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Water Resources

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Attorney for Mary Batruel, Paul Batruel, and Batruel Dairy

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

Case No. 39576

) Subcase Nos. 61-02248B and 61-07189
)
) MOTION TO ALTER OR AMEND SPECIAL
) MASTER'S RECOMMENDATIONS
)
)
)
)

Mary Batruel, Paul Batruel, and Batruel Dairy, by and through their attorney of record, Matt J. Howard, Attorney at Law, hereby move this Court, pursuant to SRBA Administrative Order No. 1, Section 13a, for an order altering or amending the Special Master's recommendations in the above-captioned subcases. Specifically, Movants request the following amendments to the Special Master's recommendations:

- The recommendation for 61-02248B should be amended by striking out and deleting the remark under the quantity element, which reads "Use of this right with rights 61-

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07189 and 61-07224 is limited to a total combined diversion rate of 0.67 cfs and to a total combined annual diversion volume of 338 AF.”¹ A new remark should be inserted under the quantity element which reads “Use of this right with right no. 61-07189 is limited to a total combined diversion rate of 0.67 cfs and to a total combined annual diversion volume of 66 AF.”

- The recommendation for 61-07189 should be amended by striking out and deleting the remark under the quantity element, which reads “Use of this right with rights 61-02248B and 61-07224 is limited to a total combined diversion rate of 0.67 cfs and to a total combined annual diversion volume of 338 AF.” A new remark should be inserted under the quantity element which reads “Use of this right with right no. 61-02248B is limited to a total combined diversion rate of 0.67 cfs and to a total combined annual diversion volume of 66 AF.”
- The recommendation for 61-07189 should be further amended to limit the period of use to “08-15 to 07-01.”

The grounds for this motion are as follows:

1. The Special Master’s recommendation erroneously recommends a combined diversion volume in excess of 66 AF (the combined total of 61-02248B and 61-07189) based on a permit, no. 61-07724, that has not yet been claimed or recommended in the SRBA pursuant to Chapter 14, Title 42, Idaho Code.

¹ The Special Master’s recommendations appear to contain a typographical error. The quantity remarks for both 61-02248B and 61-07189 refer to “61-07224,” which is a water right claimed by the Department of Defense and appears to have no relationship to these subcases. The Standard Form 5’s, on which the Special Master’s recommendations are based, refer to “61-07724,” which is a newly-acquired permit held by Magic West, Inc., that has not been claimed by Magic West in the SRBA, and is a basis for this motion to alter or amend. For purposes of clarification, Magic West’s newly-acquired permit will be referred to as “61-07724.”

2. Because the Special Master's recommendation of a combined diversion volume was based on an "unclaimed" permit, no. 61-07724, the Movants and other parties in the SRBA were denied their constitutional due process rights and statutory rights under Chapter 14, Title 42, Idaho Code, to have the opportunity to have notice of, and file an objection to, the diversion volume for permit no. 61-07724.
3. It was error for notices of the Standard Form 5's for 61-02248B and 61-07189, on which the Special Master's recommendations were based, not to be reported in the SRBA Docket Sheet, thereby resulting in a denial of the Movants' and other parties' constitutional due process rights and statutory rights under Chapter 14, Title 42, Idaho Code, to have notice of, and file an objection to, the increased combined diversion volume allowances and expanded season of use set forth in the Standard Form 5's.
4. The Special Master's recommendation for 61-07189 erroneously recommends a year-round period of use based on Idaho Code § 42-1425.

Pursuant to I.R.C.P. 7(b)(3), a brief in support of this motion will be filed in 14 days

Oral argument is requested.

DATED this 27 day of March, 2000



MATT J HOWARD

CERTIFICATE OF SERVICE

The undersigned certifies that on the 27 day of March, 2000, a true and correct copy of the within MOTION TO ALTER OR AMEND was sent to the following person(s) by the method indicated below:

Peter Ampe
Deputy Attorney General
P O. Box 83720

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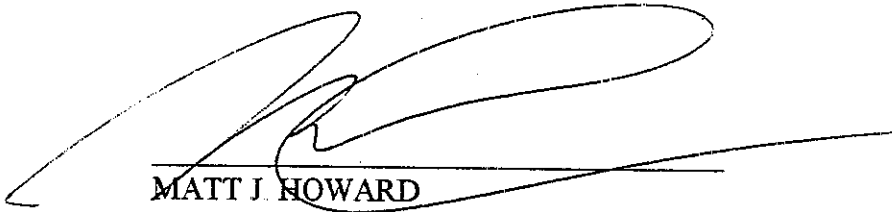
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