

RECEIVED
APR 28 2020
DEPARTMENT OF
WATER RESOURCES

Kinzo H. Mihara, ISB 7940
MIHARA LAW PLLC
923 N. Third Street
Coeur d'Alene, ID 83814
Telephone: (208) 304-3850
Fax: (208) 620-2200
khmihara@miharalawpllc.com

Attorney for Objectors

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

In Re CSRBA

SUBCASE NO.: 95-17352

Case No. 49756

DEBBIE and JAKE BERRETH,

Objectors,

vs.

ROBERT and JAN STUPPY FAMILY
TRUST,

Claimants,

**AFFIDAVIT OF TERESA
BALDERRAMA IN SUPPORT OF SF-7
MOTION TO SET ASIDE PARTIAL
DECREE AND SF-1 OBJECTION**

State of Idaho)
) ss.
County of Kootenai)

The below-named affiant, after coming before an officer duly authorized to administer oaths, and after being identified and sworn by such officer does hereby declare, swear, subscribe, and attest to the following:

(1) My name is Teresa Balderrama. I am over the age of eighteen (18) years old. I am competent to make this affidavit. The statements below are made upon my first-hand knowledge.

- (2) I lived on the adjacent parcel of land immediately adjacent to Robert and Jan Stuppy.
- (3) The parcel of land upon which Robert and Jan Stuppy is the parcel of land to which the water right of this subcase applies.
- (4) I have personally seen Robert Stuppy and have personally talked with Robert Stuppy on multiple times on multiple dates within the immediate past few years.
- (5) I have typed out a statement, attached hereto as Exhibit 1 as pages 1 to 4, 6, 8, 10, 12, 14, 16, 18, and 20. I adopt the statements contained in Exhibit 1 and incorporate such statements into this affidavit as if expressly set forth herein.
- (6) I have taken pictures which are a part of Exhibit 1 as pages 5, 7, 9, 11, 13, 15, 17, and 19. I was the person who took such photographs on the dates noted in Exhibit 1.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Respectfully submitted this 16th day of April, 2020.

By: Teresa Balderrama
Teresa Balderrama

NOTARIAL ATTESTATION

The foregoing was subscribed and sworn to before me, a notary public for the State of Idaho on the date indicated above the name of the affiant above. The affiant is either personally known to me or has provided clear and convincing evidence of his/her identity.

[SEAL]



By: Kristin Klopatek
Printed: Kristin Klopatek
Residing at: Kootenai County
My Comm'n Expires: 5/1/25

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of April, 2020, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following individuals:

By:

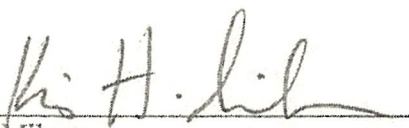

Kinzo H. Mihara

EXHIBIT 1

Mr. Stuppy first purchased the 5 acres that is located between the Berreth property and the Stuppy trust property in the summer of 2016.

The next summer (2017) he asked if I would like to graze my cattle on his property for the summer. I was surprised that he would offer such a nice gesture, as our prior experience with him as a neighbor was not pleasant. I thought that maybe he was indeed being genuine and accepted his offer. We never had a formal agreement documented and the cattle never changed ownership.

It was when my cattle were on his property that he applied for a stockman's water right. Mr. Stuppy does not own livestock and stated on the application for the water right that this property has been used for livestock since the early 1900's. I was unaware that his intention was to use my livestock to obtain this water right. As soon as Mr. Stuppy had this water right, his ability to live next to us and remain neighborly stopped completely.

Late in the summer, we moved the cows back to our property, and everything seemed like it was fine. Then Mr. Stuppy built a fence on our property line. He even tried to claim that our property line was incorrect and that our fence was off by 20 feet. He later found that our fence was indeed in the correct place and dropped the issue. He also proceeded to push a pile of rubble onto our property so he could build the fence.

Then Mr. Stuppy began to constantly harass us about livestock, our vehicles on our property, and our dogs. He called animal control several times about barking dogs. I have working dog breeds that have a job on our farm. When Mr. Stuppy was constantly at the property line that borders ours, they barked at him. Yes, they were doing their job. Alerting me that someone was there.

Mr. Stuppy claimed that our dogs barked so much that he was irritated that they were waking his elderly mother up early in the morning. We purchased bark collars to try and detour them if that was true. Then one morning I went outside and heard dogs barking in every direction around our home, while my dogs were inside. I wondered if it was really my dogs that were the problem.

When I wasn't at home I started keeping my dogs in a kennel inside to not bother anyone just in case they were naughty when I was not there. I have done this now for a couple of years.

To try and keep peace with Mr. Stuppy we also do not ride our 4 wheelers, side by side, or any other motorized vehicle on our property as per his request. He claims his elderly mother does not like the noise. She apparently resides in a small home behind Mr. Stuppy's home.

Then he made a complaint to the county that we had too many vehicles sitting on our property. At the time, I had two "dead" vehicles parked. We also had a boat, car trailer, horse trailer, a utility trailer, and three trucks that were all licensed and insured. We were not violating any sort of county ordinance as he claimed. The lady that investigated the complaint found that we were in fact NOT in any violation of any county ordinance.

