

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF CERTAIN BASIN 65
AND 67 WATER RIGHTS, IN THE NAME OF
THE UNITED STATES OF AMERICA
ACTING THROUGH THE DEPARTMENT OF
INTERIOR, BUREAU OF LAND
MANAGEMENT

Docket No. P-OSC-2021-002

**ORDER GRANTING REQUEST FOR
HEARING; ORDER STAYING
HEARING**

(PADDOCK VALLEY ALLOTMENT)

BACKGROUND

On September 16, 2021, Soulen Livestock Co. and Soulen Grazing Association, LLC (collectively, “Petitioners”) filed with the Idaho Department of Water Resources (“Department”) a *Verified Petition for Order to Show Cause* (“Petition”). Petitioners asked the Department to order the United States of America acting through the Department of Interior, Bureau of Land Management (“BLM”), pursuant to Idaho Code § 42-224(1), to show cause why 63 BLM stockwater rights, allegedly on the federal grazing allotment known as the Paddock Valley Allotment, have not been forfeit pursuant to Idaho Code § 42-222(2). *See Petition* at 1.

On April 25, 2022, the Director issued an *Order Partially Granting Petition; Order to Show Cause* (“Order”) in this matter. In it, the Director partially granted the Petition and ordered the BLM to show cause why 45 of the 63 BLM stockwater rights at issue had not been lost through forfeiture pursuant to Idaho Code § 42-222(2). *See Order* at 6.

The Department later determined that 15 of the 45 water rights subject to the April 25, 2022 Order were decreed based on federal law. Water rights decreed based on federal law are not subject to Idaho Code § 42-224. I.C. § 42-224(14), *as amended by* H.B. 608 (2022) (“This section applies to all stockwater rights except those stock water rights decreed to the United States based on federal law.”). On May 13, 2022, the Deputy Director, while serving as acting director, withdrew the Order, and issued an *Amended Order Partially Granting Petition; Amended Order to Show Cause* (“Amended Order”) in accordance with Idaho Code § 42-224(14). The Amended Order directed the BLM to show cause “why the following [30 BLM] stockwater rights have not been lost through forfeiture pursuant to Idaho Code § 42-222(2): 65-19685, 65-20003, 65-20010, 65-20011, 65-20012, 65-20015, 65-20390, 65-20464, 65-20468, 65-20475, 65-20476, 65-20477, 65-20479, 65-20480, 65-20487, 65-20488, 65-20489, 65-20597, 67-12751, 67-12752, 67-12775, 67-12809, 67-12810, 67-12841, 67-13085, 67-13086, 67-13141, 67-13142, 67-13147, and 67-13148.” *Amended Order* ¶ 3, at 6.

The Amended Order gave the BLM 21 days from the completion of service to request in writing a hearing pursuant to Idaho Code § 42-1701A(1)–(2). *Amended Order* ¶ 4, at 7. Service upon the BLM, via certified mail with return receipt, was completed on May 16, 2022. On June 3, 2022, the Department received a special appearance letter from the United States Department of the Interior, Office of the Solicitor, addressed to the Director (“USDI Letter”). The USDI

Letter includes a request, on behalf of the BLM, for hearing and a stay of said hearing in this case matter “until the conclusion of a lawsuit that the United States filed on June 2, 2022, in the U.S. District Court for the District of Idaho, Civil No. 1:22-cv-00236-DKG, to challenge the lawfulness of the [Amended] order[.]” *USDI Letter* at 1, 3.

ANALYSIS

Idaho Code § 42-224 states in pertinent part: “The stockwater right owner has twenty-one (21) days from completion of service of the order to show cause to request in writing a hearing pursuant to section 42-1701A(1) and (2), Idaho Code. I.C. § 42-224(6), *as amended by H.B. 608 (2022)*. The BLM was served a copy of the Amended Order on May 16, 2022, and its request for hearing was filed with the Department on June 3, 2022. The BLM’s request for hearing was timely because it was received within 21 days from completion of service in accordance with Idaho Code § 42-224(6). Therefore, the Director will grant the BLM’s request for hearing.

In addition, because the BLM has challenged the Amended Order in its lawsuit pending before the U.S. District Court for the District of Idaho (Civil No. 1:22-cv-00236-DKG), the Director determines the BLM’s request for stay should be granted.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that the United States of America acting through the Department of Interior, Bureau of Land Management’s request for hearing is GRANTED.

IT IS FURTHER ORDERED that the hearing requested by the United States of America acting through the Department of Interior, Bureau of Land Management is STAYED pending the outcome of the contested U.S. District Court case, Civil No. 1:22-cv-00236-DKG or until otherwise ordered by the Director.

DATED this 24th day of June 2022.



GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of June 2022, I caused to be served a true and correct copy of the foregoing *Order Granting Request for Hearing; Order Staying Hearing (Paddock Valley Allotment)*, by the method indicated below, upon the following:

Soulen Livestock Co. & Soulen Grazing Association, LLC P.O. Box 827 Weiser, ID 83672 <i>Petitioners</i>	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Overnight Mail ☐ Facsimile ☐ Email
John Murdock U.S. Department of the Interior Office of the Solicitor Boise Field Office 960 South Broadway A venue, Suite 400 Boise, Idaho 83706-6240 John.murdock@sol.doi.gov <i>Attorney for USDI BLM</i>	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Overnight Mail ☐ Facsimile ☒ Email

COURTESY COPIES TO:

David Negri Stephen G. Bartell Thomas K. Snodgrass U.S. Department of Justice david.negri@usdoj.gov stephen.bartell@usdoj.gov thomas.snodgrass@usdoj.gov	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Overnight Mail ☐ Facsimile ☒ Email
William G. Myers III Alison C. Hunter HOLLAND & HART LLP P.O. Box 2527 Boise, ID 83701 wmyers@hollandhart.com achunter@hollandhart.com	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Overnight Mail ☐ Facsimile ☒ Email

Jerome & Jill Grandi
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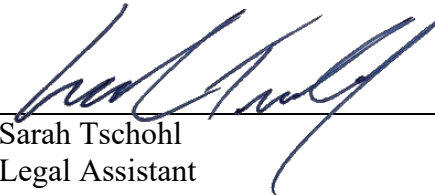
Livestock Grazing Permit Holder

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☐ Email

David Maddox
1021 Lower Crane Rd.
Weiser, ID 83672

Livestock Grazing Permit Holder

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☐ Email



Sarah Tschohl
Legal Assistant