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Department of Water Resources

**NOTICE OF IDWR NON-CONCURRENCE
IN BASIN 61 SUBCASE SETTLEMENTS
SUBMITTED WITHOUT IDWR SIGNATURE**

NOTICE OF IDWR NON-CONCURRENCE IN BASIN 61 SUBCASE SETTLEMENTS SUBMITTED WITHOUT
IDWR SIGNATURE - Page 1

IDWR REPORT REGARDING
NON-CONCURRENCE WITH THE PARTIES' STIPULATIONS

IDWR submits this report as an explanation to the Court and the parties of its non-concurrence with the stipulations filed in the following Smith/Batrueel subcases:

61-293B – IDWR cannot concur with the parties' stipulation since it does not resolve the BLM's objection to the place of use element. However, it is IDWR's understanding that there is a Stipulation to Resolve the United States' objections to this water right that has yet to be finalized. It is further IDWR's understanding that this stipulation allows certain public lands to remain on this water right. Once the stipulation with the United States has been filed, IDWR will be able to concur with the place of use element as agreed upon by the parties.

Further, IDWR disagrees with the priority date. The priority date originally recommended by IDWR was a typographical error. The appropriate priority date as agreed upon by the parties and IDWR is August 1, 1898; this priority date is identified on the revised recommendation attached hereto and incorporated herein.

61-293C – See explanation concerning priority date for 61-293B above. In addition, the ownership of this water right has changed. Filed contemporaneously herewith is a Notice of Completed Administrative Proceeding that changes the ownership and revises the priority date to August 1, 1898. Although this subcase is an uncontested overlapping water right, correcting the priority date that is based upon a typographical error is appropriate.

61-293D - See explanation concerning priority date for 61-293B above.

61-2000B - IDWR cannot concur with the quantity as specified under the purpose and period of use on the amended recommendation attached to the parties' stipulation. The quantity element under the purpose and period of use should be 2.056 cfs; the same quantity as listed under the quantity element of this water right. Also, a necessary remark was not included in "Other Provisions Necessary for Definition or Administration of This Water Right" pertaining to the lockable device. Attached hereto is a revised recommendation which is incorporated herein that properly lists these elements.

61-11921 – IDWR cannot concur with the parties' stipulation since it does not resolve the BLM's objection to the place of use element. However, as discussed above in water right number 61-293B, once the United States' stipulation is filed, IDWR will be able to concur with the place of use element as agreed upon by the parties.

IDWR further disagrees with the quantity element and the priority date. The quantity element should be 1.16 cfs based upon the agreed capacity of the ditch not 1.24 cfs. The attached recommendation properly lists the quantity element for this water right. The quantity element under the purpose and period of use should remain as reflected in the parties' stipulation with stockwater and domestic use being non-cumulative.

The appropriate priority date as agreed upon by the parties for this water right is July 31, 1898, and is identified on the revised recommendation attached hereto and incorporated herein.

CERTIFICATE OF MAILING

I certify that on October 25, 2002, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, Idaho 83303-2707

2. Copies to:

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 83720
Boise, ID 83720-0098

U.S. Department of Justice
Environment and Natural
Resources Division
550 West Fort Street, Box 33
Boise, ID 83724-0663

Charles L. Honsinger
Ringert Clark, Chtd.
P.O. Box 2773
Boise, ID 83701
Attorney for Carlene Smith

Norman M. Semanko/Amy Chestnut
Barker, Rosholt, Simpson LLP
P.O. Box 2139
Boise, ID 83709
Attorney for Roger L. Jones and resh-
Pak, Inc.

Matt J. Howard
Attorney at Law
P.O. Box 190012
Boise, ID 83719

Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098



Signature of person or attorney mailing the form

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

STOCKWATER USE INCLUDES USE FOR SMALL DAIRY AND LAND
APPLICATION OF WASTE WATER WITHIN POU.

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 61-293D
NAME AND ADDRESS: CARLENE R SMITH
RT 1 BOX 420
GLENNS FERRY ID 83623

SOURCE: SAND SPRINGS GULCH TRIBUTARY: LITTLE CANYON CREEK

QUANTITY: 0.180 CFS
THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE SHALL NOT
EXCEED 13,000 GALLONS PER DAY.

PRIORITY DATE: 08/01/1898

POINT OF
DIVERSION: T05S R10E S18 NWSESE Injection Within ELMORE County
T05S R10E S18 NWSESE Rediversion Within ELMORE County
T05S R10E S18 NWSESE Within ELMORE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
STOCKWATER	1/01 12/31	0.040 CFS
IRRIGATION	3/15 11/15	0.180 CFS

PLACE OF USE: IRRIGATION Within ELMORE County
T05S R10E S19 NENW 40.0
STOCKWATER same as IRRIGATION

40 ACRES TOTAL

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 10 ACRES WITHIN THE
PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE
EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE
ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO
LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION
42-1412(6), IDAHO CODE.