One afternoon I arrived home early from work and there was someone with a piece of machinery out in his field digging. Later that night when I was doing my chores, I saw that he had hired someone to dig a ditch across his field. The ditch was dug with a pond like shape on the end of it and also had a break in the bank to allow water to flow.

This seemed a little odd to me because there was no water here except for in the spring when the snow melts. Every year the fields have a couple of inches of water for a couple of weeks, but it all goes away as quick as it comes in.

The winter of 2018-2019 was horrible! Every time it snowed or rained my field would flood horribly. This was way worse than it had ever flooded before. I typically drive my hay truck or tractor out into the field to feed, but now I had to feed right up to the fence. The water continued to rise.

Then I noticed that the water had a current to it. This was not normal at all. But the next day, the current was gone. I thought this was strange as it was not the way a natural waterway would function. Then I witnessed Mr. Stuppy one afternoon bent over on his driveway next to his pond. In about twenty minutes the current in the water returned. Mr. Stuppy has some sort of water regulator at his pond (which he claims is a spring)

I could not believe what I just saw! He would do this every day. Mr. Stuppy would open and close the water flow. Now that he built a canal the previous summer this water was directed at my pasture and flooded deeper than ever before. I could no longer drive my tractor or hay truck out in my field to feed livestock.

Then we finally hit winter! In February of 2019 the huge flooded area froze and then it snowed. My cattle could not walk on the ice. I had one of my pregnant cows fall on the ice and get hurt. Not only did I lose the cow, but also her unborn calf. When Mr. Stuppy's actions to regulate the water flow directly impacted my livestock in this manner I decided to remedy this new problem.

We arranged (with Jake's permission) to haul in some topsoil. From the time the first dump truck showed up Mr. Stuppy attempted to stop us. He claims that we have ruined the "enjoyment of his property".

We hauled the dirt in to build an access road to the back of our property. In fact, I got the idea from looking at My Stuppy's driveway. He built his road up in the same manner. In addition to the road, we also built up a sound barrier to try and buffer what little noise we seem to make that Mr. Stuppy is so upset with.

Mr. Stuppy came over and stated that he had "water rights from the Nez Perce tribe" and that we could not alter our field. He demanded that we place a culvert in the road for his creek to flow.

I personally went to the water conservation district to find out if I was violating any laws, or Mr. Stuppy's rights. Come to find out, there is not any type of surface water recorded on either property. There is no waterway on either property. I was advised that his issue with my road would be a civil matter.

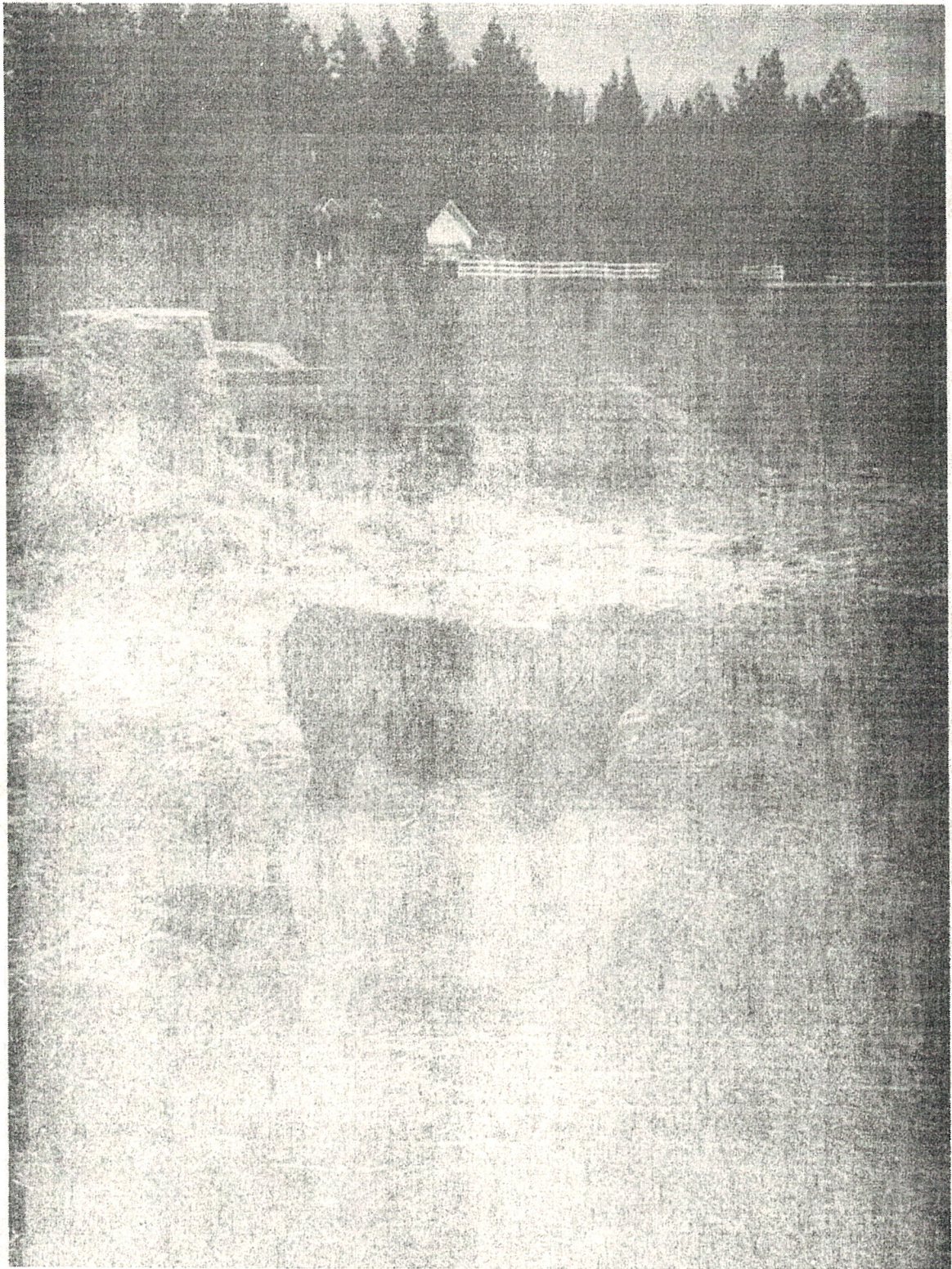
I took all M. Stuppy's concerns into consideration and decided to move forward with the project for the wellbeing of my livestock.

