

United States
Department of
Agriculture

Forest
Service

Boise Adjudication Team
Recreation and Lands
Intermountain Region

161 E. Mallard Dr., Suite A
Boise, ID 83706

October 13, 2004

RECEIVED

OCT 14 2004

Diana Delaney
Court Administrator
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, ID 83303-2707

Department of Water Resources

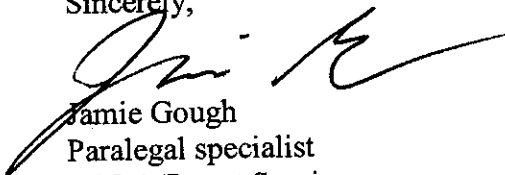
Re: *Stipulation to Resolve Subcases* - 63-31031, 63-31459 (Split #'s 63-31989 and 63-31990), and 63-31460 (Split #'s 63-31991 and 63-31992) - McGrew Ranch LLC and the United States Forest Service.

Dear Diana:

Enclosed is a *Stipulation to Resolve Subcases* for several subcases in Basin 63 involving McGrew Ranch LLC and the United States Department of Agriculture, Forest Service. This stipulation will be followed by Standard Form(s) 5 for the individual subcases, however the stipulation must first be recorded in Elmore County in order to complete the language for the SF5 attachments. Therefore, I am enclosing a second copy of the stipulation that the Court can use to certify. I would like to pick up that certified copy at the SRBA Court on Tuesday, October 19, 2004 when we come over for the monthly status conference.

Thank you for your assistance in this matter. If you have any questions please contact me at 208-331-5942.

Sincerely,



Jamie Gough
Paralegal specialist
USDA Forest Service

cc: David L. Negri
Charles L. Honsinger

Enclosure(s)

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OCT 14 2004

Department of Water Resources

Names of Parties Serving Document:

UNITED STATES OF AMERICA

McGREW RANCH LLC

Attorneys' Names and Addresses:

THOMAS L. SANSONETTI
United States Department of Justice
Assistant Attorney General
Environment and Natural Resources Division

DAVID L. NEGRI (ISB #6697)
United States Department of Justice
Environment and Natural Resources Division
General Litigation Section
550 West Fort Street, MSC 033
Boise, Idaho 83724
Telephone: (208) 331-5942
Facsimile: (208) 387-0842

DANIEL V. STEENSON (ISB #4332)
CHARLES L. HONSINGER (ISB #5240)
Ringert Clark Chartered
455 S. Third Street, P.O. Box 2773
Boise, ID 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

**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 Numbers: 63-31031, 63-31459
) (Split #'s 63-31989 and 63-31990), 63-
) 31460 (Split #'s 63-31991 and 63-31992)

)
) **STIPULATION TO RESOLVE**
) **SUBCASES**
)

DESCRIPTIVE SUMMARY

This document is the Stipulation to Resolve Subcases, filed by McGrew Ranch LLC
("McGrew") and the United States of America ("United States").

STIPULATION

McGrew and the United States (Collectively “Parties”) by and through their respective undersigned counsel, hereby stipulate and agree as follows as to the above captioned water right numbers.

1. WITHDRAWAL OF OBJECTIONS BY UNITED STATES. The United States agrees to dismiss with prejudice its objections to water right numbers 63-31031, 63-31459 and 63-31460. The Parties agree and stipulate that the elements of each water right listed should be decreed as described below.

2. WATER RIGHT DESCRIPTIONS. The Parties agree and stipulate that water right claim numbers 63-31031, 63-31459 and 63-31460 shall be decreed consistent with the following provision, as well as all remaining provisions in this Stipulation:

Claim number 63-31031. The point of diversion and place of use in the NWNE of Section 22, T1N, R10E shall be deleted from the water right description. The resulting water right is wholly on private land and should be decreed to McGrew.

Claim numbers 63-31459 and 63-31460. These water rights shall be split between McGrew and the United States. Claim number 63-31459 shall be split and renumbered as 63-31989 to McGrew and 63-31990 to the United States. Claim number 63-31460 shall be split and renumbered as 63-31991 to McGrew and 63-31992 to the United States. As a result of the splits, 63-31459 and 63-31460 should be disallowed.

