

RECEIVED
NOV 16 2004
DEPARTMENT OF
WATER RESOURCES

Island Capitol, LLC

Dana L. Hofstetter, ISB # 3867
HOFSTETTER LAW OFFICE, LLC
608 West Franklin Street
Boise, ID 83702
(208) 424-7800
(208) 424-8774 (Facsimile)

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR TWIN FALLS COUNTY**

In Re SRBA) Subcase Nos. 65-02585, 65-03114, 65-03115,
Case No. 39576) 65-03116 and 65-22587
) **Affidavit of Dana L. Hofstetter in Support of**
) **Motion to Alter or Amend or Motion to Correct**
) **Partial Decrees**
)
)
)
)
)
)
)

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

Dana L. Hofstetter, being first being duly sworn upon oath, deposes and says:

(1) I am Dana L. Hofstetter, attorney of record in this matter for Island
Capitol, LLC.

(2) On or about November 1, 2001, on behalf of Eastern Western Corporation and Island Capitol, LLC, I sent Joe Eld, Director of the Roseberry Irrigation District, a letter requesting approval of certain changes to the Idaho Department of Water Resources' ("IDWR") Roseberry Irrigation District boundary map dated November 9, 1999. A true and correct copy of this letter is attached hereto as Exhibit A.

(3) On or about April 26, 2002, I sent to Joe Eld, Mack Miller and Lyle Points, Directors of the Roseberry Irrigation District at the time, a letter following up on my letter of November 1, 2001. A true and correct copy of the April 26, 2002 letter is attached hereto as Exhibit B. It was my understanding, based on discussions with Sue Bock of IDWR, that IDWR only would correct the Roseberry Irrigation District boundary map with the approval of the Roseberry Irrigation District Directors.

(4) On or about August 5, 2002, I faxed to Garrick Baxter, then an Idaho Deputy Attorney General with IDWR, a copy of my April 26, 2002 letter to the Roseberry Irrigation District Directors with their signed approval of the requested boundary map changes. A true and correct copy of my August 5, 2002 fax to Garrick Baxter is attached hereto as Exhibit C.

(5) Correction of the Roseberry Irrigation District boundary map by IDWR was one of the factors which led to Island Capitol, LLC's decision to enter into Standard Form 5's in August 2002 for Subcase Nos. 65-02515A, 65-04033, and

65-07361. The corrections concerned property owned by Island Capitol.

(6) Attached hereto as Exhibit D is a true and correct reduced copy of the November 9, 1999 Roseberry Irrigation District boundary map from my files as originally provided to me by IDWR.

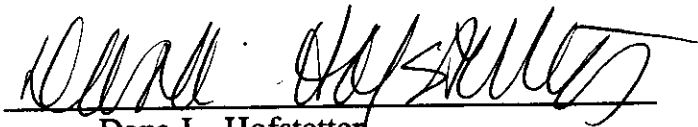
(7) Attached hereto as Exhibit E is a true and correct reduced copy of the November 9, 1999 Roseberry Irrigation District boundary map with the requested corrections finalized as of August 12, 2002 from my files, as provided to me by IDWR. I had been informed by Sue Bock of IDWR that the computer file for this corrected map would replace the prior November 9, 1999 Roseberry Irrigation District boundary map.

(8) Shortly after receiving the *Partial Decrees* in Subcase Nos. 65-02585, 65-03114, 65-03115, 65-03116 and 65-22587, I determined that the printed map attached to those *Partial Decrees* appeared not to include the corrections subsequent to November 9, 1999. Accordingly, by letter of November 11, 2004, I notified Jan Shurte of IDWR's Western Region, of the apparent error. A true and correct copy of my November 11, 2004 letter is attached hereto as Exhibit F. On November 12, 2004, I met with Don Shaff of IDWR to review the cd-rom version of the boundary map that had been submitted to the SRBA Court and was referenced in the Roseberry Irrigation District's *Partial Decrees*. During that meeting, Don Shaff and I confirmed that it appeared that the SRBA Court's version of the Roseberry Irrigation District boundary

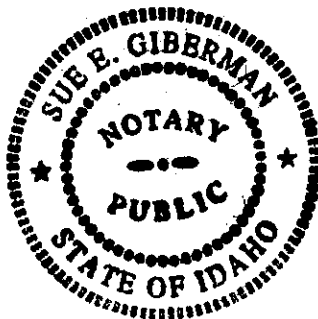
map was not the corrected version as finalized August 12, 2002.

