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Attorneys for Brenda Stolworthy and David Stolworthy

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

SUBCASE NO. 35-13305

MOTION TO ALTER OR
AMEND SPECIAL MASTER'S
REPORT AND
RECOMMENDATION

COMES NOW Claimant herein Brenda Stolworthy, by and through her attorneys of the law firm of Hopkins Roden Crockett Hansen & Hoopes and represents to the Court as follows.

Brenda Stolworthy is the water rights claimant in Subcase No. 35-13305. Claimant filed a claim on or about the 12th day of March 2001 alleging a priority date of 9-8-1960, source groundwater, points of diversion in T1N, R36E., B.M. Section 34 for

MOTION TO ALTER OR AMEND SPECIAL MASTER'S REPORT AND
RECOMMENDATION - 1

10.25 cfs total quantity appropriated. Place of use was identified in the claim to a water right on a total of 527.1 acres.

On or about February 12, 2003 the Idaho Department of Water Resources submitted its list of rights not recommended and included therein Water Right No. 35-13305 explaining the water right was disallowed on the grounds that the right was recommended as Right No. 35-7493. Claimant objected on the grounds that Right No. 35-13305 has a priority date of 1960, is separate from Right No. 35-7493 and should be recommended with an appropriate date as set forth above for 10.25 cfs.

The matter was investigated by the Idaho Department of Water Resources and Claimant has been advised that Claimant has provided sufficient proof to establish a priority date on Right No. 35-13305 of August 16, 1961 for 8.650 cfs with the place of use covering approximately 523 acres in T1N, R36E., B.M. Section 27, T1N R36E., B.M., Section 33, T1N R36E., B.M., Section 34, T1S, R36E., B.M., Section 2 and T1S, R36E., B.M., Section 3. A true and correct copy of the Recommended Water Right Acquired Under State Law supplied by the Department of Water Resources as to Right Number 35-13305 is attached hereto marked as Exhibit A and made a part hereof.

Representatives of the Department, while acknowledging the established priority date and the water claimed indicate there may be a partial overlap between Right No. 35-13305, Right No. 35-7368B, Right No. 35-7000B, and Right No. 35-7493. The Department has included in its recommendation a statement that use of these rights should be limited to a total combined diversion rate of 9.62 cfs and to a total combined annual

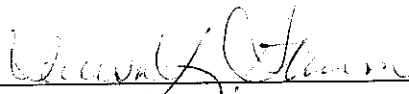
diversion volume of 2092 AF. (Please see Recommendation attached hereto marked as Exhibit A). In addition, the Department has issued a recommendation for the combined use of Rights numbered 35-7000B, 35-7368B, 35-7493 with Right Number 35-13305. True and correct copies of the Departments recommendations as to Rights numbered 35-7000B, 35-7368B, and 35-7493 are attached hereto marked as Exhibits B, C and D, respectively. The rights detailed in Exhibits B, C and D, are partially decreed rights. Claimants have filed a motion in each sub case asking that the Court amend the Decree as to each of these rights in order to resolve any possible overlap with Right Number 35-13305 and in order to comply with the Department's suggestion that the Rights be administered with a total combined diversion rate and a total combined annual diversion volume. A true and correct copy of the Motion filed in each of the sub cases referenced herein is attached hereto for this Court's information and for ease of reference.

Based upon the foregoing and the recommendation made by the Department of Water Resources, Claimant hereby respectfully requests that the Special Master amend his Report and Recommendation to recommend entry of an order confirming Water Right No. 35-13305 in accordance with the recommendation of the Department of Water Resources and to further recommend that the Partial Decrees entered in sub cases numbered 35-7000B, 35-7368B and 35-7439 be amended to incorporate the recommendation of the Department of Water Resources that use of the rights referenced herein be administered so as to avoid overlap in water use. Counsel for the Claimant takes this opportunity to apologize to the Special Master regarding instructions contained

in the Special Master's "Draft" Report and Recommendation. Counsel had read the final paragraph in the document to mean that Claimant had until April 28, 2004 in which to file this Motion with recommendations from the Department as to recognition of Right Number 35-13305 and resolution of issues related to overlap of existing, partially decreed rights.

Respectfully submitted this 28th day of April, 2004.