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR
STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL
BENEFICIAL USE.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 61-2000B
NAME AND ADDRESS: CARLENE R SMITH
RT 1 BOX 420
GLENNS FERRY ID 83623

SOURCE: LITTLE CANYON CREEK TRIBUTARY: SNAKE RIVER

QUANTITY: 2.056 CFS
USE OF THIS RIGHT WITH RIGHTS 61-02000A, 61-07236A and 61-07236B IS LIMITED
TO A TOTAL COMBINED DIVERSION RATE OF 1.67 CFS.

PRIORITY DATE: 12/07/1903

POINT OF
DIVERSION: T05S R10E S5 SWSE Within ELMORE County
T05S R10E S8 NENWSW Within ELMORE County
T05S R10E S8 NWSWSW Within ELMORE County
T05S R10E S18 SESE Within ELMORE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
STOCKWATER	11/01 03/31	0.100 CFS
IRRIGATION	03/15 11/15	2.056 CFS

PLACE OF USE: STOCKWATER Within ELMORE County

T05S R10E S17	SWNW	T05S R10E S17	NWSW
T05S R10E S18	NESW		

IRRIGATION Within ELMORE County

T05S R10E S07	SESE	16.0	T05S R10E S08	SESW	16.0
T05S R10E S17	NWNW	39.0	T05S R10E S17	SWNW	40.0
T05S R10E S17	NWSW	21.0	T05S R10E S18	NENE	39.0
T05S R10E S18	NWNE	15.0	T05S R10E S18	SWNE	31.0
T05S R10E S18	SENE	39.0	T05S R10E S18	NESW	18.0

274 ACRES TOTAL

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 63 ACRES WITHIN THE
PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE
EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE
ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO
LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION
42-1412(6), IDAHO CODE.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

A lockable device subject to the approval of the Department shall be
maintained on the diverting works in a manner that will provide the
watermaster suitable control of the diversion.

RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT
TO SECTION 42-1425, IDAHO CODE.

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 61-11921
NAME AND ADDRESS: PAUL BATRUEL
RT 1 BOX 428
GLENNS FERRY ID 83623

MARY N BATRUEL
RT 1 BOX 426
GLENNS FERRY ID 83623

BATRUELS DAIRY
RT 1 BOX 426
GLENNS FERRY ID 83623-9756

SOURCE: SAND SPRINGS GULCH TRIBUTARY: LITTLE CANYON CREEK

QUANTITY: 1.160 CFS
THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE SHALL NOT EXCEED 13,000 GALLONS PER DAY.

PRIORITY DATE: 07/31/1898

POINT OF
DIVERSION: T05S R09E S12 SESE Within ELMORE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	03/15 11/15	1.160 CFS
DOMESTIC	01/01 12/31	0.060 CFS
STOCKWATER	01/01 12/31	0.020 CFS

PLACE OF USE: IRRIGATION Within ELMORE County

T05S R09E S13	NWNE	3.0	T05S R09E S13	SWNE	24.0
T05S R09E S13 Lot 2	SENE	16.0	T05S R09E S13	NENW	19.5
T05S R09E S13	NWNW	1.5	T05S R09E S13	SWNW	1.0
T05S R09E S13	SENE	19.0	T05S R09E S13	NESE	39.0
T05S R09E S13	NWSE	16.0	T05S R09E S13	SESE	13.0
T05S R10E S18	SENE	30.0	T05S R10E S18 Lot 3	NWSW	39.0
T05S R10E S18 Lot 4	SWSW	38.0	T05S R10E S18	NESE	17.0
T05S R10E S18	NWSE	40.0			

DOMESTIC Within ELMORE County

T05S R09E S13	SWNE	T05S R09E S13 Lot 2	SENE
T05S R10E S18 Lot 3	NWSW		

STOCKWATER same as DOMESTIC

316 ACRES TOTAL

USE OF THIS RIGHT WITH RIGHT NOS. 61-00293B, 61-00303B, 61-00304B, 61-00308 61-04132 AND 61-10834 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 328 ACRES IN A SINGLE IRRIGATION SEASON.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 58 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.

THE QUANTITY OF WATER FOR STOCKWATER USE SHALL BE MEASURED AT THE POINT WHERE THE WATER ENTERS THE DIVERSION POND LOCATED IN T05S, R09E, S13, SENE.

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

DOMESTIC USE FOR 3 HOUSES.

STOCKWATER USE INCLUDES USE FOR SMALL DAIRY AND LAND APPLICATION OF WASTE WATER WITHIN POU.

RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.