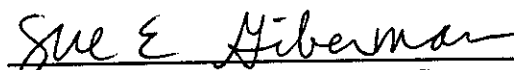
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 15th day of November, 2004.


Dana L. Hofstetter

SUBSCRIBED AND SWORN to before me this 15th day of November, 2004.




Notary Public in and for the State of Idaho
Residing at: Boise Idaho
My Commission Expires: 2/26/09

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of November, 2004, I caused to be served copies of the foregoing **Affidavit of Dana L. Hofstetter in Support of Motion to Alter or Amend or Motion to Correct Partial Decrees** by depositing a copy thereof in the U.S. mail, postage prepaid, upon:

Joe Eld
2554 East Roseberry
McCall, Idaho 83638

Lyle Points
P.O. Box 53
Donnelly, Idaho 83615

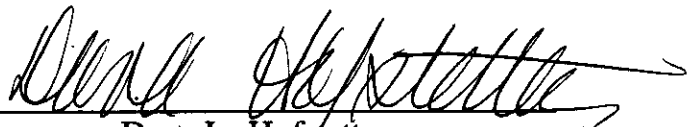
Charles F. McDevitt
P.O. Box 2564
Boise, Idaho 83701

Idaho Department of Water Resources
Document Depository
P. O. Box 83720
Boise, Idaho 83720-0098

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

United States Department of Justice
Environment & Natural Resources
550 West Fort Street, MSC 033
Boise, Idaho 83724

David Gehlert
Environment and Natural Resource Division
U.S. Department of Justice
999 18th Street, Suite 945
Denver, CO 80202


Dana L. Hofstetter

HOESTETTER LAW OFFICE

608 West Franklin Street
Boise, Idaho 83702

Dana@IdahoWaterLaw.com

Dana L. Hofstetter
Attorney at Law

Telephone: (208) 424-7800
Facsimile: (208) 424-8774

November 1, 2001

Via facsimile

Joe Eld
Roseberry Irrigation District
2554 East Roseberry
McCall, Idaho 83638

Re: Roseberry Irrigation District Boundary Map

Dear Joe:

On behalf of Eastern Western Corporation and Island Capitol, LLC, I requested that the Idaho Department of Water Resources ("IDWR") make certain changes to its Roseberry Irrigation District boundary map dated November 9, 1999. I believe you have a copy of that map. The requested changes only concern the property that recently was sold by Eastern Western to Island Capitol. IDWR has indicated that it will make the requested changes after obtaining the approval of the Roseberry Irrigation District ("Roseberry" or "District"). Therefore, on behalf of Eastern Western Corporation and Island Capitol, I request Roseberry's approval of these changes. The changes only pertain to the IDWR boundary map, and will not alter the total number of acres that are authorized to be irrigated within those boundaries under Roseberry's water rights. As you know, this latter issue is the subject of ongoing Snake River Basin Adjudication ("SRBA") proceedings. The two requested changes to the Roseberry boundary map, if approved, will result in a net decrease of approximately 5-10 acres within District boundaries.

Based on the February 23, 1995 Judgment excluding lands from the Roseberry Irrigation District (copy enclosed), it appears that there should be no District lands in the NE1/4SW1/4 Section 1, Township 16 North, Range 3 East. However, the November 9, 1999 IDWR map includes about 20 acres in that quarter-quarter section within District boundaries. Therefore, Eastern Western and Island Capitol requested that IDWR amend the map to remove those 20 acres from Roseberry's boundaries.