Mr. Stuppy has continued to harass us. I feel like I am being bullied from a fellow grade school classmate. He is constantly pacing our fence line and taking photos. I feel very violated that he is always taking pictures. When Mr. Stuppy is acting so strange, my dogs bark at him. Then he complains about that.

Mr Stuppy also gets paid to do lawncare for other properties. Last summer, I watched him "dumping" something out of his truck and trailer out in the field near our adjacent property line. Later that day, I went to see what he was doing and found lawn clippings scattered at the fence line. Mr Stuppy was raised on a cattle dairy and knows that if my cows were to eat the clippings it would have caused some serious health issues or even death. However, he chose to dump the clippings where my cattle could easily reach them. For this reason we kept our cattle at another area on the Berreth's property. Mr Stuppy then proceeded to complain to the animal control officers that I had too many animals on a small pasture. What the heck? He can dump commercial yard waste to endanger my livestock and I am the one getting a lecture because I am worried about the well being of my livestock?

Our plan was to purchase the property we reside at from Jake and Debbie. But because of Mr. Stuppy, we will not purchase this land. They have lost the sale of the property due to him constantly harassing me. They have also lost the revenue of my rent payment as we have purchased a different piece of land. I have lost the investment of property upgrades to try and keep Mr. Stuppy happy. I have put every effort into living next to Mr. Stuppy in a considerate manner. I had not reported him for taking pictures of my home and family, I have not complained about him pacing my fence early in the morning, I have not complained about him driving his vehicles or tractor out in his field all hours of the day (especially very, very early in the morning) , I have not complained about his waterfowl coming over to our property and defecating all over my yard, I have not even complained about him feeding the deer (which is illegal and very annoying because they get so used to people that they get into my barn), and tried to keep peace with extra efforts.

Teresa Balderrama



This photo (on page 5) was taken on May 10, 2017 at 11:51 AM

In the background of the calf you can clearly see there is no ditch, creek, or channel on Mr Stuppy's land.

The photo also shows no standing water anywhere on Mr Stuppy's property.



The photo on Page 6 was also taken in May 2017

In the background, you can see no ditch, creek, or channel.



Here on Page 9 you can see where Mr Stuppy has dug out a channel.

This photo was taken on May 10, 2019 at 6:15 PM

If you look closely at this photo, you can see the same tree to the right that was in the previous picture from 2017.

You can also clearly see the bare banks around this ditch indicating it was fresh and has no vegetation growing on it.



Photo on page 11 shows the ditch Mr Stuppy dug at a different angle.

Photo taken May 10 2019.

In this picture, you can see the pond shaped body of water with an open side for water to flow through it.

Again there is no vegetation on the banks.

This was a man made pond, there was never any kind of pond here before.



Page 13 shows a pile of rubble that My Stuppy pushed onto our side of the property when he built this fence.

Photo taken May 10, 2019

This pile of rubble is believed to be from an old house that Mr Stuppy tore down.

If you look closely, you can see where the pile was pushed from his side to move this trash to our side intentionally.

We were forced to haul all of this to the dump when we were cleaning up our property.



Page 15

Here is the result of Mr Stuppys ditch he dug.

The run off water no longer dissipates across the fields because of the ditch that was dug by Mr Stuppy

This photo was taken on January 15, 2019

Mr Stuppy flodded our property with his channel, ditch, or creek he built. Then it froze solid.

My cows attempted to walk across it and this one in the photo fell and could not get back up.

In the photo you can see where I used a axe to chop the ice to get to her hoping she could get up and walk.



Page 17 shows the flooding that happened





Here on page 19, you can see our farm truck stuck trying to feed cattle.

