

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF CERTAIN BASIN 79
WATER RIGHTS, IN THE NAME OF THE
UNITED STATES OF AMERICA ACTING
THROUGH THE DEPARTMENT OF
INTERIOR, BUREAU OF LAND
MANAGEMENT

Docket No. P-OSC-2021-004

**ORDER GRANTING REQUEST FOR
HEARING; ORDER STAYING
HEARING**

**(BUTCHER BAR AND CHINA
CREEK ALLOTMENTS)**

BACKGROUND

On October 15, 2021, Gill Family Ranches, LLC (“Petitioner”) filed with the Idaho Department of Water Resources (“Department”) a *Verified Petition for Order to Show Cause* (“Petition”). Petitioner asked the Department to order the United States of America acting through the Department of Interior, Bureau of Land Management (“BLM”), pursuant to Idaho Code § 42-224(1), to show cause why 8 BLM stockwater rights, allegedly on the federal grazing allotments known as the Butcher Bar and China Creek Allotments, have not been forfeit pursuant to Idaho Code § 42-222(2). *See Petition* at 1.

On April 25, 2022, the Director issued an *Order Partially Granting Petition; Order to Show Cause* (“Order”) in this matter. In it, the Director partially granted the Petition and ordered the BLM to show cause why 6 of the 8 BLM stockwater rights at issue had not been lost through forfeiture pursuant to Idaho Code § 42-222(2). *See Order* at 5.

The Department later determined that 1 of the 6 water rights subject to the April 25, 2022 Order was decreed based on federal law. Water rights decreed based on federal law are not subject to Idaho Code § 42-224. I.C. § 42-224(14), *as amended by* H.B. 608 (2022) (“This section applies to all stockwater rights except those stock water rights decreed to the United States based on federal law.”). On May 13, 2022, the Deputy Director, while serving as acting director, withdrew the Order, and issued an *Amended Order Partially Granting Petition; Amended Order to Show Cause* (“Amended Order”) in accordance with Idaho Code § 42-224(14). The Amended Order directed the BLM to show cause “why the following [5 BLM] stockwater rights have not been lost through forfeiture pursuant to Idaho Code § 42-222(2): 79-11372, 79-11373, 79-11374, 79-11376, and 79-11756.” *Amended Order* ¶ 3, at 5.

The Amended Order gave the BLM 21 days from the completion of service to request in writing a hearing pursuant to Idaho Code § 42-1701A(1)–(2). *Amended Order* ¶ 4, at 5. Service upon the BLM, via certified mail with return receipt, was completed on May 16, 2022. On June 3, 2022, the Department received a special appearance letter from the United States Department of the Interior, Office of the Solicitor, addressed to the Director (“USDI Letter”). The USDI Letter includes a request, on behalf of the BLM, for hearing and a stay of said hearing in this case matter “until the conclusion of a lawsuit that the United States filed on June 2, 2022, in the

U.S. District Court for the District of Idaho, Civil No. 1:22-cv-00236-DKG, to challenge the lawfulness of the [Amended] order[]." *USDI Letter* at 1, 3.

ANALYSIS

Idaho Code § 42-224 states in pertinent part: "The stockwater right owner has twenty-one (21) days from completion of service of the order to show cause to request in writing a hearing pursuant to section 42-1701A(1) and (2), Idaho Code. I.C. § 42-224(6), *as amended by H.B. 608 (2022)*. The BLM was served a copy of the Amended Order on May 16, 2022, and its request for hearing was filed with the Department on June 3, 2022. The BLM's request for hearing was timely because it was received within 21 days from completion of service in accordance with Idaho Code § 42-224(6). Therefore, the Director will grant the BLM's request for hearing.

In addition, because the BLM has challenged the Amended Order in its lawsuit pending before the U.S. District Court for the District of Idaho (Civil No. 1:22-cv-00236-DKG), the Director determines the BLM's request for stay should be granted.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that the United States of America acting through the Department of Interior, Bureau of Land Management's request for hearing is GRANTED.

IT IS FURTHER ORDERED that the hearing requested by the United States of America acting through the Department of Interior, Bureau of Land Management is STAYED pending the outcome of the contested U.S. District Court case, Civil No. 1:22-cv-00236-DKG or until otherwise ordered by the Director.

DATED this 24th day of June 2022.



GARY SPACKMAN
Director

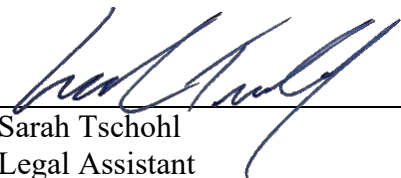
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of June 2022, I caused to be served a true and correct copy of the foregoing *Order Granting Request for Hearing; Order Staying Hearing (Butcher Bar and China Creek Allotments)*, by the method indicated below, upon the following:

<p>William G. Myers III Alison C. Hunter HOLLAND & HART LLP P.O. Box 2527 Boise, ID 83701 wmyers@hollandhart.com achunter@hollandhart.com</p> <p><i>Attorneys for Petitioner Gill Family Ranches, LLC</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>John Murdock U.S. Department of the Interior Office of the Solicitor Boise Field Office 960 South Broadway A venue, Suite 400 Boise, Idaho 83706-6240 John.murdock@sol.doi.gov</p> <p><i>Attorney for USDI BLM</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>

COURTESY COPIES TO:

<p>David Negri Stephen G. Bartell Thomas K. Snodgrass U.S. Department of Justice david.negri@usdoj.gov stephen.bartell@usdoj.gov thomas.snodgrass@usdoj.gov</p>	<p><input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
---	--



Sarah Tschohl
Legal Assistant