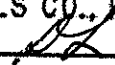


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Department of Water Resources

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
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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	)	SPECIAL MASTER'S REPORT
	)	
Case No. 39576	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW;
	)	
	)	FOR WATER RIGHTS 65-2585, 65-3114,
	)	65-3115, 65-3116 and 65-22587

I.
PROCEDURAL BACKGROUND

A notice of claim was filed for these water rights pursuant to I.C. § 42-1409. The Director of the State of Idaho Department of Water Resources examined the water system for this reporting area. The *Director's Report* contained a recommendation or abstract for the elements of these water rights.

An objection was filed to water right 65-3115 on April 12, 2000, by Black Canyon Irrigation District (objection 1) objecting to priority date and total acres. The United States, Bureau of Reclamation filed an objection (objection 2) on April 14, 2000, objecting to priority date. United States, Bureau of Reclamation also filed a late objection (objection 3) to General Provision, Separate Streams on October 18, 2000. The Idaho Department of Water Resources filed a *Corrected Director's Report* on December 20, 2000. Eastern Western Corporation filed an objection (objection 4) to the *Corrected Director's Report* on January 26, 2001. Roseberry Irrigation District also filed an objection (objection 5) on that same date. On August 31, 2001, Roseberry Irrigation District filed a *Motion to Correct Clerical Mistakes in Judgment Pursuant to I.R.C.P. 60(a) and Memorandum in Support*. A Hearing was held on January 10, 2002. This Special Master issued an *Order Denying Motion to Correct Clerical Errors Pursuant to I.R.C.P. 60(a) But Allowing Prior Decree to be*

Supplemented with Evidence of Findings of Ambiguity on October 1, 2002. A *Stipulation and Agreement* was filed on November 18, 2002, wherein the Bureau of Reclamation withdrew its objection to priority date (objection 2) and Black Canyon Irrigation District withdrew its objection to priority date and place of use (objection 1). On March 25, 2003, a *Standard Form 5* was filed settling objection 3. In addition to signing the *Stipulation and Agreement*, Black Canyon Irrigation District filed a *Motion to Withdraw its Objection* (objection 1) on April 3, 2003. The *Motion to Withdraw Objection* is **granted**.

Objections to the General Provisions Separate Streams issue for water rights 65-3114, 65-3116 and 65-22587 were settled per the *Stipulation and Agreement* and *Standard Form 5*'s filed on March 25, 2003. Although water right 65-2585 was an unobjected to overlapping water right, a *Standard Form 5* was filed wherein the parties agreed to include the General Provision Separate Streams language in "Other Provisions Necessary."

An Evidentiary Hearing was held on April 4, 2003, regarding the priority date issue in Subcase 65-3115.

II.

FINDINGS OF FACT

On January 12, 1917, the Roseberry Irrigation District submitted to the Idaho State Engineer a permit application for a storage water right in Boulder Lake located in Valley County, Idaho. The application was approved on January 20, 1917 and the permit was designated Permit R-49.

By 1922, the Roseberry Irrigation District successfully had completed construction of the Boulder Lake dam and diversion works and had applied the water to beneficial use pursuant to the terms of Permit R-49.

The Roseberry Irrigation District's irrigation storage water right for Boulder Lake based on Permit R-49, was confirmed to have a priority date of January 12, 1917 in the *Roseberry Irrigation District v. Shaw* decree filed on July 19, 1926. This decreed storage water right subsequently was assigned the number 65-3115. The storage right was claimed and decreed for 1218 AFY.

The Roseberry Irrigation District's Water Right No. 65-3115 historically has been administered and delivered based on the January 12, 1917 priority date.

The *Payette Adjudication* claim for Water Right No. 65-3115 that was filed by the Roseberry Irrigation District on May 19, 1971 had been prepared by an agent of the Idaho Department of Water

Administration, the predecessor agency to the Idaho Department of Water Resources. *Payette Adjudication* Claim No. 65-3115 identified a September 6, 1949 priority date for the water right for 1218 AFY.

The September 6, 1949 priority date apparently came from Permit No. R-842 which the Roseberry Irrigation District had previously claimed to enlarge the Boulder Lake Reservoir and which was cancelled on March 1, 1955 because of the failure to submit proof of construction for the increase to the Boulder Lake dam.

A May 27, 1971 letter from the Secretary of the Roseberry Irrigation District to the Department of Water Administration states that the priority date for the Roseberry Irrigation District's Boulder Lake storage right is January 12, 1917, and confirms that at the time of submitting the Payette Adjudication claim, the Roseberry Irrigation District continued to consider its Boulder Lake Reservoir water right to have the January 12, 1917 priority date.