EXHIBIT

tabbies

A

Re: Roseberry Irrigation District
November 1, 2001
Page 2

The second requested change concerns the NW1/4NW1/4 Section 12, Township 16 North, Range 3 East. Based on the Roseberry SRBA claim, it appears that all of that quarter-quarter section should be within District boundaries. However, the November 9, 1999 IDWR map omits about 10-15 acres from that quarter-quarter section. Accordingly, Eastern Western and Island Capitol requested that the IDWR map be revised to include this entire quarter-quarter section in District boundaries.

Roseberry probably should also confirm that other portions of the IDWR map accurately reflect Roseberry boundaries. My limited review of this matter concerned only the lands involved in the Eastern Western/Island Capitol transaction. As part of this effort, Roseberry also may wish to confirm that County assessment information is up to date and consistent with the IDWR map. Please do not hesitate to contact me if you have any questions about this matter. In any event, we would request that you contact Sue Bock at IDWR (208-334-2190) as soon as possible to discuss the two changes requested by Eastern Western and Island Capitol. She is expected to go on maternity leave by November 10, 2001. Thank you for your assistance.

Sincerely,

HOFSTETTER LAW OFFICE



Dana L. Hofstetter

Enclosure

cc: Sue Bock
Mack Miller
Lyle Points
Linda Jones
Michael McGinley

E:/1838.3/5071

Exclusion of Land followed the proper statutory procedures pursuant to Idaho Code Title 43, Chapter 13.

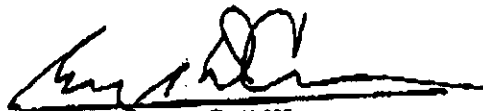
IT IS ORDERED, ADJUDGED AND DECREED AND THIS DOES ORDER, JUDGE AND DECREE that the Plaintiff have judgment by default against the Defendants and that the proceedings concerning the Special Election Modifying the Roseberry Irrigation District by the Exclusion of Lands are hereby confirmed and the following lands are excluded from the boundaries of the Roseberry Irrigation District:

SE $\frac{1}{4}$ SW $\frac{1}{4}$ (40 acres), E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ (20 acres), NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ (2 acres) and S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ (15 acres), Section 1, Township 16 North, Range 3 East, Boise Meridian, Valley County, Idaho;

NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ (10 acres), Section 12, Township 16 North, Range 3 East, Boise Meridian, Valley County, Idaho; and

NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ (10 acres), Section 13, Township 16 North, Range 3 East, Boise Meridian, Valley County, Idaho.

Dated this 23 day of February, 1995.


Judge G.D. Carey

9715/3030-3001

JUDGMENT AND DECREE OF CONFIRMATION - 2

HOFSTETTER LAW OFFICE

608 West Franklin Street
Boise, Idaho 83702

Dana@IdahoWaterLaw.com

Dana L. Hofstetter
Attorney at Law

Telephone: (208) 424-7800
Facsimile: (208) 424-8774

April 26, 2002

Joe Eld
Roseberry Irrigation District
2554 East Roseberry
McCall, ID 83638

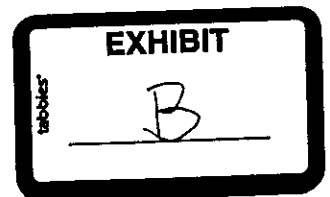
Mack Miller
1008 North 6th Street
Boise, ID 83702

Lyle Points
P.O. Box 53
Donnelly, ID 83615

Re: Roseberry Irrigation Boundary Map

Dear Gentlemen:

As you know, Eastern Western Corporation and Island Capitol, LLC previously requested certain changes to the Roseberry Irrigation District boundary map dated November 9, 1999. I enclose a copy of my November 1, 2001 letter to Joe Eld, describing the requested changes. Island Capitol and the Idaho Department of Water Resources are nearing final resolution of several of Island Capitol's water rights in the Snake River Basin Adjudication. As part of that process, Island Capitol also would like to finalize the requested changes to the Roseberry Irrigation District boundary map. On behalf of Island Capitol, LLC, I would request that as soon as possible you consider the requested changes and notify Sue Bock of Idaho Department of Water Resources and myself, concerning whether or not you approve. As you will note, the requested changes actually would result in a net decrease in the number of acres identified within Roseberry's boundaries. The Roseberry Irrigation District assessments for the land Island



Re: District Boundary Map
April 26, 2002
Page 2

Capitol purchased from Eastern Western Corporation have been corrected by the Valley County Treasurer's Office and those corrected assessments would be consistent with the requested changes on the map.

