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DEC 14 1995

Department of Water Resources

Attorneys for IDWR

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 No. 34-10167
	)	
	)	JOINT PRETRIAL
Case No. 39576	)	STIPULATION
	)	
	)	

DESCRIPTIVE SUMMARY

Pursuant to the Special Master's order of November 30, 1995, the claimant, Herb Whitworth, the objector, United States, and IDWR submit this Joint Pretrial Stipulation for the above-referenced subcase.

STIPULATIONS TO ADMISSIONS OF FACT

The parties and IDWR stipulate to the following admissions of fact:

1. There is sufficient evidence of beneficial use to establish a priority date of April 15, 1890, for this water right.¹

¹ The parties and IDWR do not intend this stipulation of fact to resolve the issue regarding the correct priority date. The court must still determine whether the Utah Constr. Co. v. Abbott Decree bars a priority date earlier than March 16, 1923, for this water right. If the court finds that the Abbott Decree



2. The claimant, Herb Whitworth, is a party in privity to the Utah Constr. Co. v. Abbott Decree.

STIPULATIONS TO THE ADMISSIBILITY OF EVIDENCE

The parties and IDWR stipulate to the admissibility of the following evidence to be offered by IDWR:

1. Certified copy of IDWR Claims Investigation Manual;
2. Certified copy of IDWR Adjudication Memorandum no. 14;
and
3. Certified copy of the Utah Constr. Co. v. Abbott Decree.

The parties, however, intend their stipulation to the admissibility of the above-listed evidence to apply to this subcase only. They reserve the right to object to the admissibility of this evidence in other subcases.

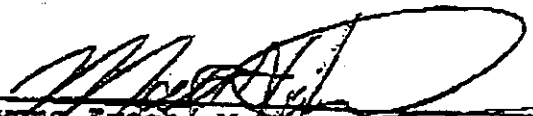
The parties and IDWR stipulate to the admissibility of the following evidence to be submitted by the claimant, Herb Whitworth: Copy of a Stipulation signed by the Utah Construction Company and Thousand Springs Land and Irrigation Company.

does not apply, then based on the above stipulation of fact, the parties and IDWR agree that the priority date should be April 15, 1890, based on evidence of beneficial use submitted to IDWR by the claimant.

EVIDENCE NOT STIPULATED TO

The following evidence to be offered by IDWR has not yet been stipulated to by the parties:

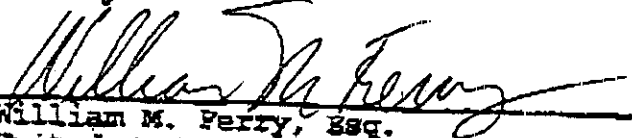
1. Map of the Big Lost River Valley; and
2. Map of place of use for water right no. 34-10167.


Lynda Krogh, Matt J. Howard
Deputy Attorney General
Idaho Department of Water Resources

12/4/95
Date


Herb Whitworth, Claimant

12/4/95
Date


William M. Ferry, Esq.
United States Department of Justice

12/4/95
Date

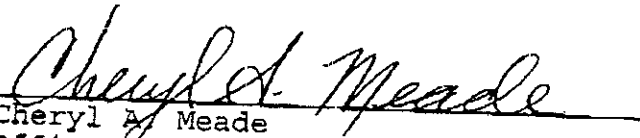
CERTIFICATE OF SERVICE

I certify that on Dec. 1/74, 1995, I served true and copies of the following described document on the persons listed below by facsimile:

DOCUMENT SERVED: Joint Pretrial Stipulation

PERSONS SERVED: Herb Whitworth
c/o Westone Bank
Mackay, ID 588-3076

Lynne Krough/ Matt J. Howard
Deputies Attorney General
Idaho Dept. of Water Resources
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Cheryl A. Meade
Office of the Field Solitictor