

COPY

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 334-2690

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 No. 55-10055
	)	
Case No. 39576	)	MOTION TO AMEND PARTIAL DECREE
	)	
	)	
_____	)	

COMES NOW, the State of Idaho, Department of Lands, by and through the undersigned deputy attorney general, and moves under I.R.C.P. 60(b)(5) to amend the partial decree entered by this Court in subcase no. 55-10055 on January 30, 1998 to limit the point of diversion and place of use as follows:

POINT OF DIVERSION:	T09S R02W S14 NESESW
PLACE OF USE (STOCKWATER):	T09S R02W S14 SESW

The grounds for this motion are as follows:

1. The State of Idaho acquired the following described lands by Clear List No. 35

dated February 19, 1923:	T09S R02W	S22	NWSE
		S23	SWNE
			SENE
			SWNW
			NWSW
			NESE
		S24	NWSW

2. Joseph E. Black, (hereinafter “claimant Black”) filed notice of claim no. 55-10055 in the Snake River Basin Adjudication, which includes within the legal description of its point of diversion and place of use the lands described in paragraph 1 above. This Court subsequently entered a partial decree for this subcase on January 30, 1998.

3. The State believes the water right filing by claimant Black was without authority because the springs rise and fall on State land. The State and claimant Black have resolved their conflict over the water rights. Claimant Black has expressed his intent to abandon and has abandoned his water right claims on State land by entry into a settlement agreement with the State of Idaho. Since the partial decree for subcase no. 55-10055 includes both claims on State land and claimant Black's own land, the decree needs to be modified to reflect only claimant Black's private land.

4. I.R.C.P. 60(b)(5) allows a court to relieve a party from a final judgment if the judgment has been satisfied, released, or discharged or if it is no longer equitable that the judgment have prospective application.

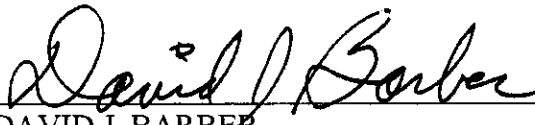
5. The abandonment by claimant Black of a portion of water right no. 55-10055 constitutes a partial release of that judgment. It is no longer equitable that the judgment have

prospective application with regard to the State Public Endowment Land because of the partial abandonment of water right no. 55-10055.

DATED this 26th day of January 2004.

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division



DAVID J. BARBER
Deputy Attorney General
Natural Resources Division

CERTIFICATE OF SERVICE

I certify that on this 26th day of January 2004, I caused the original and the copies of the MOTION TO AMEND PARTIAL DECREE to be filed and served on the following persons parties by the method designated:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

U.S. MAIL

2. One copy to the owner of the water right at the following address:

Joseph E. Black
Star Rte, Box 49
Hammett, ID 83627

U.S. MAIL

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

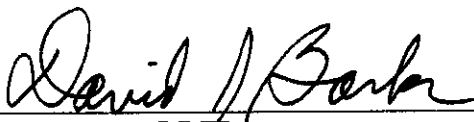
STATEHOUSE MAIL

Chief of Natural Resource Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

(not applicable)

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, Idaho 83724

U.S. MAIL



DAVID J. BARBER
Deputy Attorney General