You can indicate your assent to the requested changes by signing this letter below and returning the signed letter to me. I will arrange to forward the information to Sue Bock. Thank you for your assistance in this matter.

Sincerely,

HOFSTETTER LAW OFFICE, LLC


Dana L. Hofstetter

Approved by: _____
Joe Eld

Approved by: _____
Lyle Points

Approved by: _____
Mack Miller

Enclosures

cc: Garrick Baxter
Sue Bock
Island Capitol, LLC

E:/4004.1/5236

HOFSTETTER LAW OFFICE

608 West Franklin Street
Boise, Idaho 83702

Dana@IdahoWaterLaw.com

Dana L. Hofstetter
Attorney at Law

Telephone: (208) 424-7800
Facsimile: (208) 424-8774

November 1, 2001

Via facsimile

Joe Eld
Roseberry Irrigation District
2554 East Roseberry
McCall, Idaho 83638

Re: Roseberry Irrigation District Boundary Map

Dear Joe:

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Based on the February 23, 1995 Judgment excluding lands from the Roseberry Irrigation District (copy enclosed), it appears that there should be no District lands in the NE1/4SW1/4 Section 1, Township 16 North, Range 3 East. However, the November 9, 1999 IDWR map includes about 20 acres in that quarter-quarter section within District boundaries. Therefore, Eastern Western and Island Capitol requested that IDWR amend the map to remove those 20 acres from Roseberry's boundaries.

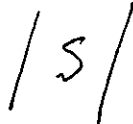
Re: Roseberry Irrigation District
November 1, 2001
Page 2

The second requested change concerns the NW1/4NW1/4 Section 12, Township 16 North, Range 3 East. Based on the Roseberry SRBA claim, it appears that all of that quarter-quarter section should be within District boundaries. However, the November 9, 1999 IDWR map omits about 10-15 acres from that quarter-quarter section. Accordingly, Eastern Western and Island Capitol requested that the IDWR map be revised to include this entire quarter-quarter section in District boundaries.

Roseberry probably should also confirm that other portions of the IDWR map accurately reflect Roseberry boundaries. My limited review of this matter concerned only the lands involved in the Eastern Western/Island Capitol transaction. As part of this effort, Roseberry also may wish to confirm that County assessment information is up to date and consistent with the IDWR map. Please do not hesitate to contact me if you have any questions about this matter. In any event, we would request that you contact Sue Bock at IDWR (208-334-2190) as soon as possible to discuss the two changes requested by Eastern Western and Island Capitol. She is expected to go on maternity leave by November 10, 2001. Thank you for your assistance.

Sincerely,

HOFSTETTER LAW OFFICE

A handwritten signature in black ink, appearing to be 'D L Hofstetter'.

Dana L. Hofstetter

Enclosure

cc: Sue Bock
Mack Miller
Lyle Points
Linda Jones
Michael McGinley

E:/1838.3/5071

LELAND G. HEINRICH, CLERK
By DeLoe Deputy

FEB 23 1995

Case No. _____ Inst. No. _____
Filed _____ A.M. _____ P.M.

Dana L. Hofstetter
HOLLAND & HART
Suite 1400, West One Plaza
Post Office Box 2527
Boise, Idaho 83701
Telephone: (208) 342-5000

Attorneys for Plaintiff,
Board of Directors of the
Roseberry Irrigation District

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF VALLEY

BOARD OF DIRECTORS OF THE
ROSEBERRY IRRIGATION DISTRICT,

Plaintiff,

vs.

DOES I-XX, Defendants, Whose
True Names are Unknown, and
All Other Persons Unknown,
Having Interest in or Claim
Against the Roseberry
Irrigation District,

Defendants.)

