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DEPARTMENT OF
WATER RESOURCES

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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

<u>In Re SRBA</u>	)	Subcase No. 45-294C&D
	)	
Case No. 39576	)	OBJECTORS' PROPOSED FINDINGS OF
	)	FACT AND CONCLUSIONS OF LAW
	)	
	)	

FINDINGS OF FACT

1. On March 21st, 1892, the Wood-Stokes decree adjudicated 240 inches of Lake Cleveland water which, after loss, was decreed as 150 inches appurtenant to certain real property then owned by the Estate of John Parke and 75 inches appurtenant to certain real property owned by George Guiles.
2. On October 5th, 1892, fifty (50) inches of the Lake Cleveland water was sold to Ira C. Parke, Sr., as confirmed by an order of the probate court having jurisdiction over the Estate of John Parke. The water was sold separately and not as appurtenant to land.
3. The fifty (50) inches of Lake Cleveland water purchased by Ira C. Parke, Sr. is the

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1 water at dispute in this case. The remaining Lake Cleveland water is owned by and
2 appurtenant to land owned by A. W. Anderson and Sondra Anderson and is not disputed.

3 4. Montgomerys assert their claim to the fifty (50) inches of disputed water in their
4 claim 45-294D. Andersons assert their claim to the fifty (50) inches in claim 45-294C.

5 5. Neither the Montgomery property nor the Anderson property is identified in the
6 Wood-Stokes decree as having Lake Cleveland water appurtenant.

7 6. There are no deeds or other instruments of conveyance establishing ground to
8 which the fifty (50) inches became appurtenant prior to SRBA.

9 7. The only evidence of appurtenancy was offered through the affidavit of Andrew
10 Parke dated July 25th, 1935, the affidavit of Julia Ballard dated June 1961, and the deposition
11 of Frederick L. Parke.
12

13 8. The chain of title to the Montgomery property makes no reference to Lake
14 Cleveland water though it specifically identifies other water rights.
15

16 9. The Andrew Parke affidavit is contradicted by the chain of title for the
17 Montgomery property, the Julia Ballard affidavit, and the deposition of Frederick L. Parke.

18 10. The Andrew Parke affidavit does not state where Lake Cleveland water was used
19 after 1934.

20 11. The deposition of Frederick L. Parke is uncontradicted as to the use of the fifty
21 (50) inches of Lake Cleveland water between 1934 and the SRBA.
22

23 12. The fifty (50) inches of Lake Cleveland water has been exclusively used on the
24 Anderson property from 1934 until the date the SRBA was filed.

25 13. The fifty (50) inches of Lake Cleveland water is appurtenant to the Anderson
26 property.

CONCLUSIONS OF LAW

1. The Director's report is prima facie evidence of its content. Idaho Code § 42-1411.

2. An Objector has the burden of going forward with evidence and rebutting the Director's report. Idaho Code § 42-1411.

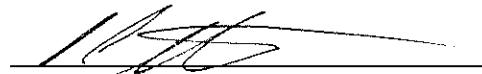
3. Andersons have met the burden of proof by establishing continuous and exclusive use of the fifty (50) inches of Lake Cleveland water on the Anderson property from 1932 until the date the SRBA was filed.

4. Andersons' objection to Claim 45-294D should be granted, and Montgomerys decreed no portion of the fifty (50) inches of Lake Cleveland water.

5. Andersons' objection to claim 45-294C should be granted, and the amount of Lake Cleveland water decreed to them should be increased to include the fifty (50) inches of Lake Cleveland water resolved by this litigation.

DATED this 10th day of August, 2006.

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CERTIFICATE OF MAILING

I certify that on the 10th day of August, 2006, I served a true and correct copy of the
Objectors' Proposed Findings of Fact and Conclusions of Law upon the following in the
manner noted:

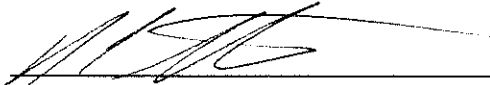
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