



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

March 9, 2001

Frank Erwin
Watermaster, Water District 36A
2628 S 975 E
Hagerman, ID 83332

Re: Kramer Stipulation – Bar S Ditch

Dear Frank,

Please find enclosed a copy of the above referenced Kramer Decision (Gooding County Case No. 166 76) concerning delivery of water rights from Weatherby Springs to the Bar S Ditch. Please also find a copy of correspondence from Nick Spencer, Idaho Deputy Attorney General, to Bill Jones concerning the Kramer Stipulation. Also included is a spreadsheet showing the water rights that were subject to the stipulation and those rights in the Bar S Ditch not subject to the stipulation.

I believe the correspondence from Mr. Spencer provides the best guidance at this time concerning the delivery of rights on the Bar S Ditch. It would be prudent to review this material and then discuss this matter with the principal parties to determine if there is some general agreement concerning the delivery of water to the Bar S. Please contact Mr. Spencer or me for possible further consultation and direction if there is some question concerning the Kramer Stipulation or in the event that a call is made for delivery of water to the Bar S Ditch.

Sincerely,

Tim Luke
Water Allocations

Cc: Nick Spencer, Deputy Attorney General, Idaho Attorney General's Office

Enclosure

D:\Data\MS Word 97\WtrDistricts\ErwinBarS.doc

Transfer 78283 (formerly 66354)

HEPWORTH, NUNGESTER & FELTON
Bank & Trust Building
Post Office Box 389
Twin Falls, Idaho 83301
Tel. No. 208-734-7510
Attorneys for Plaintiffs

Paper No. _____
Case No. _____
Filed Jan. 22, 1979
Clerk _____
By _____ Deputy

*Copies sent
to attorneys (4)
1/24/79*

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

JOHN W. JONES, JR., and DELORIS D.)
JONES, husband and wife; and W. A.)
SANDY and FLORENCE M. SANDY, husband)
and wife, dba, JONES AND SANDY)
LIVESTOCK,)

Case No. 16676

Plaintiffs,

vs.

RESERVOIR LAND COMPANY, INC., an)
Idaho corporation; KNAKE EYE LAND)
& CATTLE CO. and VIEJO MANAGEMENT)
CO.; dba BUCKEYE LAND CO.; BUCKEYE)
LAND CO.; CLIFFORD PETERSON; OMER E.)
LORANGER and BEVERLY B. LORANGER,)
husband and wife; WALLACE W. BATES)
and LOLEITA V. BATES, husband and)
wife; RICHARD P. SAUER and LUCILLE B.)
SAUER, husband and wife; SHELDON G.)
CARLETON and BARBARA S. CARLETON,)
husband and wife; EDNA M. (BELL) REA;)
STANLEY J. HOSKOVEC and BETTY)
HOSKOVEC, husband and wife; ALFRED)
H. COLE and PHYLLIS A. COLE, husband)
and wife; ELLIS & WEIR, INC., a)
domestic corporation; HAROLD V.)
WOLINE and LOIS C. WOLINE, husband)
and wife; FRED STURTEVANT and JOYCE)
E. STURTEVANT, husband and wife;)
and DOES I THROUGH V,)

STIPULATION OF FACTS

Defendants.

STIPULATION OF FACTS -1-

order specific performance of the stipulation at this time.

MEMORANDUM OPINION/1

MAY 28 1986

COMES NOW the parties through their attorneys of
record and stipulate as follows:

WHEREAS, the Bar S ditch carrying water from Weatherby
Springs across Billingsly Creek consists of an open ditch and a
series of metal pipes;

WHEREAS, on or about 1960 or 1961, a steel pipe with
an outside diameter of 24 inches was welded near the mouth or
inlet portion of the pipe or siphon crossing Billingsly Creek;

WHEREAS, at all times since 1960 or 1961, to the
present date, this pipe or siphon has been restricted at its
inlet by a section or sections of metal pipe having an outside
diameter of 24 inches;

WHEREAS, the maximum flow discharge for said original
pipe or siphon at all times since 1960 or 1961 has been 325
miners inches of water; and,

WHEREAS four other reputed or alleged diverters of
water from the Bar S ditch downstream from said crossing at
Billingsly Creek have been discovered, who have not been named
in the above-entitled proceeding and who, therefore, cannot be
bound by any judgment, decree, adjudication or stipulation
entered in the above-entitled proceeding;

All parties, by and through their attorneys of record,
agree and stipulate:

1. (a) that plaintiffs shall continuously, and on
a year round basis, allow 325 miners inches of water from
Weatherby Springs to be delivered into the Bar S ditch from the
outlet of its fish hatchery operation upon the express condition

STIPULATION OF FACTS -2-

LAW OFFICES
HEPWORTH
NUNGESTER
And
FELTON

MAY 28 1966

order specific performance of the stipulation at this time.

