

HAEMMERLE & HAEMMERLE, P.L.L.C.

Attorneys & Counselors at Law

Fritz X. Haemmerle
Jennifer L. K. Haemmerle

P. O. Box 1800
Hailey, ID 83333

400 South Main Street, Suite 102
Tel: (208) 578-0520
Fax: (208) 578-0564

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Time Luke DL
rec'd 6/22/7
DWB

W1773 file

Jay J. Kiiha
1010 W. Jefferson St., Suite 104
Boise, ID 83702

Re: Summit Ranch/ Sulphur Springs Water Rights

Dear Jay:

I have reviewed your lengthy, litigious and factually erroneous letter dated June 4, 2007, with my clients. Given the tone and not so veiled threats contained in your letter, my clients believe that it would serve no purpose to meet with your clients given the background of personal insults directed at them.

At any rate, such a meeting would appear to be unnecessary in light of the Idaho Department of Water Resources' ("IDWR") recently published interim guidelines concerning delivery of Big Gulch water. As I am sure you are aware, those guidelines are completely at odds with most of the positions you have taken and appear to resolve the delivery issues that triggered your ill-advised communication.

The Bottom Line

With minor exceptions, my clients agree with the Director's Report for recommendations in water rights 73-187A, 187B, 2073 and 11953. You informed me earlier that your clients were in agreement with these same recommendations. Also, with the exception of the omission of Graves Springs from the combined flows calculated under 73-187A, my clients are also in agreement with the distribution guidelines provided to the watermaster on or about June 1, 2007.

Based on the recommendations and administrative rulings, and assuming our objection to the omission of Graves Springs is upheld, the bottom line is that Sulphur Creek is entitled to receive no more than a combined total of 125 miners inches from three separate sources: Graves Springs, Hill Creek and Big Gulch. In fact, as the season progresses, Sulphur Creek will almost certainly receive less than that amount. Summit Ranch, on the other hand, is entitled to receive all of the remaining flow from Big Gulch, after Graves Springs and Hill Creek have been factored into the diversion for Sulphur Creek under right 73-187A. If, however, the combined flow from all three sources amounts to less than 225 miners inches, Summit Ranch will receive from Big Gulch 4/9^{ths} of the total combined flow.

While the calculations may be burdensome to the watermaster, the overall picture is quite clear. What is left for our clients to discuss? Be clearly advised that Summit Ranch has no plans to give up its rights in the face of the many threats you have made, all of which are rejected for the reasons set forth below.

Endangered Species Act ("ESA")

My clients are hard pressed to understand your position. Are you really saying that in exchange for Summit Ranch agreeing to surrender some or all of its rights to Big Gulch water that Sulphur Creek will likewise surrender its water right out of Big Gulch to stop killing bull trout. Are you aware that the diversion you now claim violates federal law delivers Big Gulch water to both Sulphur Creek and Summit Ranch? Relatedly, you don't seriously contend that bull trout diverted therefrom onto Sulphur Creek's fields would be any less dead than those you claim must surely die in Summit Ranch's reservoir?

To relieve you of the self-inflicted problem you have created for your client, please be advised that there is not now, nor has there ever been, an ESA/bull trout issue impacting the Big Gulch diversion. The issue was raised, vetted and resolved in 2000 when Idaho Watersheds Project and its counsel tried to make the same argument you advance in your letter. Only then the targets were Summit Ranch and Sulphur Creek.

Jon Marvel and company didn't know then (and you apparently don't know now) that Big Gulch Creek does not connect directly with Goldberg Creek, and hence the Pahsimeroi River. Rather, the entire flow of the creek goes underground and disappears just below the Sulphur Creek fence. The implications of this unquestioned fact are obvious: Unless the fish you seek to represent can walk, there are no indigenous stocks of bull trout in Big Gulch Creek.

