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MAY - 9 2002

Department of Water Resources

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Attorney for Claimants

**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: 36-08139

**Motion to Correct
Clerical Error in
Partial Decree**

COMES NOW, the Claimant in the above captioned Subcase to move that this Court utilize the authority granted in I.R.C.P. 60(a) and/or I.R.C.P. 60(b) and correct a clerical error found within the partial decree issued in this Subcase.

The clerical error at issue is the inclusion of the clause limiting the water right to 13,000 gallons per day, which states in total:

THE QUATITY OF WATER UNDER THIS RIGHT SHALL NOT
EXCEED 13,000 GALLONS PER DAY

Partial Decree 36-08139 January 18, 1998 (Exhibit B to the Affidavit of Jason R. Miciak).

The limiting clause is not a valid condition of this water right as is demonstrated by examination of the *Director's Report* in this Subcase. *Exhibit A to the Affidavit of Jason R. Miciak.* The Director's Report does not contain any language referring to a

13,000 gallon limitation. *Id.* No objection was filed in this subcase because the claimant had no notice of such a limitation.

The Court is not constitutionally bound to decree an unobjected to *Director's Report*. *In Re SRBA Case No. 39576*, 128 Idaho 246, 262 P.2d 614, 630 (1995). However the Court would never unilaterally impose an element or restriction in a decree without notifying the claimant. Therefore, any additional limitation found in a *Partial Decree* where there was no *Objection* to the Director's Report must be a clerical error. IRCP 60(a), cited in (*A01*), is specifically written to remedy instances such as this where a Partial Decree is issued with a clerical error.

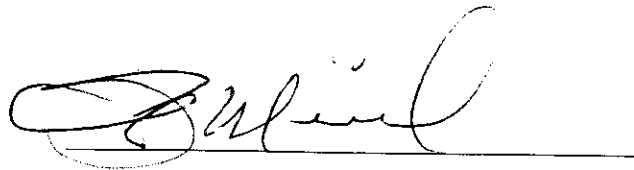
Therefore, the Claimant's respectfully request that this Court issue an Amended Partial Decree which does not contain the 13,000 gallon limitation. Claimants also request that this motion be heard on an expedited basis.

DATED this 3rd day of May, 2002.


JASON R. MICIAK

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 3rd day of May, 2002, I caused a true and correct copy of the above indicated document to be served by placing the same in the U.S. Mail, postage prepaid, addressed to all parties and counsel listed above, and all parties currently listed on the SRBA website for expedited hearing mailings.


JASON R. MICIAK

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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
Case No. 39576

Subcase No: 36-08139

Affidavit of
Jason R. Miciak

JASON R. MICIAK, being first duly sworn upon oath, deposes and states as follows:

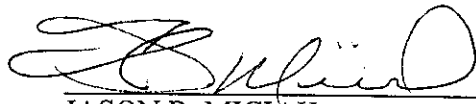
1. Your affiant is a duly licensed attorney in the state of Idaho and make the following declarations based upon personal knowledge.

2. Attached as Exhibit A to this Affidavit is a true and correct copy of the Director's Report issued in subcase No. 36-08139.

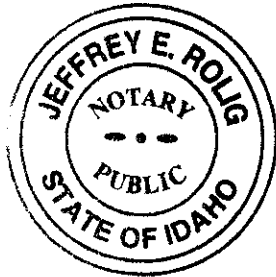
3. Attached as Exhibit B to this Affidavit is a true and correct copy of the Partial decree issued in Subcase No. 36-08139.

4. Further You Affiant Sayeth Not:

DATED this 5 day of May, 2002.


JASON R. MICIAK

SUBSCRIBED AND SWORN to before me this 3RD day of
MAY, 2002.




NOTARY PUBLIC FOR IDAHO
Residing at Twin Falls, ID
My commission expires: 2-6-04

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLSIn Re SRBA)
)
Case No. 39576)PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 36-08139

1996 DEC 13 AM 8:46

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

FILED

NAME & ADDRESS: MC CORD FAMILY PARTNERSHIP
3415 SOUTH 2400 EAST
JEROME ID 83338

SOURCE: GROUNDWATER

QUANTITY: 0.06 CFS
11.8 AFYTHE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

PRIORITY DATE: 01/21/1983

POINT OF DIVERSION: T08S R16E S29 NWNW

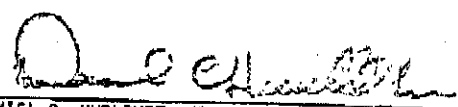
Within JEROME County

PURPOSE AND
PERIOD OF USE: PURPOSE OF USE
STOCKWATER
DOMESTIC 2 HOMESPERIOD OF USE
01-01 12-31QUANTITY
0.06 CFS
9.4 AFY
0.06 CFS
2.4 AFYPLACE OF USE: STOCKWATER Within JEROME County
T08S R16E S29 NWNWDOMESTIC Within JEROME County
T08S R16E S29 NWNW

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

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

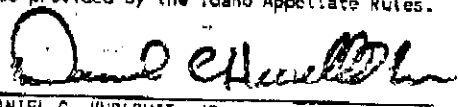
DATED: DEC 13 1996


DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

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.

DATED: DEC 13 1996


DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin AdjudicationPARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 36-08139PAGE 1
NOV-26-1996EXHIBIT B

POSS R16E S30

EXHIBIT A