



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

April 2, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

RICHARD VIERSTRA
2574 E 3800 N
TWIN FALLS ID 83301

RE: Follow up Memo to Our March 3, 1999 Meeting

Dear Mr. Vierstra,

Enclosed you will find a memo that addresses my response to issues discussed at our meeting of March 3, 1999.

Please note my memo encompasses a memo written by Corey Skinner from his meeting with Greg Vierstra on November 20, 1998.

Please feel free to contact me at our office if you need further information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Clelland'.

STEVE CLELLAND
Sr. Water Resource Agent

ENC:

CC: Pat Brown, Esq.

47-08353

MEMO

TO: SRBA Claim Files A47-12904 & A47-12905; Water Right Files 47-08278 (Permit) and 47-08353 (Application)

FROM: Steve Clelland *SC*

DATE: March 22, 1999

RE: Analysis of SRBA Claims for Dairy Uses; Appointment & Conversations with Bud Vierstra and Pat Brown

This is a follow-up memo to the appointment I had with Bud Vierstra and his counsel, Pat Brown, on March 3, 1999. I gave some verbal response, to the issues raised during the meeting, to both Mr. Vierstra and Mr. Brown on 3/12 and 3/10, respectively. Here is a final report of my analysis of this group of water rights.

Attached is a good historic description of the dairy operations as outlined in a Memo by Corey Skinner and dated November 20, 1998. That meeting was with Greg Vierstra, he is Bud Vierstra's son.

The following is a brief time-line description of the events leading to the present situation:

- 1935 --Original homestead well developed; 2 houses & 25 stock.
- 1977 --Dairy is developed to an 1100 head operation.
- 1980 --Sept. 14, second well is drilled and developed.
- 1986 --Dairy buy-out commences, 5 year duration.
- 1988 --December 21, SRBA claims filed for A47-12904 & A47-12905.
- 1991 --Dairy buy-out ends.
 - July 17, Application for Permit 47-08278 is filed. Two POD's listed.
- 1993 --Nov. 16, Proof made for 47-08278. (Due on 12/01/93.)
- 1994 --Feb. 4, Application for Permit 47-08353 is filed. Two POD's listed.
 - Application is held in SRBA drought moratorium, est. 5/15/92.
- 1998 --August, the court decrees SRBA claims.
 - Nov. 17, Greg V. meets with Georgia Satterlee to file Change of ownership.
 - Nov. 20, Greg V. meets with Corey Skinner to discuss options.
- 1999 --March 3, Bud V. and Pat B. meet with Steve Clelland to review options.

Pat Brown stated they would be filing Objections and Amendments on the two SRBA claims. They would like to see the claims reported as based on the "determination of historical beneficial use." This would result in removing the current remark stating no determination has been made. Concerns were raised that neighbors may use this statement to harass the dairy in the future about the lack of proper water rights. They also felt they could establish both the *de minimis* claims at the full limit of 13,000 gallons per day.

After consulting with several IDWR staff, here is my opinion of what exists under the rights and claims discussed. It does appear the remark on historic beneficial use can be removed from a *de minimis* water right, however, that is usually done in conjunction with an administrative procedure, i.e. transfer, rather than as part of the decree process; nonetheless it is possible. No clear process is defined when determining the historic beneficial use. In this case the earliest claim, A47-12905, has a historic use of two homes and 25 head of stock up until the time the dairy use is developed. That use would be constant in spite of the dairy development and the total volume diverted under this right would be 2.4 acre-ft per year based on common licensing practice within IDWR.

The second well, drilled in 1980, was most likely developed to accommodate the 1977 dairy use and the SRBA claim was filed during the dairy buy-out period. The *de minimis* use of the claim A47-12904 was to provide stockwater for about 100 head of mixed stock and is allowed a yearly volume of about 1.6 acre-feet, again based on IDWR practices. This right does not represent a full 13,000-gpd development because a water right cannot be established from an illegal diversion. It is clear that the dairy uses developed in 1977 are in violation of the mandatory permit statutes for groundwater uses.

Since both wells are tied into one delivery system the issue of combined use must be addressed. Based on the above descriptions it would be feasible to allow the amounts to be additive in a given year.

