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Department of Water Resources

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IN THE DISTRICT OF THE FIFTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	Subcases 55-10135 (Joyce Livestock), 55-
	)	11061, 55-11385 and 55-12452 (U.S.D.I. -
Case No. 39576	)	BLM)
	)	
	)	MOTION TO AMEND LEGAL
	)	DESCRIPTIONS OF POINTS OF
	)	DIVERSION OF STOCKWATER RIGHTS
	)	BY JOYCE LIVESTOCK CO., CLAIM
	)	NO. 55-10135 (SILVER CITY AREA)
	)	ACCORDING TO PROOF

**MOTION TO AMEND LEGAL DESCRIPTIONS
OF POINTS OF DIVERSION OF STOCKWATER
RIGHTS**

During the course of the trial, Fred Price, on behalf of the BLM opined that legal descriptions contained in the Joyce Livestock claim number 55-10135 were defective in that: 1) some of the quarter-quarter sections in the Silver City area are not true quarter-quarter sections containing 40 acres but rather are what we commonly refer to as “short” quarters; and, 2) some of the parcels adjacent to and contiguous with Jordan Creek within certain quarter-quarter sections are more accurately described by “lot” numbers.

The undersigned (qualifying myself as an expert with respect to such matters based upon 20 years experience in dealing with title insurance claims and legal descriptions) respectfully disagrees with this analysis. Specifically, in many sections of land, there will be quarter-quarter sections which do not contain 40 acres due primarily to the curvature of the earth. Nonetheless, it is customary practice to describe parcels by the quarter-quarter sections even though they may be irregular. Some quarter-quarter sections will be referred to as “long” quarters in that they contain more than 40 acres and others will be categorized as “short” quarters in that they do not contain 40 acres. However, on most plat maps and particularly those which do not identify specific parcels therein contained which also may be referred to as “lots,” the proper legal description would simply be referenced to the quarter-quarter section within any section of land, township and range. This fact notwithstanding, Mr. Price has testified that with respect to some of the quarter-quarter sections involved in the Joyce Livestock claim, “lot numbers” have been assigned and, in the opinion of Mr. Price, are the proper legal descriptions for these quarter-quarter sections at least as it relates to government owned land. Accordingly, referring to Trial Exhibit 8 and specifically Bates Stamped No. 004774, Joyce Livestock hereby requests that the

Court amend Joyce Livestock's claim to include in the legal description set forth in Claim No. 55-10135 the following legal descriptions based upon lot numbers:

1. Section 31, Township 4 South, Range 3 West, Lot 4;
2. Section 6, Township 5 South, Range 3 West, Lot 12;
3. Section 6, Township 5 South, Range 3 West, Lot 107;
4. Section 6, Township 5 South, Range 3 West, Lot 106;
5. Section 6, Township 5 South, Range 3 West, Lot 110;
6. Section 7, Township 5 South, Range 3 West, Lot 13;
7. Section 7, Township 5 South, Range 3 West, Lot 14;
8. Section 8, Township 5 South, Range 3 West, Lot 13;
9. Section 8, Township 5 South, Range 3 West, Lot 14;
10. Section 19, Township 5 South, Range 3 West, Lot 3.

Descriptions of "lots" in items 6, 7, 8 and 9 will only include BLM land. There is private land in these quarter-quarter sections which Joyce also claims. Thus Joyce also includes its original description with respect to these parcels - being: SE 1/4 NE 1/4, Section 7, Township 5 South, Range 3 West; NE 1/4 of the SE 1/4, Section 7, Township 5 South, Range 3 West; NW 1/4 of the SW 1/4, SW 1/4 SW 1/4 of Section 8, Township 5 South, Range 3 West and NW 1/4 NW 1/4, Section 17, Township 5 South, Range 3 West.

In addition, in some of the lot numbers above-referenced, there are sub-lots which have been described by Mr. Price in Exhibit 8, Bates Stamped No. 004480 primarily consisting of mining claims in and around what was Silver City. During the course of the trial and specifically