1 precedent that defendant Buckeye Land Company enclose on or before
2 January 1, 1980, the existing open Bar S ditch with a suitable
3 enclosed pipeline along the entire reach of said Bar S ditch
4 located on the property presently owned by plaintiffs downstream
5 from plaintiffs fish hatchery operation; or in the alternative,

6 (b) in the event said open ditch is not enclosed
7 as set out in subparagraph (a) immediately above, that plaintiffs
8 shall continuously allow 325 miners inches of water from Weatherby
9 Springs to be delivered into the Bar S ditch from the outlet of
10 its fish hatchery operation from March 1 until November 1 of
11 each year, and plaintiffs shall continuously allow 200 miners
12 inches of water from Weatherby Springs to be delivered into the
13 Bar S ditch from the outlet of its fish hatchery operation from
14 November 1 until March 1 of each year.

15 2. that the trial date scheduled for this matter be
16 vacated to allow these individuals to be named so as to provide
17 for a full adjudication of the water rights of all individuals
18 diverting water along said stream;

19 3. that all other issues of law and fact not stipulated
20 by the parties herein are reserved until the time of trial.

21 DATED this _____ day of January, 1979.

22
23 HEPWORTH, NUNGESTER & FELTON

24
25 By 
26 John C. Hepworth for Plaintiffs

27
28 STIPULATION OF FACTS -3-

LAW OFFICES
HEPWORTH
NUNGESTER
And
FELTON

order specific performance of the stipulation at this time.

MEMORANDUM OPINION/1

MAY 28 1980

1
PARRY, ROBERTSON, DALY & LARSON

AND

8
BENOIT AND ALEXANDER

4
5
6
7
By *Robert Alexander*
Bob Alexander for Defendants
Ruckeye Land Company and Reservoir
Land Company

8
CHURCH, CHURCH, & SNOW

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11
12
By *Thomas H. Weir*
For Defendants
Ellis & Weir, Inc. *Thomas H. Weir*

13
JAMES HOBDEY & VARIN

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22
By *David D. Hobdey*
For Defendants
Clifford Peterson; Omer E. Loranger
and Beverly B. Loranger; Wallace W.
Bates; Richard P. Sauer and Lucille B.
Sauer; Sheldon G. Carleton and Bar-
bara S. Carleton; Edna M. Rea;
Stanely J. Hoskovec and Betty
Hoskovec; and Alfred H. Cole.

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24
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28
O R D E R

IT IS SO ORDERED:
1-22-79

Douglas D. Kramer
District Judge

STIPULATION OF FACTS -4-

LAW OFFICES
HEPWORTH
NUNGESTER
And
FELTON

order specific performance of the stipulation at this time.

MEMORANDUM OPINION/1

87396

(2)

36-AS

DISTRICT COURT
GOODING CO. IDAHO

APR 27 AM 9:00

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

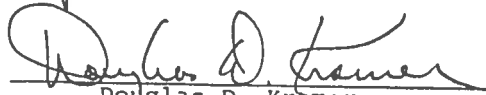
JOHN W. JONES, JR., and	)	CASE NO. 16676
DELORIS D. JONES, et al	)	
	)	
Plaintiffs,	)	MEMORANDUM OPINION
	)	
vs.	)	
	)	
RESERVOIR LAND COMPANY, INC.,	)	
et al,	)	
	)	
Defendants.	)	

