

MATT J. HOWARD
ATTORNEY AT LAW

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April 21, 2000

VIA FACSIMILE

Norman C. Young
Administrator
Idaho Department of Water Resources
P. O. Box 83720
Boise, ID 83720-0098

David R. Tuthill, Jr.
Adjudication Bureau Chief
Idaho Department of Water Resources
P. O. Box 83720
Boise, ID 83720-0098

RE: Motion for Order of Interim Administration / Request for Basis of Director's Report
SRBA Subcase No. 61-00293B

Dear Norm and Dave:

I represent Mary Batruel, Paul Batruel, and Batruel Dairy ("the Batruels") in the above-referenced subcase. Enclosed please find a copy of a Motion for Order of Interim Administration. That motion was filed in response to a call placed by Carlene Smith, which resulted in the water master closing the Batruels' "Pond Diversion" headgate on Sand Springs Gulch. The motion for interim administration seeks to have water distributed and administered in accordance with the Director's Report for 61-00293B, which does permit the Batruels to divert water at their Pond Diversion. It is my understanding that the Department can and will distribute water in accordance with its Director's Report for 61-00293B if so ordered by the Court under Idaho Code § 42-1417. If I am incorrect in my understanding, please let me know immediately.

The hearing on the motion for interim administration is set for next Friday, April 28, 2000, at 3:00 p.m. I apologize for the short notice. The call by Ms. Smith was not anticipated. However, now that my clients are being harmed by that call, they must move quickly to get their Pond Diversion headgate opened.

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APRIL 21, 2000

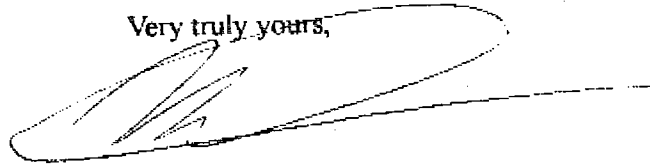
On that note, my clients will need to have Idaho Department of Water Resources (IDWR) personnel testify at the April 28 hearing. Specifically, there will need to be someone who can testify as to the basis of the Director's Report for 61-00293B, as it relates to the issues raised by the motion for interim administration. There will also need to be someone who can testify concerning the measurement and distribution of water, if the water is allowed to be administered pursuant to the Director's Report. I believe Rob Whitney is the allocations agent most familiar with this latter issue.

Please let me know, as soon as possible, which agents will be made available for the April 28 hearing so that I may identify them in my list of witnesses and exhibits. Also, I would ask that IDWR prepare a poster-size map of the area encompassing the Batruels' place of use and the Morrow Reservoir. Please include on that map markers that identify the Pond Diversion, the 50/50 Diversion, and any other helpful markers that you feel would be of assistance to the Court in getting a clear picture of the facts in this case. I believe Wendy Eklund has prepared something similar to that in the last couple of months that you may be able to work from.

The above request for assistance is made pursuant to Idaho Code §§ 42-1401B and 42-1412(4). Again, I regret the short notice. Any assistance you can provide the Court and the parties in this case is greatly appreciated.

Please feel free to contact me if you have any questions.

Very truly yours,



Matt J. Howard

Enclosures
cc: Clients

MATT J. HOWARD
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ISB 5115

Attorney for Mary Batruel, Paul Batruel, and Batruel Dairy

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. 61-00293B, 61-00293C, 61-
)	00293D
Case No. 39576)	
)	MOTION FOR ORDER OF INTERIM
)	ADMINISTRATION; MOTION FOR
)	DISCLOSURE OF WITNESSES AND
)	EXHIBITS
)	

MOTION FOR ORDER OF INTERIM ADMINISTRATION

Mary Batruel, Paul Batruel, and Batruel Dairy ("the Batruels"), by and through their attorney of record, Matt J. Howard, Attorney at Law, hereby move this Court, pursuant to Idaho Code § 42-1417(1)(a), for an Order of Interim Administration, ordering that water right no. 61-00293B be administered by the Idaho Department of Water Resources (IDWR) in accordance with its Director's Report for water right no. 61-00293B issued on February 12, 1999, a copy of which is attached as Exhibit A.