Upon being advised of this dispositive fact, Mr. Marvel and his organization immediately withdrew their threat to commence an ESA lawsuit aimed at Summit Ranch and Sulphur Creek. For the same reason, in 2000, federal fish and wildlife officers met with the principals of the Summit Ranch and Sulphur Creek at the site and conceded that no ESA/bull trout existed concerning Big Gulch Creek. Jud Whitworth, your client's predecessor in interest, attended the meeting and can correct your misrepresentation regarding the bull trout situation. To summarize, your ESA claims lack any merit and must be rejected.

Dam Site

Your further accusation that the Summit Ranch dam site has been enlarged to allow the reservoir to be overfilled is also rejected. The site is authorized by IDWR pursuant to Title 42, Chapter 17, Idaho Code, and is closely regulated by the Department, particularly as to dam crest and required freeboard. The Department periodically surveys the site and has in the past insisted that Summit Ranch raise the dam crest. Summit Ranch has complied with all such requests and is now, and has been, in compliance with Idaho law as respects its dam site.

Construction of New Diversion

Your suggestion that Summit Ranch is somehow interfering with the construction of a new diversion is completely without merit. Several times in recent months Summit Ranch sought input from Sulphur Creek concerning plans for the new diversion structure. See in this regard my letter of February 28, 2007 to IDWR (copy to your partner, Dan Nevala), as well as my e-mail to Mr. Nevala of April 2, 2007. In addition, I spoke with you directly about your client's position respecting this undertaking. The only response we ever received was written confirmation from you that Sulphur Creek did not disagree with IDWR's final recommendations respecting the delivery of Big Gulch water.

And, as you certainly should know by now, the new diversion was completed on June 1, 2007 and is in full operation. Please note that Summit Ranch arranged for, oversaw construction of and paid for the whole project, without any assistance at all from Sulphur Creek, although their input was sought in my prior communications.

Attached please find a copy of Mr. Thomas' letter dated June 6, 2007 to your area representative, Royden Eaton, seeking payment for Sulphur Creek's share (\$2,136.89) of construction costs. Please have your clients respond to this request as soon as possible. If they don't, Summit Ranch will petition IDWR to terminate Sulphur Creek's right to use or benefit from the new structure.

Accurate Measurements

Your statement that your client ". . . is prepared to insure that same is accurately measured . . ." rings particularly hollow given that contrary to Idaho law there are no measuring devices at either Hill Creek or Graves Springs. In fact, the only accurate measuring device affecting delivery of Big Gulch waters is the new diversion put in by Summit Ranch, which you should know is equipped with state-of-the-art weirs.

Watermaster (Ted O'Neil)

Your remark about Summit Ranch "lobbying" Mr. O'Neil is a cheap shot, plain and simple. Ted O'Neil is a man of ability and integrity. It is a shame that Sulphur Creek has chosen to direct its fire at him simply because he attends to his duty to deliver Big Gulch water in accordance with IDWR recommendations, guidelines and administrative rulings.

Of course, my clients remain interested in what Mr. O'Neil does given that Royden Eaton told Mr. Thomas during the course of a meeting on the road to Hill Creek that the watermaster "could be fired" if he went ahead with his stated intention to deliver Big Gulch water in accordance with IDWR recommendations. Furthermore, last week, despite the fact that the watermaster himself made the correct settings at the headgate, someone twice changed the watermaster's settings to allow more water to flow to the Sulphur Creek property. As a result, the watermaster will be required to place locks on the headgate. As you know, such actions are criminal in nature and subject to prosecution.

Conclusion

At this point, it will come as no surprise to you that Summit Ranch rejects all of your threats, accusations and insults. Likewise, it appears to us on this end that a face-to-face meeting between our respective clients would serve no useful purpose. We hope of course that court action will not become necessary. If your clients feel otherwise, we will meet you at the appropriate venue.

Sincerely,

HAEMMERLE & HAEMMERLE, P.L.L.C.



Fritz X. Haemmerle

FXH: fXH
cc: client
IDWR (Don Schaff and Tim Luke)