The matter before the court is defendants' motion to amend the order of this Court dated January 22, 1979 incorporating a stipulation by all parties concerning their respective water rights in Weatherby Springs. The defendants' contend that their attorneys signed the stipulation under the mistaken impression that it called for 325 miner's inches of water to be delivered through the Billingsley Creek Siphon. In fact, the stipulation states that the water is to be delivered into the Bar S Ditch from the outlet of plaintiffs' fish hatchery operation. Though some comment was made at oral argument and in defendants' brief as to counsels' lack of authority to make the stipulation as worded, there is nothing in the affidavits filed with the Court to support that proposition. If there was a mistake in the formation of the stipulation it was unilateral, not mutual. Typically, a mutual mistake is required to make a contract voidable. Restatement, Contracts § 503. The stipulation explicitly deals with the problem of water loss in the Bar S Ditch. If the defendants place a suitable enclosed pipe line along the ditch by January 1, 1980 they are entitled to 325 miner's inches year round. If not, they are entitled to merely 200 inches from November 1 to March 1 of each year. The stipulation underscores the fact that the parties were well aware of the excessive water loss problem in the Bar S ditch at the time it was signed. It is well recognized in Idaho that only a reasonable loss in transport is allowed to the holder of a water right. Glenn Dale Ranches Inc. v. Shaub 94 Idaho 585, 494 P.2d 1029 (1972). The Court cannot believe that the dispute now before it centers around an amount of water which would constitute a reasonable loss. It must involve water substantially in excess of that amount. If so, the defendants are not entitled to the water under the Glenn Dale Ranches case. Accordingly, the Court sees no reason to exercise its discretion in favor of the defendants. The motion to alter or amend is denied. There appears no reason to order specific performance of the stipulation at this time.

MEMORANDUM OPINION/1

However, the Court will not hesitate to enforce its order should it be necessary to do so. No attorney's fees will be allowed.

Dated this 24 day of April, 1979.


Douglas D. Kramer
District Judge

11 28 35

BAR S DITCH WATER RIGHTS SUBJECT TO STIPULATION OF GOODING COUNTY CASE 16676

<u>Basin</u>	<u>Seque</u>	<u>Split</u>	<u>Basin</u>	<u>Status</u>	<u>Priority</u>	<u>Div Rate</u>	<u>Source List</u>	<u>Water Use List</u>	<u>Owner List</u>
36	11	A	Decreed	Active	3/8/02	0.8	WEATHERBY SPRINGS	IRRIGATION	DARRELL W JENSEN (Current Owner), DE
36	11	B	Decreed	Active	3/8/02	0.5	WEATHERBY SPRINGS	IRRIGATION	BEVERLY B LORANGER (Current Owner)
36	15		Decreed	Active	3/8/02	6.5	WEATHERBY SPRINGS	IRRIGATION	BUCKEYE FARMS INC (Current Owner), J
36	33	C	Decreed	Active	3/8/02	0.26	WEATHERBY SPRINGS	IRRIGATION	CONSTANCE L ELLIS (Current Owner), LE
36	33	D	Decreed	Active	3/8/02	0.09	WEATHERBY SPRINGS	IRRIGATION	PATRICK D BROWN (Attorney), ROY E SA
36	33	E	Decreed	Active	3/8/02	0.75	WEATHERBY SPRINGS	IRRIGATION	EDNA M REA (Current Owner), PATRICK D
36	33	F	Decreed	Active	3/8/02	0.75	WEATHERBY SPRINGS	IRRIGATION	GENE L JONES (Original Owner), GUSTAF
36	33	H	Decreed	Active	3/8/02	0.13	WEATHERBY SPRINGS	IRRIGATION	GENEVIEVE R STRINGER (Directors Rep
36	33	J	Decreed	Active	3/8/02	0.06	WEATHERBY SPRINGS	IRRIGATION	GENEVIEVE R STRINGER (Directors Rep
36	33	K	Decreed	Active	3/8/02	0.06	WEATHERBY SPRINGS	IRRIGATION	BRENDA S SHAPPEE (Current Owner), CH
36	33	L	Decreed	Active	3/8/02	0.43	WEATHERBY SPRINGS	IRRIGATION	BETTY B HOSKOVEC (Current Owner)
36	33	M	Decreed	Active	3/8/02	0.32	WEATHERBY SPRINGS	IRRIGATION	BETTY B HOSKOVEC (Original Owner), K
36	15157		Decreed	Active	3/8/02	1.2	WEATHERBY SPRINGS	IRRIGATION, STOCKWATER	BARBARA HOSKOVEC (Current Owner), P
36	15451		Decreed	Active	3/23/32	0.4	WEATHERBY SPRINGS	IRRIGATION	BARBARA HOSKOVEC (Current Owner), P
Total Q:						12.25			