The grounds for this motion are as follows. As a result of a recent "water call" made by Carlene Smith, an objector in subcase no. 61-00293B, the watermaster, on April 18, 2000, shut down and locked the Batruels' headgate at a point commonly known as the "Pond Diversion." The watermaster, under direction of IDWR, took this action pursuant to a 1995 "Supplemental Judgment" entered in Elmore County case no. 82-08224, a copy of which is attached as Exhibit B. That judgment prohibits diversion of the Batruels' water at the Pond Diversion and requires that the water be diverted downstream at a point commonly known as the "50/50 Diversion." Because the 1995 Supplemental Judgment was entered after the commencement of the SRBA, there is a question as to whether the Elmore County Court lacked jurisdiction to enter the judgment and whether exclusive jurisdiction, at that time, vested in the SRBA Court.

As a result of the headgate being shut down and locked at the Pond Diversion, the Batruels are unable to divert their Sand Springs Gulch water (right no. 61-00293B) onto their entire recommended 295-acre place of use. If the Batruels are forced to take their water downstream at the 50/50 Diversion, they will only be able to irrigate the lower portion of their farmland with Sand Springs Gulch water. A large portion of their farmland, which is higher in elevation than the 50/50 Diversion, can only be irrigated with water from Sand Springs Gulch by diverting it at the Pond Diversion. The Director's Report for 61-00293B recognizes the Batruels' need for, and historical use of, diverting water at the Pond Diversion.

IDWR has indicated that, under its ministerial duties, it can and will distribute water pursuant to its Director's Report for 61-00293B, if this Court issues an Order of Interim Administration pursuant to Idaho Code § 42-1417(1)(a). Because the Batruels' are being immediately harmed by the closure of their headgate, they respectfully move the Court for an

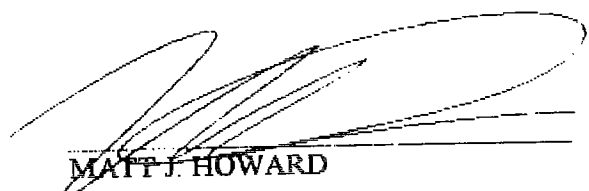
Order granting interim administration until the dispute between the parties can be resolved on the merits, pursuant to the Trial Scheduling Order issued by this Court on April 18, 2000.

MOTION FOR DISCLOSURE OF WITNESSES AND EXHIBITS

The Batruels also respectfully move this Court for an Order requiring that each party and IDWR lodge with the Court and serve on the other parties and IDWR on or before 5:00 p.m. on April 26, 2000, a list of witnesses and exhibits that the party and/or IDWR intend to call or introduce at the hearing on the above motion.

The Motion for Order of Interim Administration is supported by the record in this case and such testimony and other evidence as will be introduced at the hearing scheduled on this motion.

DATED this 21 day of April, 2000.



MATT J. HOWARD

CERTIFICATE OF SERVICE


The undersigned certifies that on the 21 day of April, 2000, a true and correct copy of the within MOTION FOR ORDER OF INTERIM ADMINISTRATION, MOTION FOR DISCLOSURE OF WITNESSES AND EXHIBITS was sent to the following person(s) by the method indicated below:

Larry Brown
U. S. Department of Justice
550 W. Fort Street, MSC 033
Boise, ID 83724
 U.S. Mail Overnight Mail Facsimile Hand-delivered

Charles L. Honsinger
Ringert Clark, Chtd
P. O. Box 2773
Boise, ID 83701
 U.S. Mail Overnight Mail Facsimile Hand-delivered

Norman M. Semanko
Rosholt, Robertson, & Tucker
P.O. Box 1906
Twin Falls, ID 83303-1906
 U.S. Mail Overnight Mail Facsimile Hand-delivered

Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098
 U.S. Mail Overnight Mail Facsimile Hand-delivered


MATT J. HOWARD

ATBBA6NF

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

DATE: FEB-12-1999
PAGE: A-915

RIGHTS FROM: SOURCE: SAND SPRINGS GULCH TRIBUTARY: LITTLE CANYON CREEK

RIGHT NUMBER: 61-002938
NAME & ADDRESS: MARY BATHUEL
RT 1 BOX 426
GLENN FERRY ID 836230000

PAUL BATHUEL
RT 1 BOX 426
GLENN FERRY ID 83623

FRANK BATHUEL
RT 1 BOX 426
GLENN FERRY ID 836230000

SOURCE: SAND SPRINGS GULCH TRIBUTARY: LITTLE CANYON CREEK

QUANTITY: 0.575 CFS
THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE SHALL NOT EXCEED 13,000 GALLONS PER DAY.

