

AUG 10 2011

DEPARTMENT OF
WATER RESOURCES

James P. Speck, ISB#2067
 Speck & Aanestad
 A Professional Corporation
 120 East Avenue
 P. O. Box 987
 Ketchum, Idaho 83340
 (208) 726-4421
 FAX: (208) 726-0752
 jim@speckandaanestad.com

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	)	
	)	MEMORANDUM IN SUPPORT OF
Case No. 39576	)	MOTION TO SET ASIDE AND
	)	AMEND PARTIAL DECREE
	)	
_____	)	Subcase No. 37-07175

The Lieskovan Family Trust ("Lieskovan") submits this Memorandum in Support of its Motion to Set Aside and Amend Partial Decree 37-07175 issued by this Court on September 28, 2010, a copy of which is attached hereto as **Exhibit A**. Lieskovan requests that the point of diversion in the Partial Decree for 37-07175 be corrected to the SW1/4NE1/4 of Section 15, Township 5N, Range 17E.

LEGAL STANDARD FOR MOTIONS TO SET ASIDE PARTIAL DECREES

"In the SRBA, a motion to set aside a partial decree is treated similar to a motion to set aside a default judgment and determined in accordance with the criteria set forth in I.R.C.P. 60(b)." *Memo. Decision and Order on Mot. to Set Aside Partial Decree* at 7, SRBA Subcase No. 55-02373

et al. (May 1, 2001); *see also* AO1 at 21. Rule 60(b) provides that a judgment may be set aside for “any other reason justifying relief from the operation for the judgment.” *Id.*

The court in determining whether to set aside a default judgment should “apply a standard of liberality rather than strictness and give the party moving to vacate the default the benefit of genuine doubt.” *Johnson v. Pioneer Title Co.*, 104 Idaho 727, 733 (Ct. App. 1983). The Court’s decision must “take into account the overriding preference for having a case decided on its merits.”

Order Conditionally Granting Mot. to Set Aside Partial Decrees at 7, SRBA Subcase Nos. 37-07454 and 37-07602 (December 2, 2003) citing *Reeves*, 102 Idaho at 272). In making that determination,

[T]he Court must take into consideration that judgments by default are not favored, the general rule in doubtful cases is to grant relief from the default in order to reach a judgment on the merits, and procedural rules other than those which are jurisdictional should be applied to promote disposition on the merits.

Id. “This is a factual determination and is discretionary with the Court. *Id.* (Citing *Johnson*, 104 Idaho at 732).

ARGUMENT

The License for 37-07175 was issued in 1981, identifying the point of diversion in the same location currently described in the Partial Decree for that water right. At the time of licensing this part of Blaine County was unsurveyed and the location of the springs’ source for the water right was a best estimate. This water right was then claimed and recommended in the SRBA as it was licensed. It was uncontested and thus decreed as it was claimed and recommended.

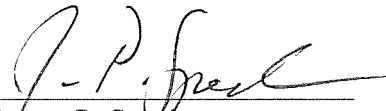
Lieskovan recently acquired the property and retained the undersigned law firm to review the appurtenant water rights. A site investigation using modern GPS devices discovered that the location of the springs is in the 1/41/4 section to the east of the decreed location. A map of the location of the springs prepared using the GPS coordinates (43.767945°N, 114.415207°W) is attached hereto as **Exhibit B**. The Partial Decree for this water right should be corrected accordingly.

CONCLUSION

For the reasons set forth above, Lieskovan requests that the partial decree for 37-07175 be set aside and amended to specify that the point of diversion is located in the SW1/4 NE1/4 of Section 15, Township 5N, Range 17E.

DATED this 9th day of August, 2011.

SPECK & AANESTAD
A Professional Corporation

By 
James P. Speck

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of August, 2011, I served a true and correct copy of the foregoing MEMORANDUM IN SUPPORT OF MOTION TO SET ASIDE AND AMEND PARTIAL DECREE on the following persons in the manner designated below:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, Idaho 83303-2707

☒ United States Mail, Postage Prepaid
☐ Hand Delivery
☐ Facsimile

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

☒ United States Mail, Postage Prepaid
☐ Hand Delivery
☐ Facsimile

The United States Department of Justice
Environmental and Natural Resources
Division
550 West Fort Street
MSC 033
Boise, ID 83724

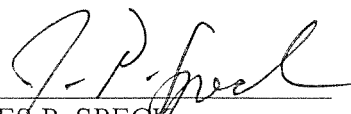
☒ United States Mail, Postage Prepaid
☐ Hand Delivery
☐ Facsimile

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

☒ United States Mail, Postage Prepaid
☐ Hand Delivery
☐ Facsimile

The Lieskovan Family Trust
c/o Ed Lieskovan
651 W. Lemon Ave.
Arcadia, CA 91007

☒ United States Mail, Postage Prepaid
☐ Hand Delivery
☐ Facsimile


JAMES P. SPECK

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

RECEIVED

SEP 28 2010

DEPARTMENT OF
WATER RESOURCES

In Re SRBA)
Case No. 39576)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 37-07175

NAME AND ADDRESS: JOHN BEEHLER
TARA BEEHLER
HC 64 BOX 8004
KETCHUM, ID 83340

SOURCE: SPRING TRIBUTARY: SINKS

QUANTITY: 0.06 CFS
3.60 AFY

PRIORITY DATE: 11/21/1972

POINT OF DIVERSION: T05N R17E S15 SENW Within Blaine County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 11-01	0.02 CFS
			3.00 AFY
	Domestic	01-01 TO 12-31	0.04 CFS
			0.60 AFY