Stipulation limits discharge to Bar S for rights above to 6.5 cfs March 1 to Nov. 1 and 4 cfs from Nov. 1 to March 1

BAR S DITCH WATER RIGHTS NOT SUBJECT TO STIPULATION OF GOODING COUNTY CASE 16676

36	42	A	Decreed	Active	4/4/10	0.11	WEATHERBY SPRINGS	IRRIGATION	GERTRUDE B OWSLEY BYBEE (Current
36	44		Decreed	Active	3/8/02	0.7	WEATHERBY SPRINGS	IRRIGATION	NEVADA B OMOHUNDRO (Current Owne
36	86	C	Decreed	Active	1888-02	1.6	WEATHERBY SPRINGS	DOMESTIC, IRRIGATION	JOLENE FUELL (Current Owner), KEITH L
36	86	D	Decreed	Active	1888-02	0.06	WEATHERBY SPRINGS	DOMESTIC, IRRIGATION	LANDON H SMITH (Current Owner), MARG
36	86	E	Decreed	Active	1888-02	0.02	WEATHERBY SPRINGS	DOMESTIC	NANCY J KNOTT (Current Owner), STEVE
36	86	F	Decreed	Active	1888-02	0.02	WEATHERBY SPRINGS	DOMESTIC	ALLEN E HENDRIX (Current Owner), FRA
36	86	G	Decreed	Active	1888-02	0.11	WEATHERBY SPRINGS	DOMESTIC, IRRIGATION	KAY L HURST (Current Owner), RONALD
36	86	H	Decreed	Active	1888-02	0.05	WEATHERBY SPRINGS	DOMESTIC, IRRIGATION	DONALD L TORGRIMSON (Current Owne
36	105		Decreed	Active	3/8/02	1	WEATHERBY SPRINGS	IRRIGATION, STOCKWATER	RONNIE D SMITH (Current Owner), SHAR
36	15454		Decreed	Active	1/10/17	0.17	WEATHERBY SPRINGS	IRRIGATION, STOCKWATER	V JOHN MAVENCAMP (Current Owner), V
Total Q:						3.84			

JONES' RIGHTS FROM WEATHERBY SPRINGS

36	68		Decreed	Active	1888-02	10.74	WEATHERBY SPRINGS	DOMESTIC, IRRIGATION, STODELORIS D JONES (Current Owner), JOH
36	7071		Decreed	Active	7/8/69	73.05	WEATHERBY SPRINGS	FISH PROPAGATION BILL AND DELORIS JONES

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Recommended Right Report

03/08/2001

WATER RIGHT NO. 36-15

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	BUCKEYE FARMS INC 18335 U S HWY 30 HAGERMAN, ID 83332 (208)837-6595
Attorney	JOHN A ROSHOLT PO BOX 1906 TWIN FALLS, ID 833031906 (208)734-0700

Priority Date: 03/08/1902
Basis: Decreed
Status: Active

<u>Source</u>	<u>Tributary to</u>
WEATHERBY SPRINGS	BILLINGSLEY CREEK

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>	<u>Subuse Code</u>
IRRIGATION	2/15	11/30	6.5 CFS		
Total Diversion			6.5 CFS		

Location of Point(s) of Diversion:

WEATHERBY SPRINGS	SENESEW	Sec. 30	Township 07S	Range 14E	GOODING County
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IRRIGATION Use:
Acre Limit: 483

Place(s) of use:

Place of Use Legal Description: IRRIGATION	GOODING County
--	----------------

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
07S	13E	23		NESW	32		NWSW	35		SWSW	40		SESW	34
		26		NENW	10		NWNW	22		SENW	21			
				NESW	19		SESW	16						
				NWSE	6		SWSE	22		SESE	12			
		35		NENE	8		NWNE	9		SWNE	38		SENE	9
				NENW	15		NWNW	2		SENW	37			
				NESW	40									
				NESE	19		NWSE	37						

Total Acres: 483

Remarks:

1. Place of Use - Irrigation USE OF THIS RIGHT WITH RIGHT NO. 36-00018 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 483 ACRES IN A SINGLE IRRIGATION SEASON.
2. Explanatory WATER IS DELIVERED THROUGH THE BAR S DITCH, CURREN DITCH, NORTH PIPELINE, AND SOUTH PIPELINE.