Payette Adjudication Claim No. 65-3115 references the 1926 Roseberry Irrigation District v Shaw decree as the basis for the water right, substantiating the erroneous nature of the 1949 date. The claim and the decree in the Payette also substantiate the 1218 AFY.¹

The error of the September 6, 1949 priority date on Payette Adjudication Claim No. 65-3115 was not identified by the Department in the Payette Adjudication claim review process.

The erroneous September 6, 1949 priority was further compounded by another mistake during the Payette Adjudication process. Since the water right ultimately was decreed as proposed by the Department in the Payette Adjudication with a May 6, 1949 priority date, the "9" for the month of September on the claim apparently was input as "5" for the month of May during data transcription.

Early in the SRBA, in November 1988, the Roseberry Irrigation District notified the Idaho Department of Water Resources by letter and affidavit of the erroneous 1949 date assigned to Water Right No. 65-3115.

On December 27, 1988, the Roseberry Irrigation District, filed its SRBA Claim for Water right No. 65-3115, initially asserting the original January 12, 1917 priority date, and the 1218 AFY volume limitation. IDWR initially recommended the January 12, 1917 priority date, but later changed the recommendation to reflect the September 6, 1949 priority date.

¹ There is a question on the Payette Decree as to whether the AFY is 1207 or 1218.

III.

CONCLUSIONS OF LAW

Therefore, based on the file and record herein and pursuant to the evidence presented at hearing and the *Order* issued October 1, 2002, IT IS RECOMMENDED that water right 65-3115 be decreed with a change in priority date to January 12, 1917. The total acres to be listed as 2719 for water rights, 65-3114, 65-3115, 65-3116, 65-2585 and General Provision Separate Stream language added to water rights, 65-3114, 65-3115, 65-3116, 65-2585, and 65-22587 as set forth in the attached *Recommendations for Partial Decrees Pursuant to I.R.C.P. 54(b)*.

III.

RECOMMENDATION FOR PLACE OF USE DESCRIPTION USING DIGITAL BOUNDARY

Effective July 1, 2002, the Idaho Legislature approved the use of a Geographic Information system (GIS) for describing the place of use (digital boundary) for water rights meeting certain criteria. See I.C. §§ 42-219(2) and 42-1411(2)(h). The GIS mapping technology allows the geographic area encompassing the place of use for a water right to be particularly identified and visually displayed in a map overlay format through the aid of computer technology.

Water rights that are for an irrigation purpose of use and also meet one of the following criteria: (1) used in conjunction with an irrigation project where the canals constructed cover an area of twenty-five thousand (25,000) acres or more; (2) the place of use for the water rights is located within an irrigation district organized pursuant to the laws of the state of Idaho; or (3) the water rights are for an irrigation project developed by an association, company, corporation or the United States to divert and deliver or distribute surface water under any annual charge or rental for beneficial use by more than five (5) water users in an area less than twenty-five thousand (25,000) acres.

Water right 65-3115 meets one of the above-stated criteria.² Therefore IT IS FURTHER

² In incorporating a digital boundary into a partial decree, the electronic or digital data is what is actually decreed as opposed to the visually displayed map ultimately generated from the data. The data is stored on a CD-ROM. The data on the CD-ROM is incorporated by reference into the partial decree. Duplicate originals of the CD-ROM will be issued. The SRBA District Court retains an original together with the original partial decree, and the Idaho Department of Water Resources (IDWR) retains the other original. Upon request, the claimant can obtain a copy of the CD-ROM from IDWR at no cost, although GIS software will still be required to access the data. Subsequent administrative changes to the place of use will also be stored in a digital format and kept on file and maintained by IDWR. IDWR will maintain all computer software and/or hardware necessary for reducing the data to a usable format that is accessible to the general public, including access through the IDWR Internet website (www.idwr.state.id.us) or its successor Uniform Resource Locator (URL).>

RECOMMENDED that water rights 65-3114, 65-3115, 65-3116 and 65-2585 be decreed using a digital boundary with the partial decree containing the following additional language as set forth in the attached Recommendation for Partial Decree Pursuant to I.R.C.P. 54(b):

The boundary encompassing the place of use for this water right is described with a digital boundary as defined by I.C. § 42-202B(2)(2003) and authorized pursuant to I.C. § 42-1411(2)(h)(2003). The data comprising the digital boundary are incorporated herein by reference and are stored on a CD-ROM disk issued in duplicate originals on file with the SRBA District Court and the Idaho Department of Water Resources. A map depicting the place of use is attached hereto to illustrate the place of use described by the digital boundary.

