



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

July 13, 1998

Jeff Sessions
HC 72 Box 2346
Malta, ID 83342

RE: Use of Small Pivot

Dear Mr. Sessions:

As you may know the department has been asked to investigate the use of your small pivot located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 13, Twp.16S, Rge.27E, B.M. I understand you met on July 9th with Corey Skinner from the department's Southern Region and reviewed your water use with him.

As you know the use of the pivot was allowed under the limitations described in the final order for transfer 4640 dated November 7th 1997. The transfer order states in part:

IT IS FURTHER ORDERED that 35 acres located in the NESW of Section 13, T16S, R27E, can only be irrigated with Clear Creek water when water is available pursuant to water right no. 43-00286(part). The 35 acres may be irrigated from the reservoir providing that: (1) Clear Creek water is simultaneously being delivered to the reservoir, and (2) water from Clear Creek is being diverted by Sessions pursuant to water right no. 43-00286(part) as ordered by the adjudication court.

As you know Judge Hurlbutt signed on June 3rd, 1998 the "Order Modifying Interim Administration on Clear Creek". The interim order states in part:

3. Round Mountain Ranch claimed right no. 43-00286B, which shall not be delivered;

5. The allocation of flows which exceed the amount of water needed to fill the rights as described above and in the previous Order for Interim Administration shall continue on the basis that has been historically followed, to wit, that excess water shall be allocated on the basis of the percentage of total amount of the rights from Clear Creek and then if additional water is available, on a "take-as-you-need" basis.

This Order shall continue in effect until modified by further order on final decision of this Court.

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

RECEIVED

JUL 15 1998

Department of Water Resources

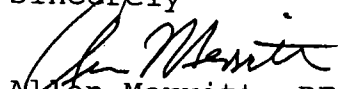
It is the department's understanding as reported by Mr. Skinner that your interpretation of the above is that you may use the pivot as long as "excess water" is available. This is a natural conclusion on your part, keeping in the spirit of why the department approved transfer No. 4640 recognizing right 43-00286 was a high water right and also why the department recommended your claim A43-000286B to the SRBA court.

Unfortunately the department must read the SRBA June 3rd, 1998 order literally; whereby, right 43-00286B shall not be delivered. Absent this right, no right of record exists for use in the pivot. It is the department's interpretation that the "excess flows" allowed by the SRBA Order are to be shared by the users of the valid right holders on the lands where the valid rights are appurtenant.

Your cooperation is requested in ceasing use of your pivot until this matter is resolved.

If you or your attorney has comment or further information for the department to consider please feel free to contact this office.

Sincerely


Allen Merritt, PE
Southern Region Manager

CC:: Roger Ling
Ray Jones
Jay Harper
Pat Brown
Dave Sundberg
✓ Norm Young