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Department of Water Resources

UNITED STATES OF AMERICA

JAMES F. HAGENBARTH
DAVID J. HAGENBARTH
MARGARET HAGENBARTH

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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	)	Subcase Number: 31-10245, 31-10740
	)	
	)	STIPULATION AND
Case No. 39576	)	SUBORDINATION AGREEMENT
	)	
_____	)	

INTRODUCTION

James F. Hagenbarth, David J. Hagenbarth, and Margaret Hagenbarth (collectively, "Hagenbarths") have filed claims in the Snake River Basin Adjudication ("SRBA") for water

STIPULATION AND SUBORDINATION AGREEMENT – Subcase Nos. 31-10245 and 31-10740

right numbers 31-10245 and 31-10740 (collectively, "Hagenbarth Water Rights"). The United States of America, through the USDA Agricultural Research Service, ("United States") has filed objections in the above-captioned subcases to the Hagenbarth Water Rights. The United States also has filed claims in the SRBA, and received partial decrees from this Court, for water right numbers 31-00080 and 31-00326 (collectively, "US Water Rights"). The US Water Rights have two points of diversion, with the upper point of diversion located in the SWSE of Section 5 of T13N R40E ("Upper POD") and the lower point of diversion located in the NESW of Section 30 of T13N R40E ("Lower POD"). The United States and the Hagenbarths (collectively, "Parties") jointly present this Stipulation and Subordination Agreement to resolve the objections of the United States.

STIPULATION AND SUBORDINATION AGREEMENT

1. Hagenbarths' subordination of claims.

a. The right to divert and use water under the Hagenbarth Water Rights shall be and is subordinated to the Upper POD of the US Water Rights, however the Hagenbarth Water Rights may be decreed by the SRBA Court. This subordination does not apply to the Lower POD of the US Water Rights. Such subordination is described further below.

b. The priority for the Hagenbarth Water rights may not be asserted or relied upon and shall be ineffective against the priority of the Upper POD of the US Water Rights for any purpose, including the purpose of effecting a delivery call, curtailment, or other administration to deliver water to supply a diversion under the Hagenbarth Water Rights.

c. No delivery call to serve any diversion under the Hagenbarth Water Rights shall be made, honored, or enforced if it would cause or require, either directly or indirectly, curtailment of, or mitigation from, the Upper POD of the US Water Rights.

d. This subordination also shall apply to any use to which the Hagenbarth Water Rights, or any portion thereof, may be transferred or changed.

e. The terms, conditions, and covenants contained herein shall run with the land underlying the Hagenbarth Water Rights, as described in Exhibit A, and shall run with the Hagenbarth Water Rights and the US Water Rights, and shall be binding upon any person claiming, having, or acquiring any right, title, or interest in the Hagenbarth Water Rights, the US Water Rights, the land described in Exhibit A, or in any lot, parcel, portion or subdivision thereof, and upon any successors, assigns, heirs, executors, and administrators of each of the Parties.

2. Form of decrees.

The partial and final decrees for the Hagenbarth Water Rights shall include the following remark:

The priority for this water right is subordinated to the point of diversion located in the SWSE of Section 5 of T13N R40E of water right numbers 31-00080 and 31-00326, as described by the Stipulation and Subordination Agreement recorded on [date] as Instrument No. [#] in the offices of the Clark County Recorder.

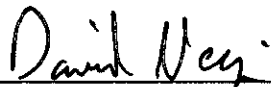
If, for any reason, the partial and final decrees for the Hagenbarth Water Rights do not include the above-stated remark, or substantially similar language, this Stipulation is null and void and shall have no effect, and the Parties shall proceed with a determination of their water rights and objections under applicable law.

3. Withdrawal of United States' objections.

In consideration of the agreement, conditions, and terms set out in this Stipulation and Subordination Agreement, the United States agrees to withdraw its objections to the Hagenbarth Water Rights.

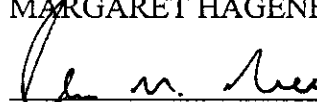
DATED this 12th day of March, 2003.

UNITED STATES OF AMERICA



David L. Negri
United States Department of Justice

JAMES F. HAGENBARTH
DAVID J. HAGENBARTH
MARGARET HAGENBARTH



John M. Marshall
Givens Pursley LLP

Patti L. Rowland
Doney, Crowley, Bloomquist & Uda, P.C.

