators--Procedure upon failure to maintain.--** The appropriators or users of any public waters of the state of Idaho shall maintain to the satisfaction of the department of water resources suitable headgates and controlling works at the point where the water is diverted, which shall be of

such construction that it can be locked and kept closed by the water master or other officer in charge, and shall also be of such construction as to regulate the flow of water at the diversion point and such appropriator shall construct and maintain when required by the department, a rating flume or other measuring device at such point as is most practical in such a canal or ditch for the purpose of assisting the watermaster or department in determining the amount of water that may be diverted into said ditch from the stream. Plans for such headgates, rating flumes or other measuring devices shall be approved by the department of water resources: provided, that should any appropriator or user of the public waters of the state of Idaho neglect or refuse to construct or maintain such headgates, controlling works or measuring devices, upon receiving ten (10) days notice from the department of water resources within which to begin to remedy such defects as exist in accordance with said notice, then the department of water resources may order the duly qualified and acting water master of the water district to shut off and refuse to deliver at the point of diversion, the water claimed by such appropriator or user until he does construct and maintain such headgates, controlling works or measuring devices or remedy the defects which exist: provided that such 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.

2. Proper measuring devices have not been installed on said diversions.

3. The water currently being diverted at the diversions in question has the potential to injure senior water right holders.

4. The request for extension of time to install measuring devices is inappropriate.

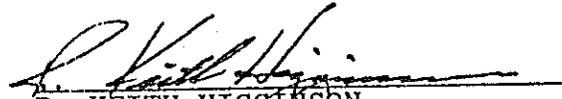
5. Section 42-701, Idaho Code, authorizes the Department to order the installation of measuring devices, head gates and controlling works and to shut off and cease to deliver water at the point of diversion, if upon receiving 10 days notice the appropriator neglects to install such devices.

ORDER

THEREFORE IT IS HEREBY ORDERED THAT:

1. The request for extension of time in which to install measuring devices is denied.
2. The Watermaster shall have complete control of the controlling works and headgates of said diversion.
3. No water shall be delivered through the Sorensen and Lloyd Ditches until said diversions have adequate measuring devices as determined by the Watermaster.

Dated this 12<sup>TH</sup> day of May, 1992

  
R. KEITH HIGGINSON  
DIRECTOR