at the end thereof, the parties agreed and stipulated that this motion would be filed to more accurately identify the places of use and points of diversion in Joyce Livestock's claim along the reaches of Jordan Creek. We agreed that mining claims owned by third-parties would be deleted in that it was not the intention of Joyce Livestock to claim an instream stockwater right on a valid and existing mining claim owned by third-parties. Subsequent to the hearing however, it has been brought to the attention of the undersigned that some of these mining claims may well have been abandoned. Accordingly, at the advice of the undersigned, it is recommended that Joyce Livestock in fact, obtain a stockwater right with respect to these mining claims and that Joyce Livestock is entitled to do so in that no objections were timely filed by any individual, corporation or other entity to Joyce Livestock Claim No. 55-10135, other than the competing claims and objections filed by the United States BLM. Beginning at p. 138 of the Trial Transcript, Mr. Price went through a litany of testimony describing all of the lots including those above-referenced as well as the additional lots which I refer to as "sub-lots" which represent mining claims. In almost all of the situations involving the mining claims, Mr. Price could not determine or did not research in order to determine who owned these mining claims and presumably could not determine whether or not they remain existing, valid claims. The undersigned has attempted to contact Mr. Price within the last ten days in order to discuss this and other issues; however, apparently, because of Mr. Price's busy schedule, he has been unable to respond to these inquiries. Accordingly, Joyce Livestock submits the following list of lot numbers to supplement the legal description contained in Joyce Livestock's claim. In the event that it is subsequently determined that any particular mining claim is active, and has not been

otherwise forfeited or abandoned, Joyce Livestock will agree to amend its decreed water right (assuming that the Court finds that Joyce Livestock is entitled to a stockwater) to delete any such claim which is owned privately and is still active. NOTHING HEREIN SHALL BE DEEMED TO BE A WAIVER BY JOYCE LIVESTOCK OF ANY WATER RIGHTS APPURTENANT TO ANY MINING CLAIM WITH RESPECT TO WHICH JOYCE LIVESTOCK IS THE CURRENT OWNER. THE UNDERSIGNED IS INFORMED AND BELIEVES THAT ALL SUCH PRIVATE PLACES OF USE OWNED BY JOYCE ARE IDENTIFIED IN THIS MOTION; HOWEVER, THE UNDERSIGNED HAS NOT HAD AN OPPORTUNITY TO VERIFY THAT FACT WITH MR. PRICE. With these premises in mind, Joyce Livestock further amends Claim No. 55-10135 to assert a stockwater right from Jordan Creek with respect to the following lot numbers:

1. Within the southwest quarter of the northeast quarter, Section 6, Township 5 South, Range 3 West, (also referred to Lot 107), Joyce Livestock claims a water right on the mining claim identified as Lot 62.
2. Within the southeast quarter of the northeast quarter, Section 6, Township 5 South, Range 3 West, (also referred to Lot 106), Joyce Livestock claims a stockwater right with respect to Mining Claim Lots 44 and 45.
3. Within the northeast quarter of the southeast quarter, Section 6, Township 5 South, Range 3 West, (also referred to Lot 110), Joyce Livestock claims a stockwater rights to the Jordan Creek in Mining Lot Claim Nos. 43, 44, 51 and 52.

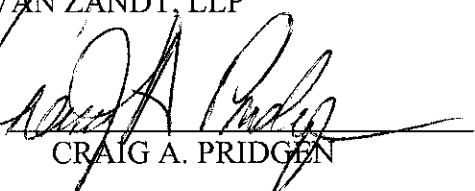
Except as otherwise expressly mentioned herein, all of the claims asserted by Joyce

Livestock in Claim No. 55-10135 identified solely by quarter-quarter section are not amended.

DATED: March 18, 2003

Respectfully Submitted,

McQUAID, METZLER, BEDFORD
& VAN ZANDT, LLP

By: 

CRAIG A. PRIDGEN

DATED: March ___, 2003

LAW OFFICES OF RICHARD L. HARRIS

By: _____

RICHARD L. HARRIS

Attorneys for Joyce Livestock Company

CERTIFICATE OF MAILING

I certify that on March 18, 2003, I faxed/mailed the original and copies of the foregoing **MOTION TO AMEND LEGAL DESCRIPTIONS OF POINTS OF DIVERSION OF STOCKWATER RIGHTS BY JOYCE LIVESTOCK CO., CLAIM NO. 55-10135 (SILVER CITY AREA) ACCORDING TO PROOF** to the following persons as indicated below, the original and/or copies, postage paid and addressed as follows:

1. Original to:

Clerk of the Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707
(Via Federal Express)

2. Copies to:

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098
(Via U.S. Mail)

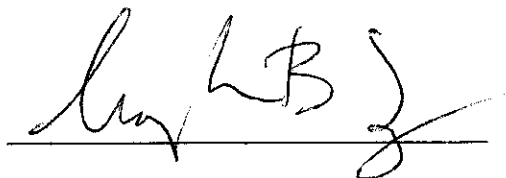
Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449
(Via U.S. Mail)

United States Department of Justice
Environment and Natural Resource
Division
550 West Fort Street, MSC 033
Boise, ID 83724
(Via U.S. Mail)

State of Idaho
c/o David J. Barber
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(Via U.S. Mail)

A handwritten signature in black ink, appearing to read "Larry Brown", is written over a horizontal line.