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WATER RESOURCES
WESTERN REGION

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Department of Water Resources

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DOUGLAS ROBISON
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:

1. 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

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

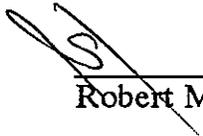
2. Defendants shall immediately and forthwith remove all obstructions to the flow of Sand Springs Gulch from such Gulch, in order that there can be a full flow of water in such Gulch. Further, Defendants shall not divert water from Sand Springs Gulch at the so-called "pond diversion," but shall allow 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

BARBARA J. LAYHER
ELMORE COUNTY PROSECUTING ATTORNEY
KENNETH M. ROBINS
DEPUTY PROSECUTING ATTORNEY
190 South 4th East
Post Office Box 607
Mountain Home, Idaho 83647

TELEPHONE: (208) 587-2144

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

THE STATE OF IDAHO,)	
)	Case No. CR-MD-93-00518
Plaintiff,)	
)	
vs.)	SUBPOENA - CRIMINAL
)	
CHARLENE SMITH,)	
)	
Defendant.)	
<hr/>		Court Trial

TO: ROBERT B. WHITNEY
DEPARTMENT OF WATER RESOURCES
WESTERN REGION
2735 AIRPORT WAY
BOISE IDAHO 83705

YOU ARE COMMANDED To appear before the Honorable Michael
McLaughlin, Magistrate Judge of the District Court of the Fourth
Judicial District in and for the County of Elmore, State of Idaho,
on the 11th day of February 1994, at the hour of 10:30 o'clock
A.M., as a witness in a criminal action prosecuted by the State of
Idaho against the above-named Defendant.

YOU ARE FURTHER REQUIRED TO:

XXXXX TELEPHONE (587-2144) the Office of the Elmore County Prosecuting Attorney the LAST WORKING DAY PRIOR TO SAID HEARING DATE to confirm said hearing.

XXXXX BRING THIS SUBPOENA AND THE ATTACHED VOUCHER WITH YOU WHEN YOU APPEAR IN COURT. The attorney handling the matter will acknowledge your appearance by signature; you will then hand deliver the voucher to the Court Clerk's Office in order to receive your witness fee.

_____ Contact the Office of the Elmore County Prosecuting Attorney upon service of this Subpoena for review of this criminal action.

_____ Appear at the Office of the Elmore County Prosecuting Attorney, 190 South 4th East, Courthouse Annex, Mountain Home, no later than _____.

_____ Make arrangements with the Office of the Elmore County Prosecuting Attorney ten (10) days prior to trial for an appointment.

_____ BRING WITH YOU AND HAVE WITH YOU BEFORE SAID COURT:

WITNESS MY HAND AND SEAL This 11 day of January 1998.

DOLORIS ROBISON
CLERK OF THE DISTRICT COURT

BY: M. Bissey
DEPUTY CLERK

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

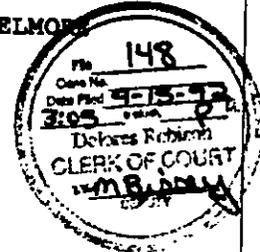
3
4 RICHARD P. VINER and CARLENE)
5 R. VINER, husband and wife,)
6 Plaintiffs,)

7 vs.)

8 PETER BATRUEL, MARY N.)
9 BATRUEL, husband and wife,)
10 and PAUL BATRUEL,)
11 Defendants.)

Case No. 8224

SUPPLEMENTAL DECISION
AND ORDER



11 In the Memorandum Decision entered herein on January 15, 1992,
12 I acknowledged defendants' contention that it was possible to
13 quantify the water involved in this controversy, rather than
14 separate it by means of new and/or rehabilitated ditches as
15 recommended in the special master's report. I then gave defendants
16 3 months, or until April 15, 1992, to try to obtain and present
17 expert opinion to support their contention.

18 In view of the time and expense which the parties and Court
19 have already invested in this matter, I have been reluctant to
20 strictly enforce such time limitation, despite the need to bring a
21 final resolution to this matter without undue delay.

22 However, defendants have now had almost 5 additional months to
23 produce such an opinion, and have not done so. I feel it is
24 inappropriate and prejudicial to the rights of the parties and
25 effective administration of justice to delay the conclusion of this
matter any longer, and that a supplemental order must now be

SUPPLEMENTAL DECISION AND ORDER

1 entered to complete the January 15, 1992 decision.

2 Accordingly, IT IS HEREBY ORDERED that the Report filed herein
3 by Carlyle Briggs, as Special Master, on October 21, 1991, be, and
4 the same hereby is, in all respects, CONFIRMED and APPROVED.