Purpose and Place of Use of Water Rights. The Parties agree that the purpose of use of water right numbers 63-31989, 63-31990, 63-31991 and 63-31992 is only for the

watering of livestock lawfully within a permitted federal grazing allotment and that the number of livestock within the allotment shall not exceed the amount authorized by a federal grazing permit. The Parties further agree that the place of use of water right numbers 63-31989, 63-31990, 63-31991 and 63-31992 shall remain *in situ*.

3. CONFORMING DOCUMENTS. The Parties agree that they will execute and file any necessary documents with the SRBA Court and IDWR to conform the elements of water right claim numbers 63-31031, 63-31989, 63-31990, 63-31991 and 63-31992 to the provisions described in this Stipulation.

4. GRAZING PERMITS AND MANAGEMENT OF FEDERAL LANDS. The Parties agree that water right numbers 63-31989, 63-31990, 63-31991 and 63-31992 shall not alter the rights of a permittee under a valid grazing permit nor impede the authority of the United States to manage federal lands.

5. UNITED STATES' PERMITTING ACTION. McGrew agrees that the imposition of terms and conditions by any federal authority on any grazing permit, or any action by any federal authority to limit, modify, revoke, or terminate any grazing permit, and any consequent limitation or elimination of the ability of McGrew or any successor thereto to divert, store, or use water, shall not be construed to be a taking, in whole or in part, of any water right.

6. NO FURTHER CLAIMS. McGrew agrees that they will not file additional claims in the SRBA for water rights where the place of use or point of diversion is located on federal lands and the United States agrees that it will not file additional claims in the SRBA for water rights where the place of use or point of diversion is located on federal lands underlying the federal Grazing Allotments on which McGrew is the grazing permittee, except by agreement between the

United States and McGrew. This paragraph shall not affect or apply to any claims already filed in the SRBA by any Party as of the effective date of this Stipulation.

7. ISSUANCE OF PARTIAL AND FINAL DECREES BY THE COURT. If for any reason the Court does not issue partial and final decrees for any of water rights numbers 63-31031, 63-31989, 63-31990, 63-31991 and 63-31992 pursuant to the terms of this Stipulation, this Stipulation is null and void and shall have no effect, and the Parties shall proceed with a determination of their water rights and/or objections under applicable law.

8. STIPULATION NOT TO BE USED AGAINST THE PARTIES. The Parties agree that this Stipulation has been entered into based upon good faith negotiations for the purpose of resolving legal disputes, including pending litigation, by compromise and settlement and that nothing in this Stipulation, or any offers or compromises made in the course of negotiating this Stipulation, shall be construed as admissions against interest or tendered or used as evidence to show the validity or invalidity of any water right claims made by the Parties, or as an admission or concession of wrongdoing or liability, or shall be used in any manner by any party in the SRBA in any future proceedings in the SRBA, in any appellate proceedings concerning the SRBA, or in any other proceeding, other than those seeking approval of this Stipulation by the SRBA Court, for interpretation or enforcement of this Stipulation, or for a purpose contemplated by Idaho Rule of Evidence 408.

9. RESERVATIONS. The Parties agree that this Stipulation has been entered into based upon good faith negotiations for the purpose of resolving legal disputes, including pending litigation, by compromise and settlement and that nothing herein shall be construed as precedent in any other proceeding or context. Nothing in this Stipulation shall be construed to deprive any

federal official of authority to revise, amend, or promulgate regulations. Nothing in this Stipulation shall be construed to commit any federal official to expend funds not appropriated by Congress.

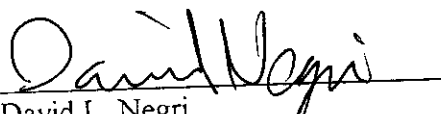
10. VOLUNTARY EXECUTION. This Stipulation was entered into and executed voluntarily by the Parties in good faith, and without any fraud, misunderstanding, overreaching, misrepresentation, duress, or undue influence.

11. BINDING EFFECT. This Stipulation shall be binding on any and all successors, assigns, heirs, executors, and administrators of each of the Parties.

