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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho JAN 29 2010 By _____ Clerk Clerk

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 63-21476
Case No. 39576) ORDER SETTING HEARING
_____)

The above-captioned water right was claimed as a beneficial use water right with a priority date of December 20, 1980. A water right for the use of groundwater may be acquired without going through the water right permitting process if the use of the water is for domestic purposes. This exception to the mandatory permitting requirement is found in Idaho Code § 42-227, which states:

42-227. Drilling and use of wells for domestic purposes excepted. – The excavation and opening of wells and the withdrawal of water therefrom for domestic purposes shall not be subject to the permit requirement under section 42-229, Idaho Code; providing such wells and withdrawal devices are subject to inspection by the department of water resources and the department of environmental quality and providing further that the drilling of such wells shall be subject to the licensing provisions of section 42-238, Idaho Code. Rights to ground water for such domestic purposes may be acquired by withdrawal and use.

Idaho Code § 42-227. The term “domestic purposes” as used in the above-quoted statute is defined in Idaho Code § 42-111, which states in part:

42-111. Domestic purposes defined. – (1) for purposes of sections 42-221, 42-227, 42-230, 42-325, 42-237a, 42-242, 42-243, and 42-1401A, Idaho Code, the phrase “domestic purposes” or “domestic uses” means:
(a) The use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to one-half (½) acre of land, if the total use is not in excess of thirteen thousand (13,000) gallons per day, or
(b) Any other uses, if the total use does not exceed a diversion rate of four one-hundredths (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day.

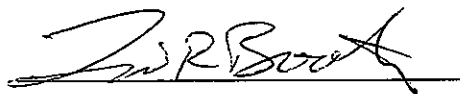
(2) for purposes of the sections listed in subsection (1) of this section, domestic purposes or domestic uses shall not include water for multiple ownership subdivisions, mobile home parks, or commercial or business establishments, unless the use meets the diversion rate and volume limitations set forth in subsection (1)(b) of this section.

Idaho Code § 42-111.

The *Director's Report* for this water right claim recommends the water right for 0.24 cfs for year 'round domestic and stockwater use with a daily limit of 13,000 gallons. The explanatory material section of the *Director's Report* states: "Stockwater use is for 1000 dairy cattle." The claimant of the right is P & L Doornebal Dairy LLP. Based upon the information set forth in the *Director's Report*, this Special Master notes that the daily limit of 13,000 gallons would be reached in approximately two hours at the diversion rate of 0.24 cfs. In addition, based upon the information that the right is claimed for the use in a dairy operation of up to 1,000 cows, and based upon the fact that the claimant is a business entity, the question arises as to whether the water right claim properly fits under the statutory definition of domestic purposes which would allow use of up to 13,000 gallons per day, or whether the right should be categorized under subsection (1)(b) of section 42-111, which allows a daily diversion of 2,500 gallons per day and a diversion rate of 0.04 cfs.

A hearing to determine the nature of the use of this water right claim and to determine whether the right should be limited to 2,500 gallons per day and 0.04 cfs, as opposed to 13,000 per day and 0.24 cfs, **will be held on March 2, 2010 at 1:30 PM** Mountain Time at the Snake River Basin Adjudication Courthouse, 253 3rd Avenue North, Twin Falls, Idaho. Parties may participate by telephone by dialing 225-383-1099 and when prompted entering the code 675342.

Dated Jan 29, 2010



THEODORE R. BOOTH
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER SETTING HEARING was mailed on January 29, 2010, with sufficient first-class postage to the following:

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