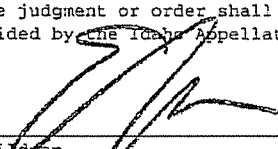
PLACE OF USE:	Irrigation		Within Blaine County
	T05N R17E S15	SWNE 0.5	SENE 0.5
	1.0 Acres Total		
	Domestic		Within Blaine County
	T05N R17E S15	SWNE	

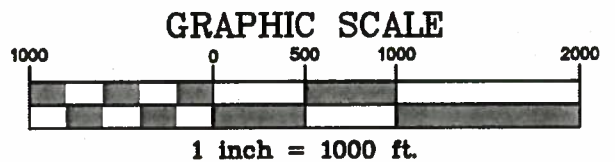
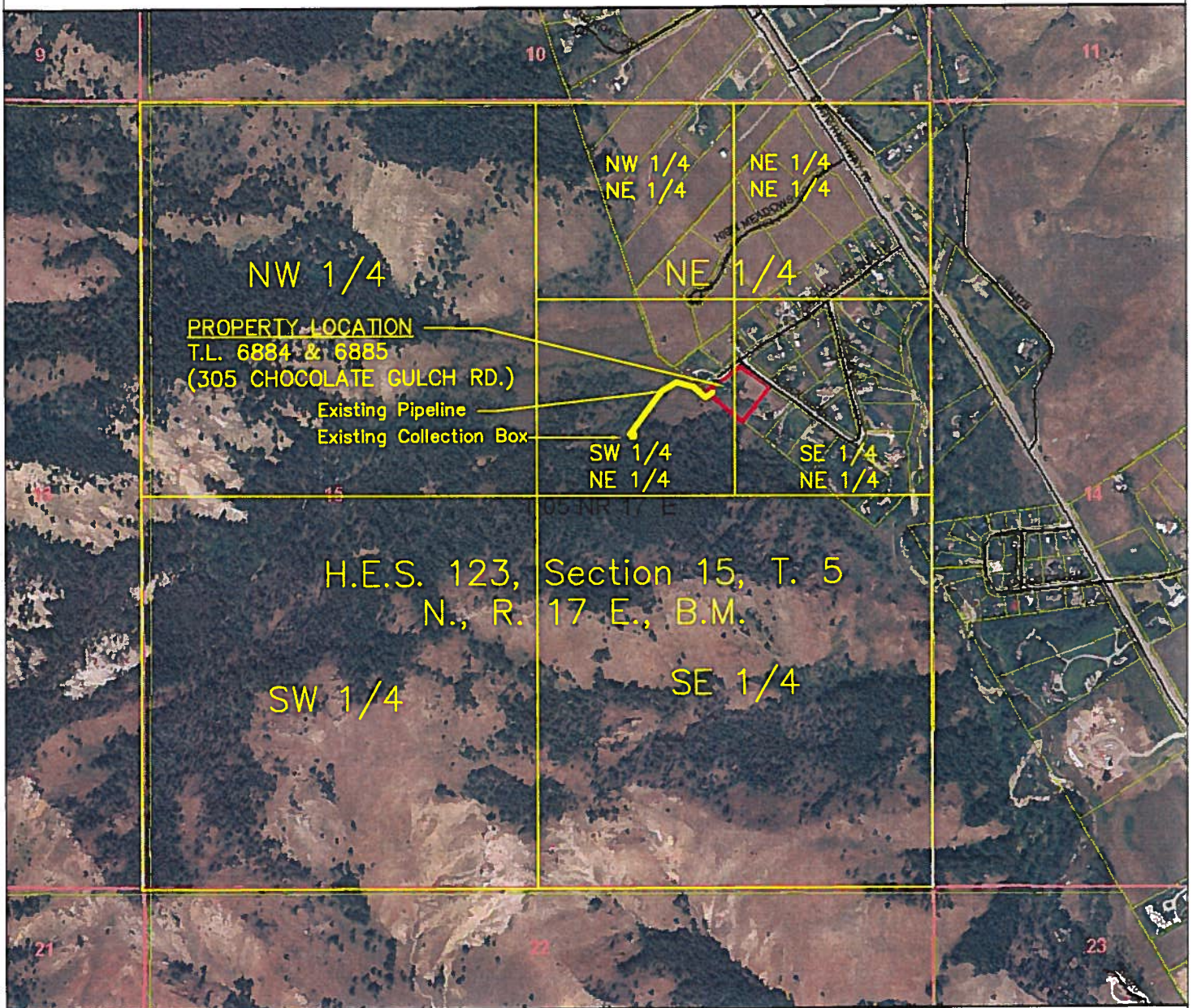
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


Eric J. Wigman
Presiding Judge of the
Snake River Basin Adjudication



REUSE OF DRAWINGS
These drawings or any portion thereof, shall not be used on any project or extension of this Project except by agreement in writing with Galena Engineering, Inc.

Galena Engineering Inc.

Civil Engineers & Land Surveyors
817 North River Street
Bozeman, Idaho 83725
(208) 758-1795
(208) 758-4612 fax
email galena@galena-engineering.com

**A VICINITY MAP SHOWING
POINT OF DIVERSION AND PIPELINE FOR WATER RIGHT 37-7175
WITHIN H.E.S 123, S 15, T.5N., R.17E., B.M., BLAINE COUNTY, IDAHO
PREPARED FOR LIESKOVAN FAMILY TRUST**

PROJECT INFORMATION

SHT 1 OF 1

EXHIBIT B