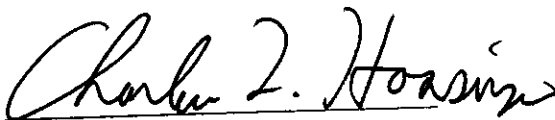
12. COSTS AND ATTORNEY FEES. Each Party shall bear their own costs and attorney fees.

13. EFFECTIVE DATE. This Stipulation shall become effective upon execution by all of the Parties.

DATED this 13th day of October, 2004.


David L. Negri
United States Department of Justice

Attorney for the United States of America

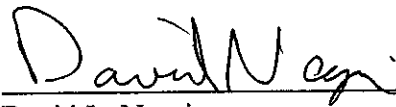

Charles L. Honsinger
Ringert Clark Chartered

Attorney for McGrew Ranch LLC

State of Idaho)
) ss.
County of Ada)

DAVID L. NEGRI, duly sworn, upon oath, deposes and says:

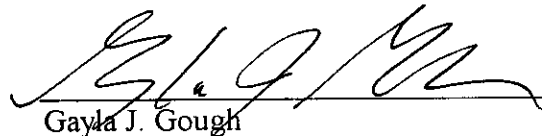
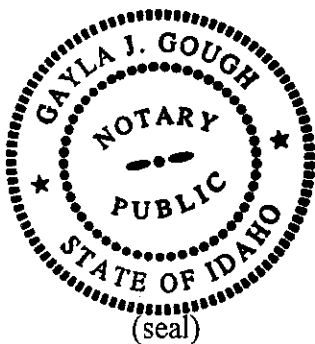
That I am the party filing this Stipulation, and/or that I am the attorney for the party, and that I have read this Stipulation, know its contents and believe that the statements are true to the best of my knowledge.



David L. Negri
United States Department of Justice
Environment and Natural Resources Division
General Litigation Section
550 West Fort Street, MSC 033
Boise, Idaho 83724
(208) 331-5943

Counsel for the United States of America

Subscribed and sworn before me on: Oct 13, 2004



Notary Public for: Idaho
Residing at: Kuna, Idaho
Commission expires: 11-17-2004

State of Idaho)
) ss.
County of Ada)

CHARLES L. HONSINGER [and/or McGrew Ranch], duly sworn, upon oath, deposes and says:

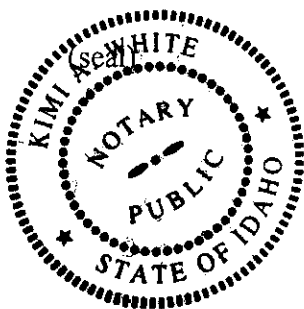
That I am the party filing this Stipulation, and/or that I am the attorney for the party, and that I have read this Stipulation, know its contents and believe that the statements are true to the best of my knowledge.

Dated 10/11/04

Charles L. Honsinger
Charles L. Honsinger
Ringert Clark Chartered
455 S. Third Street, P.O. Box 2773
Boise, ID 83701-2773
(208) 342-4591

Subscribed and sworn before me on: October 11, 2004

Kimi A. White
(name of notary)
Notary Public for: Idaho
Residing at: Boise Idaho
Commission expires: 04/04/10



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13 day of October, 2004, I served a true and correct copy of the foregoing **STIPULATION AND JOINT MOTION FOR ORDER APPROVING STIPULATION**, by depositing a copy thereof in the U.S. mail, postage prepaid, or by other service where indicated, upon the following:

Original to:

Clerk of the Court
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, ID 83303-2707

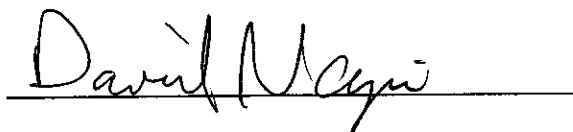
Copies to:

U.S. Department of Justice
General Litigation Section
Environment and Natural Resource Division State of Idaho
550 West Fort Street, MSC 033
Boise, ID 83724

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

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

Charles L. Honsinger
Ringert Clark Chartered
455 S. Third Street, P.O. Box 2773
Boise, ID 83701-2773



David Negri