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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED _____

**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	) Subcases: 36-8139 and 36-8140
	)
Case No. 39576	) ORDER ON COURT'S MOTION TO
	) ALTER OR AMEND JUDGMENT;
	) I.R.C.P. 59(e)
	)
	) ORDER RESCINDING AMENDED
	) PARTIAL DECREE FOR WATER
	) RIGHT 36-8139

On June 18, 2002, a hearing was held regarding the above-captioned water rights.¹ The purpose of the hearing was to determine whether the water rights are properly subjected to the inclusion of a "13,000 gallon per day" limitation. At the hearing, Nick Spencer from IDWR provided comment to the Court regarding the limitation in these water rights pursuant to Judge Hurlbutt's ruling in Basin-Wide Issue 12. The Court also heard argument from the claimant, through its counsel, Jason Miciak, regarding whether the inclusion of this limitation was a result of a clerical error. Mr. Miciak also raised an argument that the claimants should be provided the relief sought due to a deficiency of notice arising from the fact that the limitation was not included in the Director's Reports for these water rights. Based upon the comments by Mr. Spencer, and the arguments presented by Mr. Miciak, the Court makes the following findings of fact and conclusions of law:

¹ Subsequent to the hearing, Mr. Miciak informally requested the Court to hold its decision in this matter pending settlement negotiations with IDWR. Mr. Miciak requested the opinion issue on August 2, 2002.

Findings of Fact

1. Water right 36-8140 was licensed on October 16, 1990, with both a commercial and a stockwater purpose of use. Based upon the annual acre-foot volume limitation in the license, it is clear that the stockwater purpose of use in the license is **not** a *de minimis* stock watering use as defined in Idaho Code section 42-1401A(12), rather the quantity of the licensed stockwater right exceeds this statutory definition. This finding is consistent with the representations made by IDWR at the hearing.

2. Water right 36-8139 was licensed on October 16, 1990, with both a domestic and a stockwater purpose of use. Based upon the annual acre-foot volume limitation in the license, it is clear that the stockwater purpose of use in the license is a *de minimis* stock watering use as defined in Idaho Code section 42-1401A(12). This finding is also consistent with the representations made by IDWR.

3. The Director's Report for Basin 36 does not include a "13,000 gallon per day" limitation for any water right reported therein, including the subject water rights. The Department of Water Resources began including the limitation after Special Master Haemmerle issued a *Special Master's Second Amended Recommendation Re: Basin-Wide Issue 12* (August 12, 1996). Although there was a challenge to the Presiding Judge on Basin-Wide Issue 12, the Special Master's recommendation regarding the limitation at issue herein was not challenged.

4. A *Partial Decree* was issued for water right 36-8139 on December 13, 1996. A *Partial Decree* for water right 36-8140 was issued on January 15, 1998. Both *Partial Decrees* contained the "13,000 gallon per day" limitation. The claimant, the McCord Family Partnership, was timely served with copies of these *Partial Decrees*.

5. The claimant did not timely file for any post-judgment relief (e.g., a motion pursuant to I.R.C.P. 59(e)) with respect to any issue it had with the inclusion of the subject limitation, nor did the claimant timely file an appeal to the Idaho Supreme Court following the issuance of the *Partial Decrees*.

6. The *Order Designating Basin-Wide Issue 12* was issued by Judge Hurlbutt on April 5, 1996, and appeared on the Docket Sheet that was published in the first week of May 1996.

Conclusions of Law

1. The stockwater portion of water right 36-8140 is **not** the type of stockwater right that should include a "13,000 gallon per day" limitation as contemplated in the *Memorandum Decision and Order Re: Basin-Wide Issue 12*. The inclusion of the limitation was the result of a clerical error caused by oversight or omission during the implementation of the order in Basin-Wide Issue 12. IDWR acknowledges the same.
2. The stockwater portion of water right 36-8139 is the type of stockwater right that should include a "13,000 gallon per day" limitation as contemplated in the *Memorandum Decision and Order Re: Basin-Wide Issue 12*. The inclusion of the limitation was not the result of a clerical error as alleged by the claimant.
3. The claimant was provided adequate notice, via service by mail, of the issuance of the respective *Partial Decrees* for these water rights.
4. The claimant was provided adequate notice, via the Docket Sheet, of the designation of Basin-Wide Issue 12. *See Memorandum Decision and Order on Motion to Set Aside Partial Decrees*, Subcases 55-02373 *et al.*, (LU Ranching Co.)(May 1, 2001).
5. The claimant had a duty to carefully review the *Partial Decrees* that were issued for these water rights and to timely seek relief, in accordance with the Idaho Rules of Civil Procedure, regarding any perceived errors in the judgment. No such relief was sought.

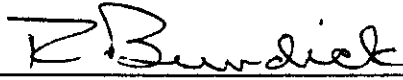
Order

The *Amended Partial Decree* issued for water right 36-8140 on May 21, 2002, correctly removed the "13,000 gallon per day" limitation from the stockwater portion of the water right, and hence no further action is required by the Court with respect thereto.

The *Amended Partial Decree* issued for water right 36-8139 on May 21, 2002 improperly removed the "13,000 gallon per day" limitation from the stockwater portion of the water right, and therefore, IT IS HEREBY ORDERED that the *Amended Partial*

Decree is rescinded. The original ***Partial Decree*** for water right 36-8139, issued December 13, 1996, is reinstated.

Dated 8-2-02

A handwritten signature in dark ink, appearing to read "R. Burdick", written over a horizontal line.

ROGER BURDICK
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER ON COURT'S MOTION TO ALTER OR AMEND JUDGMENT; I.R.C.P. 59(e) was mailed on 8/2/02 with sufficient first-class postage to the following:

Director of IDWR
PO Box 83720
Boise, ID 83720-0098

Jason R. Miciak
PO Box 2632
Twin Falls, ID 83303-2632

U.S. Department of Justice
Environment & Natural Resources Div.
550 W Fort St., MSC 033
Boise, ID 83724

Chief, Natural Resources Div.
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, Idaho 83711-4449


Deputy Clerk