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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
1200 Sixth Avenue  
Seattle, Washington 98101

In the matter of: )  
)  
) DOCKET NO. CWA-10-2000-0127  
)  
HECKMAN RANCHES, INC. & )  
HECKMAN CATTLE CO. )  
)  
White Bird, Idaho, )  
)  
) REQUEST FOR INFORMATION  
Respondents. ) AND COMPLIANCE ORDER  
)  
\_\_\_\_\_ )

The following FINDINGS AND CONCLUSIONS are made and ORDER issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Sections 308 and 309 of the Clean Water Act (“Act”), 33 U.S.C. §§ 1318 and 1319. This authority has been delegated to the Regional Administrator, Region 10, and has been duly redelegated to the undersigned Director, Office of Water, Region 10.

**I. STATUTORY AUTHORITY AND FACTUAL BACKGROUND**

1. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the “discharge of a pollutant” by any person to navigable waters of the United States, except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit issued

1 pursuant to Section 402 of the Act, 33 U.S.C. § 1342. Section 504(12) of the Clean Water Act, 33  
2 U.S.C. § 1362(12), defines the term “discharge of a pollutant” to include “any addition of any  
3 pollutant to navigable waters from any point source.”

4 2. Each of the Respondents is a corporation duly organized under the laws of the  
5 State of Idaho and therefore a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C.  
6 § 1362(5).

7 3. Respondents operate a beef cattle feeding operation that is located adjacent to the  
8 confluence of Price Creek and White Bird Creek in Idaho County, Idaho.

9 4. Respondents’ beef cattle feeding operation contains a number of unvegetated,  
10 fenced beef cattle pens and barns (“White Bird Creek Facility”) in which cattle are stabled or  
11 confined and fed or maintained for a total of 45 days or more in any 12-month period.

12 5. Neither crops, vegetation, forage growth, nor post-harvest residues are sustained  
13 over any portion of the White Bird Creek Facility.

14 6. The White Bird Creek Facility is an “animal feeding operation” as that phrase is  
15 defined in 40 C.F.R. § 122.23(b)(1).

16 7. On March 3, 2000, EPA conducted an aerial overflight of the White Bird Creek  
17 Facility. At the time of this overflight, the White Bird Creek Facility confined more than 300  
18 slaughter or feeder cattle, and these animals had direct access to White Bird Creek and Price  
19 Creek.

20 8. On March 15, 2000, EPA conducted an NPDES inspection of the White Bird Creek  
21 Facility.

22 9. At the time of the March 15, 2000 NPDES inspection, the White Bird Creek Facility  
23 confined more than 300 slaughter or feeder cattle.

24 10. At the time of the March 15, 2000 NPDES inspection, animal wastes and other  
25 pollutants were being discharged directly into White Bird Creek and Price Creek. White Bird  
26 Creek and Price Creek originate outside of and pass over, across, or through the White Bird Creek  
27 Facility and come into direct contact with the animals confined in the White Bird Creek Facility.  
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1 11. The White Bird Creek Facility does not discharge only in the event of a 25-year,  
2 24-hour storm event.

3 12. The White Bird Creek Facility is a “concentrated animal feeding operation” as that  
4 phrase is defined in 40 C.F.R. Part 122, Appendix B and used in Section 502(14) of the Act, 33  
5 U.S.C. § 1362(14).

6 13. White Bird Creek and Price Creek are tributaries of the Salmon River. The Salmon  
7 River is a tributary of the Snake River, which is an interstate water.

8 14. White Bird Creek and Price Creek are each “navigable waters” as defined by  
9 Section 502(7) of the Act, 33 U.S.C. § 1362(7), and “waters of the United States” within the  
10 meaning of 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

11 15. The animal wastes discharged from the White Bird Creek Facility were and  
12 contained “pollutant[s]” within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6).

13 16. The animal waste discharges described above constituted “discharge[s] of  
14 pollutants” within the meaning of Section 502(12) of the Act, 33 U.S.C. § 1362(12), from a “point  
15 source” within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

16 17. Respondents have not obtained coverage under an NPDES permit for the  
17 discharges from the White Bird Creek Facility.

18 18. The discharges of pollutants described above are unauthorized discharges of  
19 pollutants to waters of the United States and have placed Respondents in violation of Section  
20 301 of the Act, 33 U.S.C. § 1311(a).