Comments:

Author	Date	Subject	Comment
CHRISTEN	8/5/92	COPIED FROM REMARKS	WEATHERBY SPRINGS LIMITED BY STIPULATION IN GOODING COUNTY CASE 16676 IN JANUARY OF 1979. ALL IRRIGATION AND STOCK USERS WERE TO SPLIT 325 INCHES MARCH 1 TO NOV. 1 AND 200 INCHES NOV. 1 TO MARCH 1. COURT DID NOT ALLOCATE REDUCTION AMONGST USERS. THIS FILING IS MADE TO COVER SO MUCH OF THE 6.5 CFS AS GETS TO APPLICANT'S GROUND. CHANGES IN THE PLACE OF USE PORTIONS OF THE PLACE OF USE DIECRIBED HEREIN WERE SOLD WITHOUT WATER RIGHTS ON FEBRUARY 7, 1989.
SCHULTZ	9/23/92	NOTICE OF ERROR (NOE)	RECEIVED NOE 9/22/92. CHANGED NOE FLAG FROM BLANK TO A. CLAIM VERIFIED 8/5/92. DID NOT REVERIFY ANY PART OF CLAIM.
CLELLAND	10/21/92	NOE RESPONSE	MET TODAY WITH JOHN SIMPSON AND SHARON STRICKLAND AT IDWR, REVIEWED THE RECOMMENDATIONS AND ANALYSIS FOR THE ACREAGES AND AMOUNTS. NO CHANGES.
ROBERTSO	6/21/93	ADDRESS CHANGE	Change of address form received 6/17/93. A36-00015 also changed this date.
MSTERLIN	6/12/96	COPIED FROM REMARKS/REFORM ATTED REMARKS	0.66 CFS OF THIS RIGHT IS LIMITED TO USE FOR CONVEYANCE LOSSES IN DELIVERY OF THIS RIGHT.
DSHAFF	8/2/99	COPIED FROM REMARKS	USE OF THIS RIGHT WITH RIGHT NO. 36-00018 IS LIMITED TO A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 1690.5 AF.

Dates:

Licensed Date:
 Claim Received Date: 04/24/1989
 Enlargement Use Priority Date:
 Enlargement Statute Priority Date:
 Decreed Date: 03/06/1997
 Date Filed with Court:
 Objection Filed Date:
 SF5 Filed:
 Special Master Recom Signed Date:

Element Reviewed/Verified Dates: No dates found

Other Information:

Receipt Number(s): S006941
 State or Federal: S
 Owner Name Connector: OR
 Water District Number: 36A
 Generic Max Rate per Acre:
 Generic Max Volume per Acre:
 Civil Case Number:
 Old Case Number:
 Decree Plaintiff:
 Decree Defendant:
 PresumptionFlag:
 Notice of Error Flag: RECEIVED - NO CHANGE TO RECOMMENDATION
 Swan Falls Trust or Nontrust:
 Swan Falls Dismissed:
 DLE Act Number:
 Cary Act Number:
 Mitigation Plan: False

Verification Log: No log entries

ALAN G. LANCE
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

A. LYNNE KROGH
NICHOLAS B. SPENCER
Deputy Attorneys General
P.O. Box 83720
Boise, Idaho 83720-0098
Telephone: (208) 327-7920
FAX: (208) 327-7866

ATTORNEYS FOR IDAHO
DEPARTMENT OF WATER RESOURCES

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 Nos. 36-00033F,)
	)	36-11142, 36-11144, and
	)	36-11145
	)	
Case No. 39576	)	SETTLEMENT STATUS REPORT
	)	

Descriptive Summary

This is a report by IDWR on the status of settlement negotiations regarding objections filed against IDWR's recommendations of water right no. 36-00033F, filed by claimant Gustafson Family Trust, and water right nos. 36-11142, 36-11144, and 36-11145, filed by claimant Flying Triangle, Inc.

