



State of Idaho
DEPARTMENT OF WATER RESOURCES

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DET
Rob
File

PHILIP E. BATT
GOVERNOR

July 13, 1995

KARL J. DREHER
DIRECTOR

Dan Hall
Watermaster
Water District 61-D
P.O. Box 644
Glenns Ferry, ID 83623

COPY

Re: Revised Delivery Instructions for Sand Springs Gulch

Dear Mr. Hall:

Attached you will find a copy of the District Court's Supplemental Judgment filed on July 5, 1995.

The District Court required the parties to take certain actions to effectuate water delivery on Sand Springs Gulch.

1. Defendant Batruel has been ordered to immediately construct a new ditch and remove any obstructions from Sand Springs Gulch.
2. Defendant Batruel and Plaintiff Viner have each been ordered to install a locking headgate at the 50/50 diversion in order that the Watermaster may properly allocate the parties' respective water rights.
3. Defendant Batruel was further ordered not to divert water from the "pond diversion," and only use the gulch if directed to do so by the Department in order to alleviate structural integrity problems with Morrow Dam.

Additionally, the Supplemental Judgment ordered the Department to allocate the water rights of the parties in conformance with the Judgment and all prior orders of the Court. Pursuant to I.C. § 42-701 the design and installation of the headgates at the 50/50 diversion must be approved by the Department to insure the water in the gulch can be divided equally.

At this point, both parties still need to make the structural changes described in paragraph number one and two above, in order to allow for the delivery of water as contemplated by the Court's order. A period of ten days from the date of this letter will be allowed for both parties to make any required structural changes. Thereafter, the watermaster is directed to deliver water in accordance with the Supplemental Judgment

Dan Hall, Watermaster
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of the Court unless it has been stayed through appropriate legal action.

Delivery of water under the Supplemental Judgment will require that the headgate at the "pond diversion" be locked and posted by the Watermaster, and that no water be diverted through the existing ditch from Sand Springs Gulch into the Batruel pond. Likewise, at the 50/50 diversion, the watermaster under the Supplemental Judgment is directed to divide the available water one-half to Batruel and one-half to Viner up to her decreed amount of 28-3/4 inches, provided Department approved headgates are installed. The unauthorized removal of a lock placed by the watermaster or otherwise illegally diverting water at either the pond diversion or the 50/50 diversion will be subject to criminal prosecution under Chapter 43, Title 18, Idaho Code.

The watermaster's actions will result in no water being diverted through the existing ditch into Batruel's pond. Plaintiff may need to take precautions to prevent flooding should it become necessary for the watermaster to lock the diversion of water at the pond diversion, and is being so advised by copy of this letter.

After considerable review by the Department it appears that the Supplemental Judgment may have substantially modified the earlier decrees of the Court and effectively adjudicated the parties' water rights. The Court's Supplemental Judgment raises issues concerning jurisdiction of the Court to adjudicate water rights under Chapter 14, Title 42, Idaho Code. The Department expects that the jurisdictional issue will be addressed later in the Snake River Basin Adjudication, Twin Falls County Case No. 39576, in the event the issue is not appealed in this case.

Upon a showing of good cause, either party may petition the Department for additional time to take any actions identified above.

Sincerely,



NORMAN C. YOUNG
Administrator
Resource Administration Division

NCY/JWH/dde
cc: Paul Batruel
Carlene Viner-Smith
D. Blair Clark, Esq.
Howard I. Manweiler, Esq.