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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: 36-08140

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

Partial Decree 36-08140 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 (401), 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

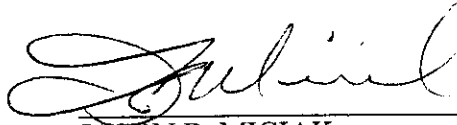
Subcase No: 36-08140

**Affidavit of
Jason R. Miciak**

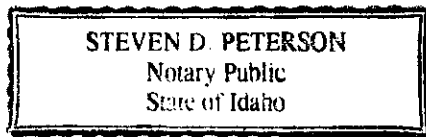
JASON R. MICIAK, being first duly sworn upon oath, deposes and states as follows:

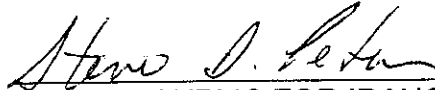
1. Your affiant is a duly licensed attorney in the state of Idaho and make the following declarations based upon personal knowledge.
2. Attached as Exhibit A to this Affidavit is a true and correct copy of the Director's Report issued in subcase No. 36-08140.
3. Attached as Exhibit B to this Affidavit is a true and correct copy of the Partial decree issued in Subcase No. 36-08140.
4. Further You Affiant Sayeth Not:

DATED this 3rd day of May, 2002.


JASON R. MICIAK

SUBSCRIBED AND SWORN to before me this 2 day of
May, 2002.




NOTARY PUBLIC FOR IDAHO
Residing at: Twin Falls, ID
My commission expires: 5-2-2006

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)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 36-08140

1997 JUN 15 PM 1:44

NAME & ADDRESS: MC CORD FAMILY PARTNERSHIP
3415 S 2400 E
JEROME ID 83338

SOURCE: GROUNDWATER

QUANTITY: 0.11 CFS
79.4 AFY

THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE
SHALL NOT EXCEED 13,000 GALLONS PER DAY.

PRIORITY DATE: 01/21/1983

POINT OF DIVERSION: T08S R16E S30 SENENE Within GOODING County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
STOCKWATER		01-01 12-31	0.11 CFS
			20.0 AFY
COMMERCIAL		01-01 12-31	0.11 CFS
			59.4 AFY

COMMERCIAL USE IS A DAIRY.

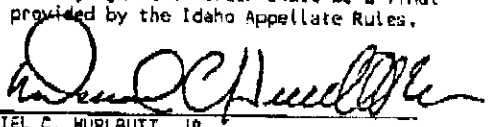
PLACE OF USE:	STOCKWATER	Within GOODING County
	T08S R16E S29	NW1/4
	S30	NENE
	COMMERCIAL	Within GOODING County
	T08S R16E S30	NENE

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

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

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.


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

PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 36-08140

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EXHIBIT B.....