

M. B. Hiller, Esq.
HILLER, BENJAMIN & ASSOCIATES
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RECEIVED

SEP 11 1995

Department of Water Resources

Attorneys for Smith Ranches, Inc.

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	)	<u>REQUEST TO WITHDRAW AS COUNSEL</u>
	)	<u>OF RECORD AND PETITION TO PERMIT</u>
Case No. 39576	)	<u>HAROLD SMITH TO APPEAR PRO SE/</u>
	)	<u>IN THE ALTERNATIVE, REQUEST FOR</u>
	)	<u>POSTPONEMENT OF SETTLEMENT</u>
	)	<u>CONFERENCE</u>
	)	
	)	Subcase No. 36-04219

M. B. Hiller earlier responded to the Special Master on August 4, 1995, concerning Smith Ranches, Inc., noting that Harold Smith preferred to appear pro se in the above matter; accordingly, application is made for the formal withdrawal of M. B. Hiller as attorney of record and a request is made for permission of the Special Master to permit Harold Smith and Smith Ranches, Inc. to continue pro se and appear at the settlement conference now scheduled for September 29, 1995, in Arco at the Memorial Building, 326 West Grand, Arco, Idaho.

That attached hereto is a copy of a May 26, 1993, letter addressed to Daria J. Zane of the Department of Justice. Within the attachment is an explanation concerning Water Right No. 36-04219. Commencing on page two of the attachment and highlighted for easy reference is a historical background concerning Smith

Ranches' activities. It is the contention and position of Smith Ranches, Inc. that the information contained in the May 26, 1993, letter is accurate and correct.

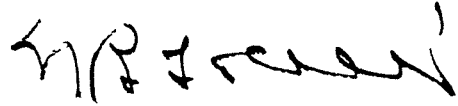
Smith Ranches, Inc. requests that they be permitted to appear at the settlement conference pro se and historically present all evidence relative to their involvement in the various ponds and their experiences with the BLM, all of which they contend are pertinent in any final resolution of this particular claim.

In the event M. B. Hiller is not permitted to withdraw and Smith Ranches, Inc./Harold Smith allowed to appear pro se, request is made to vacate the September 29, 1995, settlement conference upon the grounds and for the reasons that M. B. Hiller, since March of 1995, has commitments to be out of the continental United States and will not return to the continental United States until the 6th of October. Presently, available dates to M. B. Hiller for such settlement conference in Arco, Idaho, would be September 13, 14, and 15, 1995; September 22, 1995; the week of October 16, 1995.

It is further requested that upon the timely review of the foregoing petition by the Special Master, that a further order be issued requesting the relief prayed for herein and/or the alternative relief concerning a continuance.

DATED this 8 day of September, 1995.

HILLER, BENJAMIN & ASSOCIATES

By 
M. B. Hiller

CERTIFICATE OF SERVICE

I hereby certify that on this 8 day of September, 1995, a true and correct copy of the foregoing REQUEST TO WITHDRAW AS COUNSEL OF RECORD AND PETITION TO PERMIT HAROLD SMITH TO APPEAR PRO SE/IN THE ALTERNATIVE, REQUEST FOR POSTPONEMENT OF SETTLEMENT CONFERENCE was served upon the following:

[☒] Mailed
[☐] Hand Delivered

Terrence A. Dolan
Special Master
Snake River Basin Adjudication
P. O. Box 2707
Twin Falls, ID 83303-2707

[☒] Mailed
[☐] Hand Delivered

Clive Strong
Deputy Attorney General
Statehouse Mail
Boise, ID 83720

[☒] Mailed
[☐] Hand Delivered

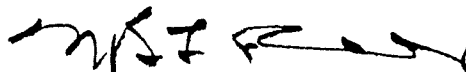
Director of IDWR
P. O. Box 83720
Boise, ID 83720-0098

[☒] Mailed
[☐] Hand Delivered

K. Jack Haugrud
U. S. Dept. of Justice
550 West Fort St., Box 33
Boise, ID 83724-0663

[☒] Mailed
[☐] Hand Delivered

Harold Smith, Sr.
Smith Ranches, Inc.
Route 1, Box 63
Moore, ID 83255



M. B. Hiller

May 26, 1993

Daria J. Zane, Esq.
Department of Justice
E&NR Division
General Litigation Section
Washington, D.C. 20530

