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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

FEB - 2 2010

By _____ Clerk
Deputy 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

Case No. 39576

) ORDER SETTING
) SHOW CAUSE HEARING

) SUBCASE NOS.: 27-11728, 27-11729,
) 27-11730 and 27-11996
)

I. BACKGROUND

After the *Director's Reports* were filed for Basin 27, the Idaho Department of Water Resources notified the court that it had conducted a review of its recommendations for Basin 27 and discovered that some corrections were needed. On November 18, 2008, IDWR sent a letter providing the Court with additional information about the necessary corrections. The letter was served on the parties to the subcases. The IDWR letter stated that these subcases contained errors in the *Director's Report*.

Hearings were held on January 30, 2009, June 5, 2009 and January 27, 2010. The claimant did not attend. At the hearing on January 27, 2010, the Idaho Department of Water Resources reported to the court that it had sent a proposed settlement agreement to the claimant, but had not had any response.

THEREFORE, an *Order to Show Cause* hearing is set as follows:

Date: June 30, 2010 Time: 11:00 am

Show Cause Hearing

Location: Snake River Basin Adjudication
253 3rd Ave. North
Twin Falls, Idaho 83301

Parties may participate by telephone for the Show Cause Hearing by dialing 1-225-383-1099 and when prompted enter participant code 926509. Any questions regarding telephone participation, please contact the clerk's office at (208) 736-3011.

IT IS HEREBY ORDERED, pursuant to I.R.C.P. 6(c)(2) and I.R.C.P. 6(c)(4) that Ken Wixom shall appear at a **Show Cause Hearing** to determine whether the Court should issue a *Special Master's Report and Recommendation* recommending the elements as set forth in the

proposed *Standard Forms 5*. (Attached hereto as Exhibit 1) The elements of these water rights would then be recommended as set forth in the proposed *Standard Forms 5*. (Exhibit 1)

IT IS FURTHER ORDERED THAT, any affidavits and/or notices to cross-examine pursuant to I.R.C.P. 6(c)(2) shall be due on or before June 23, 2010.

Ken Wixom is hereby informed that pursuant to Rule 6(c)(4) of the Idaho Rules of Civil Procedure, any party may elect to produce testimony and evidence at the hearing upon the Order to Show Cause, or to cross-examine the adverse party or the adverse party's affiants, by first giving at least twenty four (24) hours notice to the Court and opposing counsel before the show cause hearing.

A copy of this *Order to Show Cause and Summons to Appear* shall be served upon the Claimant not less than five (5) days prior to the date set for hearing, where they are required to appear before this Court and show cause. Service of this *Order* shall be made in accordance with I.R.C.P. 5(b) and 6(c)(2).

APPEARANCE AT THIS HEARING IS MANDATORY. FAILURE TO APPEAR AT THIS HEARING MAY RESULT IN THIS WATER RIGHT BEING RECOMMENDED AS SET FORTH IN THE ATTACHED STANDARD FORMS 5.

DATED: February 2, 2010.


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

Exhibit 1
IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 27-11728

NAME AND ADDRESS: KEN J WIXOM
260 W 300 N
BLACKFOOT ID 83221

SOURCE: MENASSA CREEK
MINER CREEK

TRIBUTARY: MINER CREEK
TRIBUTARY: BLACKFOOT RIVER

QUANTITY: 0.020 CFS
4.10 AFY

The rights listed below are limited to a total combined annual diversion volume of 4.2 AF. Combined Right Nos.: 27-11728, 27-11729, 27-11730, and 27-11996.

The quantity of water under this right shall not exceed 13,000 gallons per day.