Case No. CV-94-197

JUDGMENT AND DECREE OF
CONFIRMATION

The Defendants having been duly served by published summons
in this action, and having failed to answer or object in the
allotted time, and the default of said Defendants having been
entered, and it appearing that there are no outstanding bonds,
warrants or other indebtedness of the Roseberry Irrigation
District, and it appearing the proceedings concerning the Special
Election Modifying the Roseberry Irrigation District by the

JUDGMENT AND DECREE OF CONFIRMATION - 1

Exclusion of Land followed the proper statutory procedures pursuant to Idaho Code Title 43, Chapter 13.

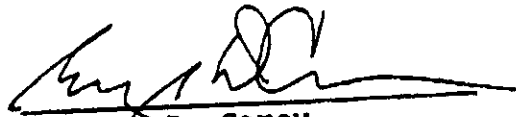
IT IS ORDERED, ADJUDGED AND DECREED AND THIS DOES ORDER, JUDGE AND DECREE that the Plaintiff have judgment by default against the Defendants and that the proceedings concerning the Special Election Modifying the Roseberry Irrigation District by the Exclusion of Lands are hereby confirmed and the following lands are excluded from the boundaries of the Roseberry Irrigation District:

SE $\frac{1}{4}$ SW $\frac{1}{4}$ (40 acres), E $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ (20 acres), W $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ (2 acres) and S $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ (15 acres), Section 1, Township 16 North, Range 3 East, Boise Meridian, Valley County, Idaho;

NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ (10 acres), Section 12, Township 16 North, Range 3 East, Boise Meridian, Valley County, Idaho; and

NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ (10 acres), Section 13, Township 16 North, Range 3 East, Boise Meridian, Valley County, Idaho.

Dated this 23 day of February, 1995.


Judge G.D. Carey

44715/36304.3001

JUDGMENT AND DECREE OF CONFIRMATION - 2

608 West Franklin Street
Boise, Idaho 83702
Phone: (208) 424-7800
Fax: (208) 424-8774
E-Mail: Dana@IdahoWaterLaw.com

FAX COVER SHEET

DATE: August 5, 2002

TO: Garrick Baxter
CC: Sue Bock
Graye Wolfe

Fax: 327-5400
334-2348
288-0216

FROM: Dana Hofstetter

RE: Approval of Roseberry Map Revisions

MESSAGE: Here is the signed approval for the requested Roseberry Irrigation District boundary map revisions. Please let me know if you'd like me to mail the original approval to you. Thank you for your help.

The information contained in this facsimile may be confidential information or attorney work product or both and is for the exclusive use of the intended recipient listed above. Any reading, disclosure, use or reproduction of this communication other than by the intended recipient is prohibited. If you have received this communication in error, please notify us by collect telephone call immediately and return the communication to us by U. S. Mail.

NUMBER OF PAGES BEING TRANSMITTED (INCLUDING THIS PAGE) = 3
IF ALL PAGES ARE NOT RECEIVED, PLEASE CALL (208) 424-7800.
ORIGINAL BY MAIL: YES _____ NO X



HOFSTETTER LAW OFFICE

608 West Franklin Street
Boise, Idaho 83702

Dana@IdahoWaterLaw.com

Dana L. Hofstetter
Attorney at Law

Telephone: (208) 424-7800
Facsimile: (208) 424-8774

April 26, 2002

Joe Eld
Roseberry Irrigation District
2554 East Roseberry
McCall, ID 83638

Mack Miller
1008 North 6th Street
Boise, ID 83702

Lyle Points
P.O. Box 53
Donnelly, ID 83615

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April 26, 2002

Page 2

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Sincerely,

HOFSTETTER LAW OFFICE, LLC

15/

Dana L. Hofstetter

Approved by:

Joe Eld
Joe Eld

Approved by:

Lyle Points
Lyle Points

Approved by:

Currently retired
Mack Miller

Enclosures

cc: Garrick Baxter

Sue Bock

Island Capitol, LLC

E:/4004.1/5236

208 424 8774
Aug-5-02 7:18PM

Job	Phone Number	Start Time	Pages	Mode	Status
666	3275400	8/ 5 7:15PM.....	3/ 3	BC	Completed.....
666	3342348	8/ 5 7:16PM.....	3/ 3	BC	Completed.....
666	2880216	8/ 5 7:17PM.....	3/ 3	BC	Completed.....