Status Report

Settlement conferences have been held for all of the above-listed recommended water rights. The status of settlement negotiations for each of them is as follows:

SETTLEMENT STATUS REPORT, Page 1

SUBCASE NO. 36-00033F (GUSTAFSON FAMILY TRUST)

The claimant and IDWR have reached agreement as to all elements of this water right, and have filed with the SRBA Court a stipulation memorializing this agreement. The reason that IDWR and the claimant have not yet filed a Standard Form 5 with the court is that it presently is unclear as to whether it is necessary to include within the description of the water right a remark recognizing the case of Jones, et al. v. Reservoir Land Company, Inc., et al., Gooding County Civil Case No. 16676, Memorandum Opinion filed April 27, 1979 ("Reservoir Land Company decision").

The Reservoir Land Company decision upholds a stipulation of the parties that limits to 325 miners inches (6.5 cfs) from March 1st to November 1st, and 200 miners inches (4.0 cfs) from November 1st to March 1st (hereinafter the "325/200 limit"), the quantity of water that plaintiffs John W. "Bill" Jones, Jr. and Deloris D. Jones must release from their fish hatchery outlet into the Bar S Ditch to satisfy some--but not all--of the water rights¹ delivered through the Bar S Ditch.

The question the Reservoir Land Company decision raises is whether the 325/200 limit must be provided for in the SRBA Court's decree of the water rights affected by it. The decree that will eventually be entered in the SRBA will supercede prior decrees of

¹ IDWR has researched the changes that have occurred to the water rights that were originally subject to the Reservoir Land Company decision in order to determine which SRBA claims appear presently to be subject the 325/200 limit. A list of those claims by water right number, current owner, and legal counsel, if any, is attached as Exhibit 1.

water rights from the same water system.² Therefore, if the Reservoir Land Company decision should be deemed to constitute a prior decree, the 325/200 limit may automatically be voided by operation of law unless it is expressly provided for by the SRBA decree. Such an effect, by depriving the Jones of their legal right to limit the release from their fish hatchery, would in itself raise serious notice and due process concerns.

~~These matters appear to IDWR to be issues of law that are within the province of the court to decide, as independent expert and technical advisor~~ IDWR takes no position as to how they should be decided.

Earlier in the year, when IDWR was preparing its proposal for grouping Hagerman Valley subcases by ditch or source for settlement conferences or trial, IDWR intended to propose that the Reservoir Land Company decision be addressed as part of the grouping of subcases involving water use out of the Bar S ditch. Since it now appears that IDWR's grouping proposal is unlikely to be adopted by the court, and since the subcases affected by the Reservoir Land Company decision are now assigned to different special masters, IDWR no longer has a proposal for how the questions presented by that decision should be resolved.

SUBCASE NOS. 36-11142, 36-11144, AND 36-11145 (FLYING TRIANGLE)

These three subcases were initially grouped with subcase no.

² See, e.g., Idaho Code §42-1420(1), which provides in part that "[t]he decree entered in a general adjudication shall be conclusive as to the nature and extent of all water rights in the adjudicated water system. . . ."

36-00033F solely for the purpose of providing a procedural vehicle for raising to the court the issues surrounding the Reservoir Land Company decision. At the time this was done it appeared that one of these Flying Triangle water rights was affected by the 325/200 limitation. Further review by IDWR has now revealed, however, that none of the Flying Triangle rights is affected by the Reservoir Land Company decision. Flying Triangle therefore no longer need be included in any proceedings to resolve those issues.

IDWR and the claimant believe that they essentially have resolved all issues encompassed within Flying Triangle's objections to these three recommended water rights. Therefore, IDWR anticipates that Standard Form 5's will be prepared and filed with the court very shortly.

DATED this _____ day of May, 1996.

NICHOLAS B. SPENCER
Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of May, 1996, I served a true and correct copy of the foregoing SETTLEMENT STATUS REPORT on the each of the following persons in the manner specified below.

Gustafson Family Trust
Dr. Ivan Gustafson
P.O. Box 209
Hagerman, Idaho 83332

(via first class mail, postage prepaid, to the above address; and via hand delivery to be made at the May 30, 1996, scheduling conference)

John K. Simpson, Esq.
ROSHOLT, ROBERTSON & TUCKER, CTD.
1221 W. Idaho Street, Ste. 600
Boise, Idaho
FAX NO. (208) 344-6034

(via facsimile transmission to the above fax number)