DATE April 8, 2004.



THOMAS R CUSHMAN
Special Master
Snake River Basin Adjudication

Roseberry Irrigation District

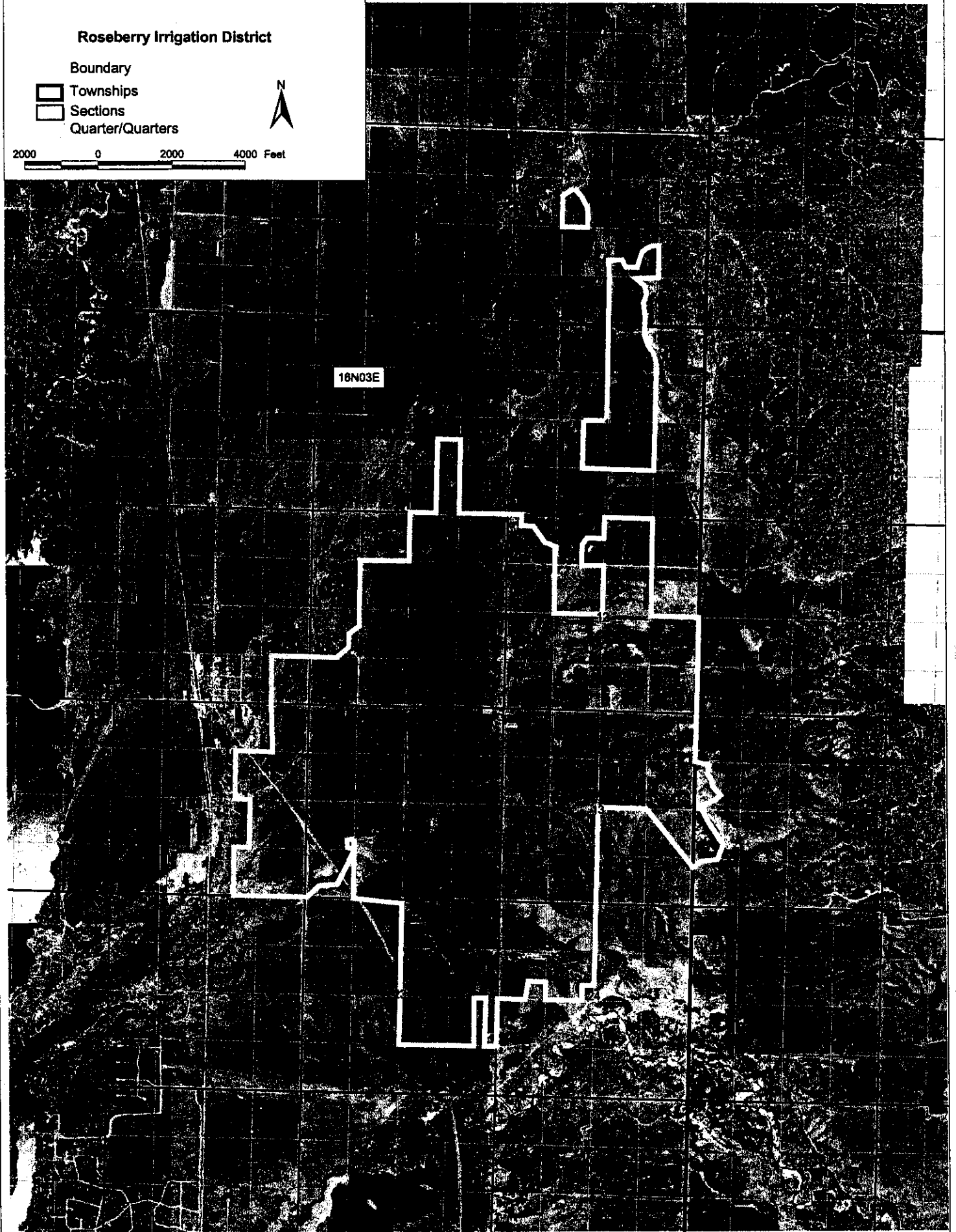
Boundary

- Townships
- Sections
- Quarter/Quarters



2000 0 2000 4000 Feet

16N03E



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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: 65-2585, 65-3114, 65-3115,
	)	65-3116 and 65-22587
Case No. 39576	)	
_____	)	CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT AND RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed April 13, 2004, with sufficient first-class postage to the following:

Director of IDWR
P O Box 83720
Boise, Idaho 83720-0098

Charles F McDevitt
P O Box 2564
Boise, Idaho 83701

Dana L Hofstetter
608 West Franklin Street
Boise, Idaho 83702

United States of America
USDI Bureau of Reclamation
550 West Fort Street, MSC 033
Boise, Idaho 83724