State of Idaho)
) ss.
County of Ada)

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

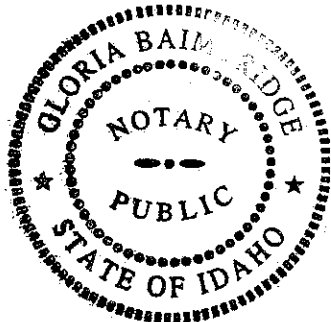
That I am the party filing this Stipulation and Subordination Agreement, and/or that I am the attorney for the party, and that I have read this Stipulation and Subordination Agreement, know its contents and believe that the statements are true to the best of my knowledge.

David L. Negri

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: March 6, 2003



(seal)

Gloria Baimbridge

Gloria Baimbridge

Ada County

Notary Public for: Idaho
Residing at: Boise, Idaho
Commission expires: 10-17-2008

State of Montana)
) ss.
County of Beauregard)

JAMES F. HAGENBARTH, duly sworn, upon oath, deposes and says:

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

Dated 3/12/03

James F. Hagenbarth
JAMES F. HAGENBARTH
P.O. Box 1128
Dillon, Montana 59725

For the following parties:
James F. Hagenbarth
David J. Hagenbarth
Margaret Hagenbarth

Subscribed and sworn before me on: 3/12/03

Patti L. Rowland
(name of notary)

Notary Public for State of: Montana
Residing at: Dillon, Montana
Commission expires: 1/01/04



PLACE OF USE:

IRRIGATION Within CLARK County

T13N R40E S10	SESW	25.0	T13N R40E S10	NESE	27.0
T13N R40E S10	NWSE	12.0	T13N R40E S10	SWSE	37.0
T13N R40E S10	SESE	40.0	T13N R40E S11	NWSW	3.5
T13N R40E S11	SWSW	37.0	T13N R40E S11	SESW	28.0
T13N R40E S11	NESE	9.4	T13N R40E S11	SWSE	31.0
T13N R40E S11	SESE	34.0	T13N R40E S12	NESW	5.0
T13N R40E S12	NWSW	35.0	T13N R40E S12	SWSW	6.2
T13N R40E S14	NENE	2.7	T13N R40E S14	NWNE	11.0
T13N R40E S14	NENW	14.0	T13N R40E S14	NWNW	5.0
T13N R40E S15	NENE	40.0	T13N R40E S15	NWNE	40.0
T13N R40E S21 Lot 4	NWNW	25.0	T13N R40E S21 Lot 5	SWNW	6.6
T13N R40E S21	SESW	5.0	T13N R40E S21	SWSE	11.0
T13N R40E S23	SWSW	40.0	T13N R40E S23	SESW	19.0
T13N R40E S26	NENW	32.0	T13N R40E S26	NWNW	40.0
T13N R40E S26	SWNW	29.0	T13N R40E S27	NENE	40.0
T13N R40E S27	NWNE	38.0	T13N R40E S27	SENE	40.0
T13N R40E S27	NENW	18.0	T13N R40E S27	NWNW	10.0
T13N R40E S27	SWNW	18.0	T13N R40E S27	SENW	14.0
T13N R40E S28	NENE	27.0	T13N R40E S28	NWNE	38.0
T13N R40E S28	SWNE	40.0	T13N R40E S28	SENE	40.0
T13N R40E S28	NENW	32.0	T13N R40E S28	NWNW	4.1
T13N R40E S28	SWNW	8.1	T13N R40E S28	SENW	27.0
T13N R40E S29 Lot 2	NWNE	13.0	T13N R40E S29	SWNE	21.0
T13N R40E S29	SENE	11.0			

STOCKWATER same as IRRIGATION

1089.6 ACRES TOTAL

EXHIBIT

A

CERTIFICATE OF SERVICE

I certify that on March 17, 2003, I served a true and correct copy of the foregoing **STIPULATION AND SUBORDINATION AGREEMENT** upon the following individuals as follows:

Original by United States mail, postage prepaid and BY FACSIMILE to:

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

Copies by United States mail, postage prepaid and BY FACSIMILE to:

Givens Pursley LLP	Doney, Crowley, Bloomquist, & Uda P.C.
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Attorney for Larry Singleton

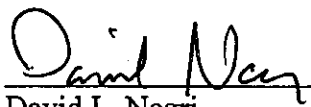
Kent W. Foster
Holden, Kidwell, Hahn & Crapo
P.O. Box 50130
Idaho Falls, ID 83405
Attorney for Mud Lake Water Users, Inc.

Copies by United States mail, postage prepaid to:

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General Litigation Section
Environment and Natural Resource Division
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David L. Negri