

RECEIVED

OCT 25 2002

Department of Water Resources

Names of Parties Filing Document:

UNITED STATES OF AMERICA

BATRUEL DAIRY, MARY N.
BATRUEL AND PAUL BARTUEL

Attorneys' Names and Addresses:

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division

LARRY A. BROWN
Attorney, U.S. Dept. of Justice
General Litigation Section
Environment and Natural Resources Division
550 West Fort Street, MSC 033
Boise, Idaho 83724
Ph.: (202) 305-0435 FAX: (202) 305-0274

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA	)	Subcase Numbers: 61-00293B, 61-00303B,
	)	61-00304B, 61-00308, 61-10834, and
	)	61-11921
Case No. 39576	)	
	)	STIPULATION TO RESOLVE
_____	)	UNITED STATES' OBJECTIONS

The United States of America and Batruel Dairy, Mary N. Batruel, and Paul Batruel (hereinafter "Claimants") agree and stipulate to resolve United States Department of the Interior, Bureau of Land Management (hereinafter "BLM") objections to the above-captioned water right claims as follows:

STIPULATION

1. The United States and the Claimants agree that the Standard Forms 5, filed herewith, for Water Right Numbers 61-00303B and 61-00304B do not contain legal descriptions of public land.^{1/}

2. The United States and the Claimants agree and stipulate that the land encompassed by the following places of use described in the Standard Forms 5, filed herewith, for Water Right Numbers 61-00293B, 61-00308, 61-10834, and 61-11921 are public land managed by the BLM:

PLACES OF USE ON BLM

T.05S., R.09E., Section 13, NWNE, NWNW, SWNW, and NWSE

Claimants agree that Water Right Number 61-04132 shall not be decreed with public land places of use, except as provided for in this Stipulation.

3. The United States agrees that Claimants' agricultural use and irrigation of 21.5 acres of public land located within the places of use described in paragraph 2 is authorized by a Cooperative Wildlife Habitat-Farming Development Agreement (hereinafter "Land Use Authorization") between Claimants, the BLM, and the Idaho Department of Fish and Game, entered on December 1, 1999. The BLM agrees that Claimants may hold title to the water rights used for irrigation of the 21.5 acres of public land irrigated under the terms of the Land Use Authorization, *provided:* if the Land Use Authorization expires and is not renewed, or is terminated according to its terms, then the Claimants agree and stipulate to initiate a transfer pursuant to I.C. 42 §222 to move irrigated acres describing public land to privately owned lands; and the application for transfer shall be filed within 60 days of the date the Land Use

^{1/} In this document, the term "public land" means "any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the

**STIPULATION TO RESOLVE UNITED STATES' OBJECTIONS; SUBCASE NUMBERS:
61-00293B, 61-00303B, 61-00304B, 61-00308, 61-10834, and 61-11921**

Authorization expires or is terminated according to its terms. All costs incurred in seeking the transfer shall be borne by the Claimants.

4. The United States agrees and stipulates to cooperate in the transfer described in paragraph 3, and agrees not to claim or assert ownership of the water rights which are the subject of such transfer. The Claimants shall not assume title to any places of use which describe public land as a result of such transfer.

5. In the event the Idaho Department of Water Resources does not concur with the Standard Forms 5 referenced in paragraphs 1 and 2, and requires the place of use descriptions for the water rights be changed, Claimants agree that such change will not include acres on public land not authorized under a Land Use Authorization.

6. The Claimants recognize and agree that the BLM's decision to renew or not renew the Land Use Authorization is discretionary, and that renewal may or may not be approved by the BLM's authorized officer.

7. Claimants agree and stipulate that the United States shall be released and held harmless from any loss, injury, or damage should the Land Use Authorization expire and not be renewed, or is terminated according to its terms, or if the Idaho Department of Water Resources does not allow transfer of all acres describing public land to privately owned lands and any portion of the water rights are forfeited.

8. The parties agree that nothing in this stipulation forecloses future administrative or judicial action by the United States in the relief of, or as a consequence of, the unauthorized use of public land, including, but not limited to, actions for past rent, rehabilitation of used land, or trespass.

9. The parties agree that nothing in this stipulation shall prevent the BLM from administering the use of public land and its associated water rights in accordance with applicable law, including taking such administrative actions as modifying or terminating BLM-issued Land Use Authorizations.

10. This stipulation has been reached through good faith negotiations for the purpose of resolving legal disputes, including pending litigation. The parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest. This stipulation does not create a precedent for settlement of any other disputes or objections.

11. This stipulation was entered into and executed voluntarily by all the parties in good faith, and without any fraud, misunderstanding, overreaching, misrepresentation, duress, or undue influence.

12. The parties agree to bear their own costs and attorney fees.

CLAIMANTS:

BATRUEL DAIRY

MARY N. BATRUEL

PAUL BATRUEL

Mary N. Batruel 9-19-2002
Mary N. Batruel

DATED: 9-17-02

Paul Batruel
Paul Batruel



DATED: 9-19-2002

OBJECTOR:

UNITED STATES OF AMERICA

Larry A. Brown
LARRY A. BROWN *Fwp*
Of Attorneys for the United States

DATED: 10/22/02

(28)
1/23

CERTIFICATE OF SERVICE

I certify that on Oct 22, 2002, I served a true and correct copy of the foregoing **STIPULATION TO RESOLVE OBJECTIONS; SUBCASE NUMBERS: 61-00293B, 61-00303B, 61-00304B, 61-00308, 61-10834, and 61-11921** upon the following individuals by placing the document in the United States Mail in Washington D.C., postage paid, and addressed as follows:

U.S. Department of Justice
General Litigation Section
Environment and Natural Resources Division
550 West Fort Street, MSC 033
Boise, ID 83724

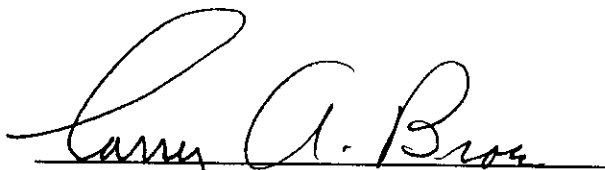
Charles L. Honsinger
Attorney at Law
Ringert-Clark
P.O. Box 2773
Boise, ID 83701

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83720-0098

Norman M. Semanko
Attorney at Law
205 N 10th St., Ste 530
Boise, ID 83702

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

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


Larry A. Brown