

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF COMPLAINT OF VALLEY SUN LLC)	
REGARDING THE ILLEGAL WATER USE ON LANDS)	
OWNED OR OPERATED BY BETTY & DICK BAKER)	ORDER TO
<u>AND/OR MELODIE & WAYNE BAKER</u>)	CEASE AND DESIST

The Director of the Department of Water Resources (department), being charged with the duties of protecting vested water rights, enforcing specific statutes of the state of Idaho and the rules promulgated by the department, and being authorized to order the cessation of violations or apparent violations of the provisions of the law relating to the appropriation, distribution and use of water makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. In the fall of 2001, the department received complaints and investigated the development of a new point of diversion on Pine Creek. The new diversion was located within the NWSESW S5, T09N, R18E, B.M. in Custer County.
2. In response to the department's inquiry Betty & Dick Baker filed application for transfer no. 69690. Melodie & Wayne Baker filed application for transfer no. 69678. Both parties are represented by Pat Brown, attorney.
3. Both applications were advertised and both were protested by Valley Sun LLC and USDI Bureau of Land Management (BLM).
4. On October 1, 2003, a representative of Valley Sun LLC complained of the continued use of the diversion sought to be authorized by the pending protested applications contrary to Idaho law.

CONCLUSIONS OF LAW

1. Section 42-351(1), Idaho Code, provides as follows:

If the director of the department of water resources finds, on the basis of available information, that a person is diverting water or has diverted water from a natural watercourse or from a ground water source without having obtained a valid right to do so or is applying water or has applied water not in conformance with a valid water right, then the director of the department of water resources shall have the discretion to issue a written

notice of violation to the person in accordance with the provisions of section 42-1701B, Idaho Code, for the illegal diversion or use of water. Notwithstanding the issuance of a notice of violation, the director may also file an action seeking injunctive relief directing the person to cease and desist the activity or activities alleged to be in violation of applicable law or any existing water right.

2. Section 42-201, Idaho Code, provides in part as follows:

All rights to divert and use the waters of this state for beneficial purposes shall hereafter be acquired and confirmed under the provisions of this chapter and not otherwise.

3. The diversion of the public waters of the state of Idaho not in compliance with existing water rights must be stopped to prevent injury to other water rights, to protect the water resources of the state and to assure that the allocation and use of available water supplies takes place in an orderly manner.

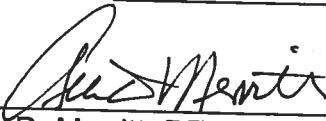
4. The Director of the department should issue an Order to Cease illegal use of the point of diversion located within NWSESW S5, T09N, R18E, B.M.

ORDER

IT IS HEREBY ORDERED as follows:

1. Betty and Dick Baker and/or Melodie Baker shall cease use of the point of diversion located within NWSESW S5, T09N, R18E, Custer County until authorization to use said point of diversion is granted.

DATED this 20th day of October, 2003.



Allen D. Merritt, PE
Southern Region Manager

CERTIFICATE OF MAILING

I hereby certify that on the ^{20th} ~~10th~~ day of October, 2003 a true and correct copy of the above and foregoing Order to Cease and Desist was forwarded with all required charges prepared, by Regular U.S. Mail, to the parties listed:

DICK & BETTY BAKER
HC 68 BOX 370
CLAYTON ID 83227

RENEE SYNDER FIELD MGR
USDI – BUREAU OF LAND MGT
HC 63 BOX 1670
CHALLIS ID 83226 –9304

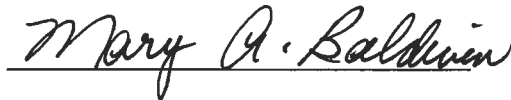
WAYNE &/OR MELODIE BAKER
HC 68 BOX 304
CLAYTON ID 83227

GLEN SAXTON
ID DEPARTMENT OF WATER RESOURCES
PO BOX 83720
BOISE ID 83720-0098

PATRICK D. BROWN
PO BOX 207
TWIN FALLS ID 83303

ROBERT FOSTER
ID DEPARTMENT OF WATER RESOURCES
VAN DREFF OFFICE COMPLEX - SUITE B
SALMON ID 83467

VALLEY SUN LLC
C/O JON MARVEL MGR
PO BOX 1770
HAILEY ID 83333



Mary A. Baldwin
Administrative Assistant I