21  
22 **II. ORDER**

23 Based upon the foregoing FINDINGS, and pursuant to Sections 308 and 309 of the Clean  
24 Water Act, 33 U.S.C. §§ 1318 and 1319, it is hereby ORDERED as follows:

25 19. Immediately upon receipt of this Order, Respondents shall cease all discharges of  
26 pollutants to navigable waters from the White Bird Creek Facility including, but not limited to,  
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1 discharges related to direct access of cattle to any surface waters, and discharges related to land  
2 application, confinement areas, silage piles, or waste storage ponds.

3           20. Immediately upon receipt of this Order and continuing for a period of one year from  
4 the date of this Order, Respondents shall conduct daily visual monitoring of all potential sources  
5 of pollutant discharges to navigable waters from the White Bird Creek Facility. Monitoring  
6 locations shall include, but are not limited to, areas with direct access of cattle to any surface  
7 waters, areas of potential or actual discharges from fields subject to land application of wastes,  
8 confinement areas, silage piles, and waste storage ponds. Respondents shall develop a  
9 monitoring log containing the following information for each area monitored: the date and time of  
10 the visual observation, an indication of whether or not a discharge was observed, and the initials  
11 of the person making the observation. Respondents shall maintain these monitoring records at  
12 the White Bird Creek Facility for at least three years after the date of this Order and shall  
13 immediately make these records available for inspection or copying upon request by an  
14 authorized representative of EPA or the State of Idaho. The operator of the White Bird Creek  
15 Facility subject to this Order shall know the location of the records.

16           21. For each discharge from the White Bird Creek Facility which enters navigable  
17 waters, Respondents shall:

- 18           a. Sample the discharge within two (2) hours of observing the discharge and  
19                 submit the sample to a state-certified laboratory to be analyzed for fecal  
20                 coliform;
- 21           b. Prepare and submit to EPA a written Report of Discharge containing the  
22                 following information: 1) date and time of the discharge; 2) location of the  
23                 discharge; 3) origin of the discharge; 4) sample analysis results; and 5)  
24                 steps taken to prevent reoccurrence of the discharge; and
- 25           c. Provide the Report of Discharge to EPA within ten (10) days of the  
26                 discharge.

1           22.    In the event that Respondents are unable to comply with any requirement of this  
2 Order, Respondents shall, within ten (10) days of becoming aware of such inability, provide the  
3 following:

- 4           a.    A summary of the specific reasons why Respondents are unable to comply  
5                with the requirement;
- 6           b.    A summary of all actions taken by Respondents or others that  
7                Respondents allege demonstrate “good faith efforts” to comply with the  
8                requirement; and
- 9           c.    The date by which Respondents expect to comply with the requirement.

10           23.    Submissions required by this Request for Information and Compliance Order shall  
11 be submitted to:

12                           U.S. Environmental Protection Agency, Region 10  
13                           1200 Sixth Avenue, Mail Stop OW-133  
14                           Seattle, Washington 98101  
15                           Attn: Chae Park

16           24.    Pursuant to 40 C.F.R. §§ 2.201 - 2.311, Respondents may assert a business  
17 confidentiality claim covering any portion of the submitted information which is entitled to  
18 confidential treatment and which is not effluent data. For any such claim, describe the basis for  
19 the claim under the applicable regulation. Any material for which business confidentiality is  
20 claimed should be placed in a separate envelope labeled, “Confidential Business Information.”  
21 Failure to assert a claim in the manner described in 40 C.F.R. § 2.203(b) allows EPA to release the  
22 submitted information to the public without further notice. EPA may disclose information subject  
23 to the business confidentiality claim only to the extent set forth in the above-cited regulations.  
24 Special rules governing information obtained under the Clean Water Act appear in 40 C.F.R. §  
25 2.302.

26           25.    Nothing in this Order shall be construed to relieve Respondents of the requirement  
27 to obtain and comply with any NPDES permit or other applicable requirements of other federal,  
28 state, or local law. EPA reserves the right to take enforcement action as authorized by law for any

1 violation of this Order, and for any future or past violation of any permit or other applicable legal  
2 requirement.

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5 **III. SANCTIONS**

6 Notice is hereby given that violation of, or failure to comply with, any of the provisions of  
7 the foregoing Order may subject Respondents to (1) civil penalties of up to \$27,500 per day for  
8 each violation, pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d); (2) civil action in  
9 federal court for injunctive relief, pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b); or (3)  
10 administrative penalties of up to \$11,000 per day for each violation, pursuant to Section 309(g) of  
11 the Act, 33 U.S.C. § 1319(g).

12  
13 Dated this \_\_\_\_ day of \_\_\_\_\_, 2000

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16 \_\_\_\_\_  
17 Randall F. Smith  
18 Director  
19 Office of Water  
20 Region 10