5 Dated this 14th day of September, 1992.

6
7 

8 ROBERT M. ROWETT
9 District Judge

10
11
12
13
14
15
16
17
18 I certify that I mailed a full and true copy of the foregoing, securely
sealed in an envelope with postage prepaid, to:

19 D. Blair Clark to Box 2773 Boise
20 10 83701 + Howard Memorials 90
21 Broadway Ave. Suite 220 Boise ID 83720
22 15th day of September 1992
23 M. B. Biddy
24 Deputy Clerk of the District Court

25
SUPPLEMENTAL DECISION AND ORDER

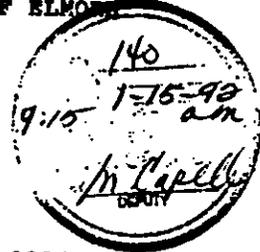
1 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
2 STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE

3
4 RICHARD P. VINER and CARLENE R.)
5 VINER, husband and wife,)
6 Plaintiffs,)

7 vs.)

8 PETER BATRUEL, MARY N. BATRUEL,)
9 husband and wife, and PAUL)
BATRUEL,)

10 Defendants.)



Case No. 8224

MEMORANDUM DECISION

11 Ref: Plaintiffs' motion to approve master's report and require
12 payment of costs and expenses of master.

13 Pursuant to a stipulation and order entered herein on
14 March 19, 1991, Carlyle Briggs, as Special Master, made an
15 inspection and analysis of the problem regarding division of
16 the Sand Springs Gulch water between the parties hereto which
17 has complicated these proceedings since they were initiated in
18 1982.

19 On October 21, 1991, Mr. Briggs' written report thereon
20 was filed along with plaintiffs' motion to approve it; and on
21 November 21, 1991, an Addendum thereto was filed. In effect,
22 the report seems to indicate that it is impractical and
23 uneconomical to attempt to quantify such water which is to go
24 to each party here, and that a separation of the reservoir
25

1 water by new or rehabilitated ditch instead of co-mingling with
2 gulch water, or use of weirs, would be more feasible.

3 Defendants contend that it is still possible to quantify
4 the water, as contemplated by Court and counsel. I will give
5 defendants a reasonable opportunity to obtain and present
6 expert opinion to support their claim that it can be
7 quantified. For that purpose, I will reserve decision on the
8 motion to confirm the master's report of Mr. Briggs until April
9 15, 1992.

10 With regard to Mr. Briggs fees and costs as Master, I
11 conclude that he made a good faith attempt to perform his
12 duties and applied his expertise as anticipated by the
13 stipulation and order, and that pursuant thereto, the
14 defendants should forthwith pay 1/2 of his fees and costs.

15 AND IT IS ACCORDINGLY ALL SO ORDERED.
16 Dated this 10th day of January, 1992.

17
18 
19 ROBERT M. ROWETT
20 District Judge
21
22
23
24

25 MEMORANDUM DECISION-Page 2
26 CERTIFICATE OF MAILING
27 I certify that I mailed the foregoing, securely
28 sealed in an envelope with postage prepaid, to
Blair Clark P.O. Box 2773, Boise, Id 83701-5773
and Howard Manweiler P.O. Box 827, Boise, Id 83701-0827
on the 15 day of Jan 1992
M. Capelli
Deputy Clerk of the District Court

*filed
11-21-91
4:35
M. Capell*

November 19, 1991

D. Blair Clark, Attorney
Ringert Clark Chartered Lawyers
455 South Third Street
P.O. Box 2773
Boise, Idaho 83701

Howard I. Manweiler, Attorney
Manweiler, Bevis & Cameron, P.A.
960 Broadway Ave., Suite 220
P.O. Box 827
Boise, Idaho 83701-0827

ADDENDA TO
REPORT OF FINDINGS TO DETERMINE THE
QUANTIFICATION OF WATER IN
SAND SPRINGS GULCH

VINDER-BATRUEL, CASE NO. 8224

On Sunday, November 10, 1991 I traveled to VINER-BATRUEL area and walked the route of a ditch proposed to separate the Viner and Batrule waters, as discussed in my report of August 14, 1991.

I have now verified, on the ground, that this split of water can be accomplished by constructing approximately 400 feet of ditch, to include installation of a culvert under a road, a short distance to the north of the small pond by Batruel's home. The enclosed map is marked to show the ditch route from the Morrow Reservoir to Batruel's pond. The map also shows the location of the approximately 400 feet of new ditch and culvert necessary to separate Batruel's and Viner's water, and to allow all of Batruel's water to be transmitted to the pond in accordance with his expressed need.

Carlyle W. Briggs
Carlyle W. Briggs, P.E.



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Department of Water Resources

B. & A. Engineers, Inc. 619 Grove Street Boise, Idaho 83702

August 14, 1991

D. Blair Clark, Attorney
Ringers, Clark, Harrington, Reid,
Christenson & Kaufman
P.O. Box 2773
Boise, Idaho 83701

Howard I. Manweiler, Attorney
Manweiler, Bevis and
Cameron, P.A.
P.O. Box 827
Boise, Idaho 83701

REPORT OF FINDINGS TO
DETERMINE THE QUANTIFICATION OF
WATER IN SAND SPRINGS GULCH

VINER-BATRUEL, CASE NO. 8224

On Thursday, April 11, 1991 evening, I telephoned Carleen Viner at the Lava Rim Ranch north of Glenns Ferry (Tel. 1-366-2638) and arranged to meet her at the ranch Saturday, April 13, 1991, at 2:00 P.M. to look at the water courses and sources. I arrived at the ranch at the appointed time and toured the roads to the reservoir, diversion points and ditches to the two ranches. Mrs. Viner (Smith) loaned me an aerial photo map, which had an exhibit number marked Exhibit L, 11-7-87. Upon my return to Boise I had a photographic copy made thereof, and on Wednesday, April 17, 1991 I enhanced markings for ditches, diversion points, etc. on the photo copy, and on copies of the Morrow Reservoir, Idaho USGS 7½ Minute Quadrangle Map, Provisional Edition 1986. Such copy is available for review and will be filed with the court.