State of Idaho
Office of Attorney General
P O Box 44449
Boise, Idaho 83711-4449

Roseberry Irrigation District
c/o Joe Eld
2554 E Roseberry
McCall, Idaho 83638

Roseberry Irrigation District
P O Box 366
Donnelly, Idaho 83615


Deputy Clerk

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
Case No. 39576

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

Water Right(s): 65-02585
65-03114 65-03115 65-03116
65-22587

On April 13, 2004, Special Master THOMAS R CUSHMAN issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s) pursuant to SRBA Administrative Order 1 (AO1), Section 13a.

Pursuant to SRBA Administrative Order 1, Section 13a, any party to the adjudication including parties to the subcase, may file a Motion to Alter or Amend on or before the 28th day of the next month.

Failure of any party in the adjudication to pursue or participate in a Motion to Alter or Amend the SPECIAL MASTER'S RECOMMENDATION shall constitute a waiver of the right to challenge it before the Presiding Judge.

DATED April 13, 2004.


DEBBIE LASH
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED *[Signature]*

2004 APR 13 AM 9 30

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
_____) Water Right 65-03115

NAME AND ADDRESS: ROSEBERRY IRRIGATION DISTRICT
PO BOX 366
DONNELLY, ID 83615

JOE ELD
2554 E ROSEBERRY
MC CALL, ID 83638

SOURCE: BOULDER LAKE TRIBUTARY: BOULDER CREEK

QUANTITY: 1207.00 AFY

PRIORITY DATE: 01/12/1917

POINT OF DIVERSION: T17N R03E S13 SENWSE (Rediversion) Within Valley County
T18N R04E S27 NESE

WHEN AVAILABLE 361 ACRE FEET OF WATER FROM BOULDER LAKE OR 310
ACRE FEET AT HEADGATE OF WATER DIVERTED UNDER THIS RIGHT IS
EXCHANGED WITH WATER FROM LOUIE LAKE UNDER RIGHT NO. 65-02916.
WATER DIVERTED UNDER THIS RIGHT IS USED WITHIN THE BOULDER
IRRIGATION COMPANY AND THE ROSEBERRY IRRIGATION DISTRICT
BOUNDARIES.

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation from Storage	04-15 TO 10-15	1207.00 AFY
	Irrigation Storage	01-01 TO 12-31	1207.00 AFY

PLACE OF USE:

USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 2826 ACRES WITHIN THE
BOUNDARIES OF THE ROSEBERRY IRRIGATION DISTRICT IN A SINGLE
IRRIGATION SEASON. COMBINED RIGHT NOS.: 65-03114, 65-03116,
65-02585.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 2,719 ACRES
WITHIN THE BOUNDARIES OF THE ROSEBERRY IRRIGATION DISTRICT IN
A SINGLE IRRIGATION SEASON

The boundary encompassing the place of use for this water right
is described with a digital boundary as defined by I.C. Section
42-202B(2) (2003) and authorized pursuant to I.C. Section 42-1411
(2)(h)(2003). The data comprising the digital boundary are
incorporated herein by reference and are stored on a cd-rom disk
issued in duplicate originals on file with the SRBA District
Court and the Idaho Department of Water Resources. A map
depicting the place of use is attached hereto to illustrate the
place of use described by the digital boundary.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

BASIN 65 GENERAL PROVISIONS NO. 3, THE SEPARATE STREAMS
GENERAL PROVISION, DOES NOT APPLY TO APPROPRIATIONS OF WATER
AFTER OCTOBER 18, 1977.

THIS WATER RIGHT SHALL BE ADMINISTERED AS BEING FROM A
SEPARATE SOURCE PUSUANT TO BASIN 65 GENERAL PROVISION NO. 3.
IF THE HOLDER OF THIS RIGHT SEEKS TO CHANGE THE RIGHT PURSUANT
TO IDAHO CODE SECTION 42-222 OR SUCCESSOR STATUTE, NOTHING IN
THIS GENERAL PROVISION SHALL PRECLUDE ANY OTHER PERSON OR ENTITY

SRBA Partial Decree Pursuant to I.R.C.P. 54(b) (continued)

OTHER PROVISIONS (continued)

FROM DEMONSTRATING THAT SUCH CHANGE IN USE WOULD CAUSE INJURY
TO ITS WATER RIGHT OR FROM RECEIVING ANY RELIEF PROVIDED BY LAW
IN THE EVENT OF INJURY.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