PRIORITY DATE: 01/01/1890

POINT OF DIVERSION: TMS R09E S12 R10E S18 RESE (Cons D. Jackson) WITHIN ELMORE County
SWSW (Cons D. Jackson)

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION		03-15 12-15	0.575 CFS
STOCKWATER		01-01 12-31	0.575 CFS

PLACE OF USE: IRRIGATION Within ELMORE County
T04S R09E S13 N3NE 3 S3NE 24 SENE 9 NENE 16
N3NW 6 S3NW 4 NENE 36 N3NE 10
R10E S13 SENE 13 SENW 16 N3SW 30 SWSW 30 N3NE 17
S18 SENW 28 N3SE 40
295 ACRES TOTAL

Place of use for STOCKWATER is same as IRRIGATION

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

EXHIBIT A

RECEIVED

JUL 10 1995

Department of Water Resources

FILE COPY

1995 JUL -5 AM 9:44

DOUGLAS ROBINSON
CLERK OF THE COURT
DEPUTY

D. Blair Clark
RINGERT CLARK CHARTERED
455 South Third, P.O. Box 2773
Boise, Idaho 83701-2773
Telephone No. (208) 342-4591
Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE

RICHARD P. VINER and CARLENE R.)
VINER, husband and wife,)
)
Plaintiff,)
vs.)
)
PETER BATRUEL, MARY N. BATRUEL,)
Husband and Wife, and PAUL BATRUEL,)
)
Defendants.)

Case No. 8224

SUPPLEMENTAL JUDGMENT

Plaintiff Carlene Viner Smith having moved the Court to order Defendants to comply with prior orders of this Court, and the Court having considered the pleadings and records in this action, and the Court having determined in conference with counsel for the parties that a hearing thereon is not required, and good cause appearing,

IT IS HEREBY ORDERED AS FOLLOWS:

I. Defendants shall immediately and forthwith construct a good and sufficient ditch in the manner outlined in the reports of Carlyle W. Briggs, Special Master, by constructing approximately 400 feet of ditch, to include installation of a culvert under a road, from the Morrow Reservoir to the Batruel pond located near Batruel's home. The water from the Morrow Reservoir shall be diverted from such reservoir through such new ditch and pond, and shall not be diverted

EXHIBIT B

into Sand Springs Gulch, except as provided in paragraph 3 hereof.


2. Defendants shall immediately and forthwith remove all obstructions to the flow of Sand Springs Gulch from such Gulch, in order that there can be a full flow of water in such Gulch. Further, Defendants shall not divert water from Sand Springs Gulch at the so-called "pond diversion," but shall allow water to flow to the "50-50" diversion downstream therefrom. Further, the parties shall jointly install two locking headgates in order that the Watermaster may properly allocate the parties' respective water rights. However, if Plaintiff agrees in writing filed in this Court, the equal division of the water that rises and flows in Sand Springs Gulch may occur at the Pond Diversion.

3. Defendants shall, however, be allowed to use Sand Springs Gulch, if directed to do so by the Department of Water Resources to alleviate leaking and structural integrity problems with such dam on the Morrow Reservoir. Defendant shall not divert water through their pond in such fashion as it floods Plaintiff's fields.

4. The Department of Water Resources and the Watermaster with jurisdiction over this region shall be furnished with a copy hereof, and shall endeavor to allocate the water rights of the parties in conformance with this Judgment and the prior orders of this Court.

Dated this 30th day of June, 1995.

ROBERT M. ROWETT


Robert M. Rowett, District Judge

MATT J. HOWARD
Attorney at Law
2402 W. Jefferson
Boise, Idaho 83702
(208) 333-0622
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ISB 5115

Attorney for Mary Batruel, Paul Batruel, and Batruel Dairy

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)
Case No. 39576) Subcase Nos. 61-00293B, 61-00293C, 61-
) 00293D
)
) NOTICE OF HEARING
)
)
)
)

PLEASE TAKE NOTICE that Mary Batruel, Paul Batruel, and Batruel Dairy ("the Batruels"), by and through their attorney of record, Matt J. Howard, will bring for hearing before the Honorable Thomas R. Cushman, Special Master, their Motion for Order of Interim Administration, at the SRBA Courthouse, in Twin Falls, on the 28th day of April, 2000, at 3:00 p.m., or as soon thereafter as they can be heard. Please take notice that the Batruels intend to call witnesses and introduce exhibits at the hearing in support of their motion.

DATED this 21 day of April, 2000.


MATT J. HOWARD

CERTIFICATE OF SERVICE

The undersigned certifies that on the 21 day of April, 2000, a true and correct copy of the within NOTICE OF HEARING was sent to the following person(s) by the method indicated below:

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Norman M. Semanko
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P.O. Box 1906
Twin Falls, ID 83303-1906

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Idaho Department of Water Resources
P.O. Box 83720
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