HOPKINS RODEN CROCKETT
HANSEN & HOOPES, PLLC

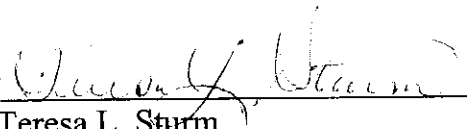
By 
Teresa L. Sturm

CERTIFICATE OF SERVICE BY MAIL, HAND DELIVERY
OR FACSIMILE TRANSMISSION

I hereby certify that a true and correct copy of the foregoing document was on this date served upon the persons named below, at the addresses set out below their name, either by mailing, hand delivery or by telecopying to them a true and correct copy of said document in a properly addressed envelope in the United States mail, postage prepaid; by hand delivery to them; or by facsimile transmission.

DATED this 28th day of April, 2004.

HOPKINS RODEN CROCKETT
HANSEN & HOOPES, PLLC

By 
Teresa L. Sturm

IDWR Document Depository
P. O. Box 83720
Boise, ID 83720-0098

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

☒ Mail
☐ Hand Delivery
☐ Facsimile

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

☒ Mail
☐ Hand Delivery
☐ Facsimile

IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED
WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 35-13305

NAME AND ADDRESS:

BRENDA STOLWORTHY
1230 N 375 E
SHELLEY ID 83274

SOURCE:

Source:

Tributary:

GROUND WATER

QUANTITY:

8.650 CFS ~~7.750 CFS~~

1,856.000 AFY

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED
DIVERSION RATE OF 9.62 CFS AND TO A TOTAL COMBINED ANNUAL
DIVERSION VOLUME OF 2092 AF. COMBINED RIGHT NOS.: 35-7000B, 35-7368B,
35-7493 AND 35-13305

PRIORITY DATE:

08/16/1961

POINT OF DIVERSION:

T01N R36E S34 NWSENE

Within BINGHAM County

T01N R36E S34 NENWNW

Within BINGHAM County

T01N R36E S34 NWSSEW

Within BINGHAM County

PURPOSE AND
PERIOD OF USE:

Purpose of use

Period of use:

Quantity:

IRRIGATION

04/01 10/31

8.650 CFS 1,856.00 AFY

~~7.750 CFS 1,856.00 AFY~~

PLACE OF USE:

IRRIGATION

within BINGHAM County

T01N R36E S27 NESW 4.0

T01N R36E S27 NWSW 4.0

T01N R36E S27 SWSW 36.0

T01N R36E S27 SESW 40.0

T01N R36E S27 NWSE 3.0

T01N R36E S27 SWSE 37.0

T01N R36E S33 NENE 1.0

T01N R36E S33 SENE 1.0

~~T01N R36E S27 SWCW 20.0~~

~~T01N R36E S27 SESE 37.0~~

~~T01N R36E S27 SWSE 19.0~~

~~T01N R36E S33 NENE 0.5~~

~~T01N R36E S33 SENE 5.2~~

~~T01N R36E S33 SESE 0.2~~

EXHIBIT A

IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED
WATER RIGHTS ACQUIRED UNDER STATE LAW

T01N R36E S34 NENE 27.0
T01N R36E S34 NWNE 39.0
T01N R36E S34 SWNE 35.0
T01N R36E S34 SENE 33.0
T01N R36E S34 NENW 40.0
T01N R36E S34 NWNW 37.0
T01N R36E S34 SWNW 32.0
T01N R36E S34 SENW 36.0
T01N R36E S34 NESW 34.0
T01N R36E S34 NWSW 24.0
T01N R36E S34 SWSW 28.0
T01N R36E S34 SESW 32.0

T01N R36E S34 NENE 26.0
T01N R36E S34 NWNE 40.0
T01N R36E S34 SWNE 33.0
T01N R36E S34 SENE 15.0
T01N R36E S34 NENW 41.0
T01N R36E S34 NWNW 36.0
T01N R36E S34 SWNW 37.0
T01N R36E S34 SENW 37.0
T01N R36E S34 NESW 21.0
T01N R36E S34 NWSW 26.0
T01N R36E S34 SWSW 31.0
T01N R36E S34 SESW 39.0

523 ACRES TOTAL

463.9 ACRES TOTAL

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A
COMBINED TOTAL OF 523 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED
RIGHT NOS.: 35-7000B, 35-7368B, 35-7493 AND 35-13305

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 463.9 ACRES WITHIN THE PLACE
OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

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

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. Section 42-1412(6), Idaho
Code.