NICHOLAS B. SPENCER
Deputy Attorney General
Idaho Department of Water Resources

WATER RIGHT NUMBER	CLAIMANT'S NAME(S)	ATTORNEY'S NAME
36-00011A	DARRELL W JENSEN DEE ANNA JENSEN	PATRICK D BROWN
36-00011B	BEVERLY B LORANGER GENE E LORANGER	
36-00015	BUCKEYE FARMS INC	JOHN A ROSHOLT
36-00033B	BETTY B HOSKOVEC	
36-00033C	LEROY E ELLIS CONSTANCE L ELLIS	
36-00033D	VIVA SAUER ROY E SAUER	PATRICK D BROWN
36-00033E	EDNA M REA	PATRICK D BROWN
36-00033F	IVAN GUSTAFSON	
36-00033G	NIKO A TZANAKAKIS GWENDOLYN PEARSON TZANAKAKIS	
36-07071	DELORES D JONES JOHN W JONES JR	PATRICK D BROWN
36-15157	STANLEY E HOSKOVEC BARBARA HOSKOVEC	PATRICK D BROWN
36-15461	STANLEY E HOSKOVEC BARBARA HOSKOVEC	PATRICK D BROWN



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
ALAN G. LANCE

January 19, 1999

Mr. John W. "Bill" Jones
P.O. Box 265
Hagerman, Idaho 83332

Re: Jones, et al. v. Reservoir Land Company, Inc., et al.
(Memorandum Opinion, entered April 27, 1979, Gooding
County Civil Case No. 16676)

Dear Mr. Jones:

Following our conversation last month regarding the letter addressing IDWR's interpretation of the above-referenced Memorandum Opinion, I have searched my files to try to figure out why the letter I wrote you last February had not reached you. I can find no explanation. The file indicates that I mailed the letter to you on February 9th of last year.

Fortunately, however, in addition to retaining a file copy of the letter I also kept the letter in my computer memory. Therefore I have printed out a new original, which I am enclosing.

Please accept my apologies for the letter not getting to you sooner.

Very truly yours,

A handwritten signature in cursive script, reading "Nick Spencer", is written over a horizontal line.

NICHOLAS B. SPENCER
Deputy Attorney General
Idaho Department of Water Resources

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STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
ALAN G. LANCE

February 9, 1998

Mr. John W. "Bill" Jones
P.O. Box 265
Hagerman, Idaho 83332

Re: Jones, et al. v. Reservoir Land Company, Inc., et al.
(Memorandum Opinion, entered April 27, 1979, Gooding
County Civil Case No. 16676)

Dear Mr. Jones:

This letter is in response to the questions you have raised regarding (1) why, in the SRBA, the Jones v. Reservoir Land Company decision (hereinafter the "Memorandum Opinion") is not expressly described or referenced in the individual water rights affected by it that are being recommended by IDWR and decreed by the SRBA Court; and (2) what legal effect IDWR will give the Memorandum Opinion in matters of administration of the water rights affected by it. Based upon your representation to me that you are not presently represented by counsel in these particular matters, I am forwarding this response directly to you, rather than to your lawyer.

I. WHY THE MEMORANDUM OPINION IS NOT REFERENCED IN THE
WATER RIGHTS AFFECTED BY IT

Throughout its investigation and recommendation of Hagerman Valley water rights, IDWR has been aware of the Jones v. Reservoir Land Company decision. It has raised to the SRBA Court the question of how the decision should be addressed in the SRBA. The particular question which IDWR raised to the Court was whether the Court believed the Memorandum Opinion was a matter necessary to define or administer the water rights affected by it, and if so, whether the Memorandum Opinion therefore had to be expressly referenced in the description of those water rights.

IDWR raised this issue to Special Master Dolan in two individual subcase proceedings: subcase no. 36-00033F (Ivan Gustafson) and 36-11142 (Flying Triangle, Inc.). While IDWR took no position regarding the question, it did point out that while it had not included a reference to the Memorandum Opinion in its recommendations of the affected water rights, it would include in

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its description of those rights any such language the Court thought necessary in that regard.

At a scheduling and status conference in these subcases, held before him on or about May 29, 1996, Special Master Dolan, in a verbal ruling, concluded that the issue was not properly before him because no objections had been filed in those subcases (or any other Hagerman subcases) asserting that the Memorandum Opinion should be referenced in the description of those water rights affected by it. Since there was no party before him asserting that position, the Special Master believed that his deciding the issue would constitute an improper judicial advisory opinion; and that if any SRBA party subsequently disagreed with the absence of such a reference in his recommendation of any affected water right, such party would have full opportunity to raise that concern in a motion to challenge the Special Master's recommendation.