RE: **Smith Ranches, Inc.**
Right No. 34-10717 - Dry Fork
Right No. 36-04219 - Desert
Right No. 34-00439A - Antelope Creek

Dear Daria:

I represent Smith Ranches, Inc. and called your office concerning the objections filed. Although I left a message on your machine, I did want to get a letter to you so that you would have the information on hand when we discussed the objections. The three water rights under consideration are:

Right No. 34-10717 - Dry Fork
Right No. 36-04219 - Desert
Right No. 34-00439A - Antelope Creek

I will address each of these rights separately, with the request that you favorably consider my comments and withdraw the present objections.

On Water Right No. 34-10717, the circled entries identify BLM titled land. The water rights identified are in-stream use. Apparently your objection relates only to the circled descriptions which identify the BLM land. Should your office require clarification concerning the in-stream use at Dry Fork by Smith Ranches, Inc., we will be happy to provide that data to you. However, if necessary, Smith Ranches is willing to forego its claim to water rights on these two specific entries, namely:

S17 NWSE SESE
S20 NENE SENE

If your objection will be removed, Smith Ranches, Inc. is agreeable to merely foregoing its claim on the above two entries. If this can be accomplished, will you so advise.

Daria J. Zane, Esq.
Department of Justice
E&NR Division
May 26, 1993
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Your attention is next directed to Water Right No. 34-00439A - Antelope Creek. As we understand your objection, the objection relates to the one acre identified because that acre is on Federal land. We are unsure of why the one acre was identified in the water right and are again agreeable to omitting this acre thus allowing you to withdraw your objection. Please advise if this is acceptable.

On the final water right, No. 36-04219, your objection states that Pratt Lake Reservoir was built under a cooperative agreement with Leadbelt Cattle Association and the BLM in 1952. This information is incorrect. The Pratt Lake Reservoir was constructed by Harold Smith during the period 1962 to 1965. Prior to the construction of the Reservoir, there was a small pond near the construction site of the Reservoir. We can only conclude that the small pond is what you refer to in your objection. The Reservoir, as constructed by Harold Smith, is 100' x 300' and six (6) feet deep. Attached are the actual costs expended by Harold Smith. Additionally, Harold Smith built four (4) ponds (Service Berry, Muddy, Stadium, and No. 5 pond).

You will note from the attached records that the only contribution by the BLM was \$641.75 for plastic to line some of the ponds. Attached is BLM Form 4-1119 signed by Harold Smith and Jesse L. Kirk. No funds were expended by the BLM in the construction of the Pratt Lake Reservoir.

In 1975, the BLM was to construct six (6) troughs and proceeded to publish an Invitation for Bids (see attached). The BLM determined that the bids were too costly and never proceeded with the work.

In about 1981, Harold Smith agreed to construct four (4) troughs and the BLM agreed to furnish some of the material. The BLM manager, Brent Jensen, authorized the arrangement and Harold Smith proceeded to construct the four troughs.

In 1984, Harold Smith built one additional trough and the BLM agreed to furnish the necessary materials. We have enclosed the November 2, 1992, Water Right No. 36-04219 which clearly shows Pratt Lake Reservoir as a water right in the name of Smith Ranches, Inc.

Daria J. Zane, Esq.
Department of Justice
E&NR Division
May 26, 1993
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Following your review of the foregoing, we request that you withdraw your objection to the water right as the reasons listed on your objection are, in fact, incorrect. Smith Ranches, Inc. (Harold Smith) did construct the Reservoir and all ponds and troughs.

I have sent a copy of this letter to the Public Affairs Officer, BLM, Idaho Falls District Office, 940 Lincoln Road, Idaho Falls, ID, 83401. I would most appreciate hearing from one or both of your offices within the next several days. With the above explanations, I would request that the pending objections be withdrawn subject to the modifications noted above.

Thank you for your time and attention.

Very truly yours,

HILLER, BENJAMIN & ASSOCIATES

M. B. Hiller

MBH/bjp
Enclosures

cc: Harold Smith, Sr.
Public Affairs Officer, BLM