HOFSTETTER LAW OFFICE
608 West Franklin Street
Boise, Idaho 83702
Phone: (208) 424-7800
Fax: (208) 424-8774
E-Mail: Dana@IdahoWaterLaw.com

FAX COVER SHEET

DATE: August 5, 2002

TO: Garrick Baxter **Fax:** 327-5400
CC: Sue Bock 334-2348
Graye Wolfe 288-0216

FROM: Dana Hofstetter

RE: Approval of Roseberry Map Revisions

MESSAGE: Here is the signed approval for the requested Roseberry Irrigation District boundary map revisions. Please let me know if you'd like me to mail the original approval to you. Thank you for your help.

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NUMBER OF PAGES BEING TRANSMITTED (INCLUDING THIS PAGE) = 3
IF ALL PAGES ARE NOT RECEIVED, PLEASE CALL (208) 424-7800.
ORIGINAL BY MAIL: YES _____ NO X

Roseberry Irrigation District Boundary



☐ Roseberry Boundary
☐ Quarter Quarter Lines
☐ Section Lines



Created by Sue Bock
November 9, 1999

0 900 1800 2700 3600 Feet

EXHIBIT

D

Roseberry Irrigation District Boundary



- Roseberry Boundary
- Quarter Quarter Lines
- Section Lines



Created by Sue Bock
November 9, 1999
Modified 10/31/2001
Finalized 8/12/02

0 0 600 1800 2700 3600 Feet

EXHIBIT

tabbles

E

HOFSTETTER LAW OFFICE

608 West Franklin Street
Boise, Idaho 83702
Dana@IdahoWaterLaw.com

Dana L. Hofstetter
Attorney at Law

Telephone: (208) 424-7800
Facsimile: (208) 424-8774

November 11, 2004

Via Facsimile

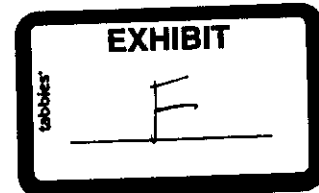
Jan Shurte
Western Region
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082

Re: Roseberry Irrigation District – Digital Boundaries

Dear Jan:

I recently received copies of the November 2, 2004 *Orders of Partial Decree for Irrigation Delivery Entity Using Digital Boundary Description* for the Roseberry Irrigation District's Water Right Nos. 65-02585, 65-03114, 65-03115, and 65-03116, as well as for 65-22587. Copies of these documents are enclosed for your reference.

Upon reviewing the maps attached to these *Orders* and comparing them to the finalized Roseberry Irrigation District boundary map dated August 12, 2002, it appears that the boundary maps referenced in the enclosed Snake River Basin Adjudication ("SRBA") Court's *Partial Decrees* are an earlier incorrect version of the map dated November 9, 1999, rather than the corrected and finalized map dated August 12, 2002. I have correspondence in my file concerning the requested corrections to this map on behalf of my client, Island Capitol, LLC, as well as a full-size print of the corrected and finalized map as of August 12, 2002 provided to me by the Idaho Department of Water Resources ("IDWR"). I can provide you copies of any of these documents upon request.



Jan Shurte
November 11, 2004
Page 2

Please contact me immediately to discuss this matter. I may need to file a Motion with the SRBA Court immediately to have this matter corrected. Thank you for your attention to this matter.

Sincerely,

HOFSTETTER LAW OFFICE, LLC

A handwritten signature in black ink, appearing to read "Dana Hofstetter", with a long horizontal flourish extending to the right.

Dana L. Hofstetter

Enclosures

cc: Susan Hamlin, IDWR
Chris Bromley, IDWR
Island Capitol, LLC
Joe Eld, Roseberry Irrigation District
Lyle Points, Roseberry Irrigation District

DLH:drj
4004.1/6215