

3/95

**From:** Kerry Carpenter  
**To:** LSIM  
**Subject:** DISTRIBUTION OF DEVIL CREEK, TRIBUTARY TO BEAVER RIVER

Although it appears at present there will be abundant water to fight about during the coming summer on the Beaver system, I have been requested to provide some specific instruction to the Commish related to distribution on a pro rata basis. Last summer I sent a memo related to general procedures (See G:\KERRY\DEVILCR.MMO), and have now prepared a draft memo more specific to Devil Creek (See G:\KERRY\DEVLCR2.MMO).

Whereas I have been accused of malfeasance and incompetence in this regard and even threatened with litigation (scary business), would you please review these documents before anything is officially issued? I would appreciate any other advice you may wish to offer.

**CC:** JMABEY

# PRELIMINARY DRAFT

## D R A F T M E M O R A N D U M

TO: Ronnie Roberts, Beaver River Distribution Commissioner  
FROM: Kerry Carpenter, Southwestern Region  
DATE: 10 March 1995  
RE: Distribution of waters of Devil Creek

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We are advised that there may be continued disputes among the users on Devil Creek this coming irrigation season as there were last year. At the request of Clark Smith, we are providing this memo for the purpose of giving you some specific instruction and information as to the distribution of the decreed rights. We would also refer you to a memo provided last year and dated 25 August 1994 which gave some general instruction as to the procedures and statutes utilized in distribution of surface waters.

The subject rights are described in the 1931 Beaver River Decree and amendments as follows:

<u>AWARD NO.</u>	<u>WUC NO(S).</u>	<u>PRIORITY</u>	<u>FLOW</u>	<u>REMARKS</u>
67	77-636	1870	1.81 CFS	Amendment of 1/11/1933
68	77-626	1870	0.50 CFS	Amendment of 1/11/1933
69	77-640,1240	1870	0.50 CFS	Amendment of 1/11/1933
70	77-644,1687	1870	0.60 CFS	Amendment of 12/7/1936
71	77-644,1687	1870	0.40 CFS	Amendment of 12/7/1936
72	77-642	1890	0.75 CFS	Secondary to all others
87	77-692	1870	3.00 CFS	Beaver River & Devil Creek <sup>1</sup>

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<sup>1</sup> This award is somewhat complicated. We interpret the intent of the Decree to provide that, of the 10 CFS awarded, no more than 7 CFS can be taken from the Beaver River with the remaining 3 CFS being a "primary" (1870 priority) right on Devil Creek. If there is less than 7 CFS available in the Beaver River, the deficiency can be taken from Devil Creek, but only if that deficiency is available after all other rights on Devil Creek have been satisfied.

The current owners of these rights are:

<u>WATER RIGHT NO(S.)</u>	<u>CURRENT OWNER(S)</u>
77-636	Ira Yardley
77-626	Ira Yardley
77-640,1240	Ira Yardley, Glen B. Hutchings
77-644,1687	Mark & Madeline Truman, Duane Yardley
77-642	Wayne A. Smith
77-692	Barton Ditch Association

As you know, the 1890 right belonging to Wayne Smith would only be delivered if all the primary (1870) rights were fully satisfied.

In the event there is not sufficient flow to satisfy all the primary rights, distribution on a pro rata basis - either by "time" or "flow" - would be based on the following percentages:

<u>WATER RIGHT NO(S).</u>	<u>FLOW</u>	<u>% OF 1870 PRIORITY RIGHTS</u>
77-636	1.81 CFS	26.58 % ---
77-626	0.50 CFS	7.34 %   - 41.26% (Yardley)
77-640,1240	0.50 CFS	7.34 % ---
77-644,1687	1.00 CFS	14.68 %
77-692	3.00 CFS	44.06 %
TOTAL	6.81 CFS	100.00 %
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We would presume that if this type of division of the water becomes necessary this year or in the future, you could work with the water users to determine the best and most fair way to make the division, whether by taking the full stream in turns, by dividing the flow, or by some combination of these methods. We will assist you as needed in evaluating various options and in determining the placement and type of control and measurement devices that may be required.

### PRELIMINARY DRAFT