PRIORITY DATE: 05/29/1915

POINT OF
DIVERSION:

~~T03S R39E S18 SESENEW End of Stream Flow Within BINGHAM County~~
T03S R39E S18 SESENEW Begin of Stream Flow Within BINGHAM County
T03S R39E S18 NWSWN Lot 2 End of Stream Flow Within BINGHAM County
T03S R39E S18 SESENEW Begin of Stream Flow Within BINGHAM County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE:	PERIOD OF USE:	QUANTITY:
STOCKWATER	05/01 12/31	0.020 CFS <u>4.10 AFY</u>

PLACE OF USE: STOCKWATER in BINGHAM County

T03S R39E S18	NENW	T03S R39E S18	<u>Lot 1</u> NWNW
T03S R39E S18	<u>Lot 2</u> SWNW	T03S R39E S18	SENEW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

~~The quantity of water decreed for this water right is not a determination of historical beneficial use.~~

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use
Stockwater use is for 450 range cattle.

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 27-11730
NAME AND ADDRESS: KEN J WIXOM
260 W 300 N
BLACKFOOT ID 83221

SOURCE: RAWLINS CREEK
TRIBUTARY: BRUSH CREEK
BLACKFOOT RIVER

QUANTITY: 0.020 CFS
4.10 AFY

The rights listed below are limited to a total combined annual diversion volume of 4.2 AF. Combined Right Nos.: 27-11728, 27-11729, 27-11730, and 27-11996.

The quantity of water under this right shall not exceed 13,000 gallons per day.

PRIORITY DATE: 01/01/1916

POINT OF
DIVERSION:

~~T03S R39E S15 SESWNE End of Stream Flow Within BINGHAM County~~
~~T03S R39E S15 NESWNE Begin of Stream Flow Within BINGHAM County~~

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE:	PERIOD OF USE:	QUANTITY:
STOCKWATER	05/01 12/31	0.020 CFS 4.10 AFY

PLACE OF USE: STOCKWATER in BINGHAM County
T03S R39E S15 SWNE

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

~~The quantity of water decreed for this water right is not a determination of historical beneficial use.~~

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use
Stockwater use is for 450 range cattle.

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 27-11996
NAME AND ADDRESS: KEN J WIXOM
260 WEST 300 N
BLACKFOOT ID 83221

SOURCE: BLACKFOOT RIVER TRIBUTARY: SNAKE RIVER
QUANTITY: 0.020 CFS
 4.10 AFY

The quantity of water under this right shall not exceed 13,000 gallons per day.

The rights listed below are limited to a total combined annual diversion volume of 4.2 AF. Combined Right Nos.: 27-11728, 27-11729, 27-11730, and 27-11996.

PRIORITY DATE: 05/29/1915

POINT OF
DIVERSION:

T03S R38E S13 NWSE Lot 8 End of Stream Flow Within BINGHAM County

~~T03S R38E S13 SESENE End of Stream Flow Within BINGHAM County~~

T03S R39E S19 SESENE Begin of Stream Flow Within BINGHAM County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE:	PERIOD OF USE:	QUANTITY:
STOCKWATER	05/01 12/31	0.020 CFS
		<u>4.10 AFY</u>

PLACE OF USE: STOCKWATER in BINGHAM County

T03S R38E S13 Lot 8 NWSE

T03S R38E S13 Lot 9 SWSE

T03S R38E S24 Lot 5 NWNE

T03S R38E S24 Lot 6 SWNE

T03S R38E S24 Lot 6 SENE

T03S R39E S19 Lot 2 SWNW

T03S R39E S19 SENW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

~~The quantity of water decreed for this water right is not a determination of historical beneficial use.~~

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use
Stockwater use is for 450 range cattle.

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER SETTING
SHOW CAUSE HEARING was mailed on February 02, 2010, with sufficient
first-class postage to the following:

SHOSHONE-BANNOCK TRIBES

Represented by:
JEANETTE WOLFLEY
SPECIAL COUNSEL
SHOSHONE-BANNOCK TRIBE
202 N ARTHUR
POCATELLO, ID 83202
Phone: 208-232-1922

STATE OF IDAHO

Represented by:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
PO BOX 44449
BOISE, ID 83711-4449

UNITED STATES OF AMERICA

Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

DIRECTOR OF IDWR

PO BOX 83720
BOISE, ID 83720-0098

KEN J WIXOM

260 W 300 N
BLACKFOOT, ID 83221