The best choice for legitimizing the dairy use is to follow through with the examination and licensing of Permit 47-08278. This right may be limited to a herd size of 450 head based on the permit and the beneficial use form submitted by Mr. Vierstra. A second possibility for a water right is with the pending Application 47-08353. The Vierstras may be able to document and show this use was actually developed in 1977 and pre-dates the SRBA and the moratorium, which has held the processing. They claim to have quite complete records of the dairy herds and uses since its start in 1977. This can be pursued through letters

and requests to our offices to pull the Application from the moratorium holdback.

A third option for a dairy use water right is the purchase of water from other parties and transfer the amounts needed to the Vierstra dairy. It seems logical to pursue the options in this manner since these first two rights are already part of the record.

I think the Vierstra's efforts to create a full dairy use from the two *de minimis* SRBA claims would be better aimed at developing the non-*de minimis* permits or, if necessary, the transfer process. The use of *de minimis* rights will always limit the dairy and, as in other cases similar to this, will continue to be an administrative issue with surrounding landowners; a situation the Vierstras are trying to avoid.

MEMORANDUM

TO: Water Right Files 47-08278 and 47-8353 and Snake River Basin
Adjudication Claim Files A47-12904 and A47-12905

FROM: Corey Skinner *CS*

DATE: November 20, 1998

SUBJECT: Conversation with Greg Vierstra

This day, I met with Greg Vierstra to discuss the water right situation on his dairy located within the SWSE $\frac{1}{4}$ of Section 14 (T10S, R16E), about a mile southeast of Curry. The following information was gathered from my conversation with Mr. Vierstra, and examination of the Department's records:

According to Mr. Vierstra, the dairy was built in about 1977. In about August of 1986, the dairy went into the Federal Dairy Buyout Program. Mr. Vierstra had copies of records that may have indicated that approximately 900 dairy cows were on the property at the time that the dairy went into the buyout program.

On December 21, 1988, two SRBA claims (A47-12904 and A47-12905) were filed by Richard &/or Norma Vierstra (Greg Vierstra's parents). One of these claims (A47-12904) was filed for stockwater use diverted from two wells. The original claim lists the number of livestock as "100 mixed range, horses, mules". The other claim (A47-12905) lists domestic and stockwater use diverted from one well. The original claim lists two homes and 25 head of stock.

According to Greg Vierstra, the dairy operation started back up sometime in 1991, and the dairy herd was gradually built up over the next year or so. Mr. Vierstra had a 1992 letter from Twin Falls County for a LCO permit for 900 milking cows, 250 dry cows, and 400 replacement heifers. Mr. Vierstra said that these numbers describe his current dairy operation.

On July 17, 1991, an Application for Permit (47-08278) was filed for stockwater and commercial purposes by "Phoenix" (a Vierstra partnership). The original application lists stockwater use for 450 head and the approved permit lists stockwater use for 450 head.

On February 4, 1994, an Application for Permit (47-08353) was filed in the name of "Phoenix Partnership" for Stockwater and Commercial use. The original application lists stockwater use for 450 dairy cattle and 650 dry stock. This application was held, and not processed, due to the Snake River Basin Moratorium (established May 15, 1992).

It appears that the only water rights that cover the Vierstra dairy are SRBA claims A47-12904 and A47-12905 and water right permit 47-08278. The two SRBA claims, which were recommended to the SRBA court in August of 1998, are for minimal amounts of stockwater. In addition, the water right permit appears to cover about one-half the current dairy operation. This was discussed with Mr. Vierstra, along with the possibility that any water right that may have possibly been established prior to the dairy entering the dairy buyout program may have been lost due to at least five consecutive years of non use during the time the dairy was in the buyout program and being reestablished after the program. Also note that no water right was recorded for the dairy before it was entered into the buyout program, so any water use in excess of 42-111 would have violated the mandatory groundwater permit statutes. It also appears that when the 47-08278 application was filed, the applicant could have filed for a larger dairy operation, but for whatever reason chose not to.

I explained to Mr. Vierstra that there was no "quick fix" for the water right problem(s) at the dairy. I also tried to encourage Mr. Vierstra to obtain a water right for the dairy through the transfer process. Mr. Vierstra gave the impression that he was not pleased, and left the office.