~~RECOMMENDED AS RIGHT NO. 35-7493. This is included for a
claim that is PROPOSED to be disallowed because the right claimed is
recommended pursuant to another right. The remark indicates the
water right number of the OTHER right that is proposed to be
recommended. If you are not mailed a notice of the recommendation of
the OTHER right, then the OTHER right is recommended in another
claimant's name.
RECOMMENDED AS RIGHT NO. 35-7493.~~

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION
PURSUANT TO SECTION 42-1425, IDAHO CODE.

RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO
SECTION 42-1425, IDAHO CODE.

IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED
WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 35-7000B

NAME AND ADDRESS:

BRENDA STOLWORTHY
1230 N 375 E
SHELLEY ID 83274

DAVID STOLWORTHY
1230 N 375 E
SHELLEY ID 83274

SOURCE:

Source:
GROUND WATER

Tributary:

QUANTITY:

3.410 CFS

0.000 AFY

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED
DIVERSION RATE OF 9.62 CFS AND TO A TOTAL COMBINED ANNUAL
DIVERSION VOLUME OF 2092 AF. COMBINED RIGHT NOS.: 35-7000B, 35-7368B,
35-7493 AND 35-13305

~~USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A TOTAL
COMBINED ANNUAL DIVERSION VOLUME OF 2092 AF.
COMBINED RIGHT NOS.: 35-07493 AND 35-07368B.~~

PRIORITY DATE:

07/28/1967

POINT OF DIVERSION:

T01N R36E S34 NWSENE	Within BINGHAM County
T01N R36E S34 NENWNW	Within BINGHAM County
T01N R36E S34 NWSSEW	Within BINGHAM County

PURPOSE AND
PERIOD OF USE:

Purpose of use	Period of use:	Quantity:
IRRIGATION	4/01 10/31	3.410 CFS

PLACE OF USE:

IRRIGATION within BINGHAM County

T01N R36E S27 NESW	4.0
T01N R36E S27 NWSW	4.0
T01N R36E S27 SWSW	36.0
T01N R36E S27 SESW	40.0
T01N R36E S27 NWSE	3.0
T01N R36E S27 SWSE	37.0
T01N R36E S33 NENE	1.0
T01N R36E S33 SENE	1.0
T01N R36E S34 NENE	27.0
T01N R36E S34 NWNE	39.0
T01N R36E S34 SWNE	35.0
T01N R36E S34 SENE	33.0

EXHIBIT 6

IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED
WATER RIGHTS ACQUIRED UNDER STATE LAW

T01N R36E S34 NENW 40.0
T01N R36E S34 NWNW 37.0
T01N R36E S34 SWNW 32.0
T01N R36E S34 SENW 36.0
T01N R36E S34 NESW 34.0
T01N R36E S34 NWSW 24.0
T01N R36E S34 SWSW 28.0
T01N R36E S34 SESW 32.0

523 ACRES TOTAL

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A
COMBINED TOTAL OF 523 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED
RIGHT NOS.: 35-7000B, 35-7368B, 35-7493 AND 35-13305

~~USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 523 ACRES IN A SINGLE IRRIGATION
SEASON. COMBINED RIGHT NOS.: 35-07368B AND 35-07493.~~

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

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. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED
WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 35-7368B

NAME AND ADDRESS:

BRENDA STOLWORTHY
1230 N 375 E
SHELLEY ID 83274

DAVID STOLWORTHY
1230 N 375 E
SHELLEY ID 83274

SOURCE:

Source:
GROUND WATER

Tributary:

QUANTITY:

1.820 CFS

0.000 AFY

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED
DIVERSION RATE OF 9.62 CFS AND TO A TOTAL COMBINED ANNUAL
DIVERSION VOLUME OF 2092 AF. COMBINED RIGHT NOS.: 35-7000B, 35-7368B,
35-7493 AND 35-13305

~~USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A TOTAL
COMBINED ANNUAL DIVERSION VOLUME OF 2092 AF.
COMBINED RIGHT NOS.: 35-07493 AND 35-07000B.~~

PRIORITY DATE: 01/11/1974

POINT OF DIVERSION:

T01N R36E S34 NWSENE
T01N R36E S34 NENWNW
T01N R36E S34 NWSESW

Within BINGHAM County
Within BINGHAM County
Within BINGHAM County

PURPOSE AND
PERIOD OF USE:

Purpose of use

Period of use:

Quantity:

IRRIGATION

4/01 10/31

1.820 CFS

PLACE OF USE:

IRRIGATION

within BINGHAM County

T01N R36E S27 NESW 4.0
T01N R36E S27 NWSW 4.0
T01N R36E S27 SWSW 36.0
T01N R36E S27 SESW 40.0
T01N R36E S27 NWSE 3.0
T01N R36E S27 SWSE 37.0
T01N R36E S33 NENE 1.0
T01N R36E S33 SENE 1.0
T01N R36E S34 NENE 27.0
T01N R36E S34 NWNE 39.0
T01N R36E S34 SWNE 35.0
T01N R36E S34 SENE 33.0
T01N R36E S34 NENW 40.0
T01N R36E S34 NWNW 37.0
T01N R36E S34 SWNW 32.0

EXHIBIT

C

IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED
WATER RIGHTS ACQUIRED UNDER STATE LAW

T01N R36E S34 SENW 36.0
T01N R36E S34 NESW 34.0
T01N R36E S34 NWSW 24.0
T01N R36E S34 SWSW 28.0
T01N R36E S34 SESW 32.0

523 ACRES TOTAL

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A
COMBINED TOTAL OF 523 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED
RIGHT NOS.: 35-7000B, 35-7368B, 35-7493 AND 35-13305

~~USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 523 ACRES IN A SINGLE IRRIGATION
SEASON. COMBINED RIGHT NOS.: 35-07000B AND 35-07493.~~

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

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. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

~~RIGHT NOS. 35-07000B & 35-07493 ARE ALSO DIVERTED THROUGH POINTS OF
DIVERSION DESCRIBED ABOVE.~~

IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED
WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 35-7493

NAME AND ADDRESS:

BRENDA STOLWORTHY
1230 N 375 E
SHELLEY ID 83274

DAVID STOLWORTHY
1230 N 375 E
SHELLEY ID 83274

SOURCE:

Source:
GROUND WATER

Tributary:

QUANTITY:

4.240 CFS

0.000 AFY

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED
DIVERSION RATE OF 9.62 CFS AND TO A TOTAL COMBINED ANNUAL
DIVERSION VOLUME OF 2092 AF. COMBINED RIGHT NOS.: 35-7000B, 35-7368B,
35-7493 AND 35-13305

~~USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A TOTAL
COMBINED ANNUAL DIVERSION VOLUME OF 2092 AF.
COMBINED RIGHT NOS.: 35-07000B AND 35-07368B.~~

PRIORITY DATE: 03/24/1975

POINT OF DIVERSION:

T01N R36E S34 NWSENE	Within BINGHAM County
T01N R36E S34 NENWNW	Within BINGHAM County
T01N R36E S34 NWSESW	Within BINGHAM County

PURPOSE AND
PERIOD OF USE:

Purpose of use	Period of use:	Quantity:
IRRIGATION	4/01 11/01	4.240 CFS

PLACE OF USE:

IRRIGATION	within BINGHAM County
T01N R36E S27 NESW 4.0	
T01N R36E S27 NWSW 4.0	
T01N R36E S27 SWSW 36.0	
T01N R36E S27 SESW 40.0	
T01N R36E S27 NWSE 3.0	
T01N R36E S27 SWSE 37.0	
T01N R36E S33 NENE 1.0	
T01N R36E S33 SENE 1.0	
T01N R36E S34 NENE 27.0	
T01N R36E S34 NWNE 39.0	
T01N R36E S34 SWNE 35.0	
T01N R36E S34 SENE 33.0	
T01N R36E S34 NENW 40.0	
T01N R36E S34 NWNW 37.0	

EXHIBIT

D

IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED
WATER RIGHTS ACQUIRED UNDER STATE LAW

T01N R36E S34 SNNW 32.0
T01N R36E S34 SENW 36.0
T01N R36E S34 NESW 34.0
T01N R36E S34 NWSW 24.0
T01N R36E S34 SWSW 28.0
T01N R36E S34 SESW 32.0

523 ACRES TOTAL

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A
COMBINED TOTAL OF 523 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED
RIGHT NOS.: 35-7000B, 35-7368B, 35-7493 AND 35-13305

~~USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 523 ACRES IN A SINGLE IRRIGATION
SEASON. COMBINED RIGHT NOS.: 35-07368B AND 35-07000B. THIS RIGHT IS
LIMITED TO THE IRRIGATION OF 480 ACRES WITHIN THE PLACE OF USE
DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.~~

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

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. Section 42-1412(6), Idaho
Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO
SECTION 42-1425, IDAHO CODE.

~~RIGHT NOS. 35-07368B & 35-07000B ARE ALSO DIVERTED THROUGH POINTS OF
DIVERSION DESCRIBED ABOVE.~~