However, the Special Master did not enter a written order memorializing his bench ruling. Therefore, it is important to note that IDWR's understanding of the Special Master's decision is based upon its own interpretation of his verbal remarks. By summarizing its own interpretation of those remarks, IDWR is not in any way thereby attempting to speak for the SRBA Court.

In any event, based upon its understanding of the Special Master's ruling, IDWR has not included a reference to the Memorandum Opinion in its recommendations of any of the water rights affected by it.

II. HOW IDWR INTERPRETS THE MEMORANDUM OPINION FOR PURPOSE OF THE ADMINISTRATION OF WATER RIGHTS

IDWR was not a party to the Jones v. Reservoir Land Company suit, and therefore is not bound by the Memorandum Opinion. Nonetheless, the Memorandum Opinion is relevant to IDWR's administration of the water rights affected by it because it appears to prohibit the holders of some--but not all--of the rights out of the Bar S Ditch from making a call on junior rights that would require you to release from your hatchery outflow more than 6.5 cfs (325 miner's inches) during the period from March 1st to November 1st, or 4.0 cfs (200 miner's inches) from November 1st to March 1st.

Therefore, the Memorandum Opinion does not impose any limitations upon IDWR's statutory duty to administer water rights, but it does appear by implication to impose restrictions upon certain water right holders to request IDWR to deliver water to which they might otherwise be entitled.

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By affirming the district court's January 22, 1979, order adopting the provisions of a stipulation entered into between the plaintiffs and defendants in the Jones v. Reservoir Land Company suit, the Memorandum Opinion in effect grants to the plaintiffs a right to limit the releases from the hatchery outflow to the specified quantities--but only to the extent that the water thereby released is available to fill the rights of the defendants and their successors in interest. There are other holders of rights out of the Bar S ditch who were not named as parties defendant in the Jones v. Reservoir Land Company suit; the limitation affirmed in the Memorandum Opinion does not apply to them, and their right to call out junior rights remains unimpaired.

IDWR's research shows that water rights 36-00044 (Nevada Omohundro), 36-00105 (Ronnie and Sharlene Smith), 36-15454 (John and Vernon Mavencamp), and possibly 36-11142 (Flying Triangle, Inc.), fall into this category. The January 22, 1979, stipulation also noted that four other water right holders, taking water from the Bar S Ditch below its crossing of Billingsley Creek, had not been joined as defendants and therefore could not be bound by the decision in the Jones v. Reservoir Land Company case.

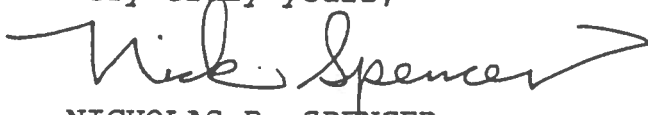
IDWR does not believe that it has statutory authority to itself police the provisions contained in the Memorandum Opinion. As with any other judgment between private parties, the plaintiffs themselves have judicial enforcement mechanisms available to use if necessary. Nonetheless, if a call were to be made by a water right holder subject to the limitation provided in the Memorandum Opinion, IDWR would view the Memorandum Opinion as part of the evidence it would need to consider in determining how, under the circumstances presented, it should respond to such a call. Any party aggrieved by IDWR's response to such a call would have full opportunity to seek both administrative review and, ultimately, judicial review of IDWR's response.

As to precisely how the Memorandum Opinion would be applied by IDWR in the event that a call were made, I cannot say at this point because IDWR's response to any call is based upon the particular circumstances present at the time. IDWR cannot commit itself in advance to take any particular course of action where its actions will depend upon factual circumstances that have not yet arisen. Nonetheless I can assure you that IDWR is aware of the Jones v. Reservoir Land Company decision and the limitation it provides; it will take that limitation into account in any situation where it might be implicated.

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I hope and trust that this letter provides you the information you were seeking. If I can be of any further assistance please feel free to contact me.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Nick Spencer", with a long horizontal stroke extending to the right.

NICHOLAS B. SPENCER
Deputy Attorney General
Idaho Department of Water Resources