On Tuesday, April 7, 1991, evening, I called Paul Batruel at his ranch (Tel. 1-366-2375) and arranged to meet at his ranch on

B. & A. Engineers, Inc. 619 Grove Street Boise, Idaho 83702

Saturday, May 11, 1991 in the afternoon. Consequently we arrived at his ranch at 1:30 P.M.

From 1:30 P.M. until 4:00 P.M. I discussed the irrigation problems with Paul Batruel and his mother. Since Paul Batruel had to leave, we did not tour his irrigation facilities with him.

After having listened to both parties discuss their viewpoints, and after having taken a preliminary driving tour of the irrigation water ditches, streams and diversion points, I have formed a tentative conclusion that it is neither practical nor economical to try to mix varying quantities of Batruel's Morrow Reservoir water with varying quantities of water claimed by Viner rising and flowing in Sand Creek Gulch, and then to be able to divide and split the waters equitably at a downstream diversion point.

It appears to me that Batruel could run all of his Morrow Reservoir water along an existing ditch which lies westerly and somewhat parallel to Sand Springs Creek. Such ditch could with a small additional amount of new ditch, or rehabilitated old ditch, run water into the small reservoir by his house, where he can divert water wherever it needsto go. Batruel says he cannot connect the ditch to his small reservoir, which Viner says he can. I need to walk this ditch route, using a hand level, and then I can determine if the ditch can discharge into the small reservoir.

B. & A. Engineers, Inc. 619 Grove Street Boise, Idaho 83702

It is my understanding that presently it is possible for all of Batruel's water to travel to Batruel lands in ditches that do not commingle with or use any portion of the Sand Springs Creek Gulch. Water is piped or flumed across the gulch in several places, but does not enter the gulch except in the upper reach near the Morrow Reservoir.

If Batruel uses his ditches instead of the gulch, then there should be no water to split from Morrow Reservoir. Batruel claims that he should be allowed to collect and use water that seeps from the Morrow Reservoir to form at least part of the seeps feeding Sand Spring Creek Gulch, and that when he irrigates lands alongside of the gulch, that additional water seeps into the gulch as springs flow. Both parties have said that for the past 2 or 3 years there has not been enough water coming down the gulch, from springs, to be worth much, and at the time of my April 11, 1991 visit there appeared to be very little water emanating from the springs or seeps along the gulch.

A review of Idaho Department of Water Resources letter September 14, 1989, by David R. Tuthill, Jr., P.E., Manager of the Western Region office, indicates that about a 50-50 split of water was recommended and attempted at that time. This method will work if Morrow Reservoir water is not constantly being diverted to the gulch in varying quantities. Two weirs, just alike, would evenly split any

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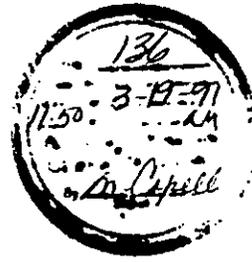
waters coming down the gulch to the Batruel Diversion, where the existing ditch would convey Batruel's half to his small reservoir by his house, and Viner's half would continue on down Sand Springs Creek for their use. The two weirs can be constructed in the same concrete box, which can be provided with a metal cover and lock to deter vandalism.

With your concurrence, I would plan to again visit the site for the purposes heretofore discussed, as soon as I receive your reply.

Carlyle W. Briggs

Carlyle W. Briggs, P.E.
Consulting Engineer.





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 CHRISTENSON & KAUFMAN, CHARTERED
 599 West Bannock, P.O. Box 2773
 Boise, Idaho 83701-2773
 Telephone No. (208) 342-4591
 Attorneys for Plaintiff

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,
 Plaintiffs,
 vs.
 PETER BATRUEL, MARY N. BATRUEL,
 Husband and Wife, and PAUL
 BATRUEL,
 Defendants.

Case No. 8224
 STIPULATION TO APPOINT
 SPECIAL MASTER AND ORDER

COMES NOW, the parties, by and through their attorneys, and stipulate that Carlyle Briggs may be appointed as special master to determine the quantification of the water which rises and flows in Sand Springs Gulch in order to attempt to resolve this matter and the ambiguities in prior Court orders and decrees pursuant to the provisions of IRCP 53. The fees of such master shall be divided between the parties.

Dated this 8 day of March, 1991.

RINGERT, CLARK, HARRINGTON, REID,
 CHRISTENSON & KAUFMAN, CHARTERED,

by 
 D. Blair Clark
 Attorneys for Plaintiff