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Attorney for Rowlands, Inc.

RECEIVED
APR 10 2012
DEPARTMENT OF
WATER RESOURCES

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 39576

Subcase No. 29-11278

MOTION TO AMEND
PARTIAL DECREE

Rowlands, Inc., hereby moves the Court pursuant to Rule 60(a) of the Idaho Rules of Civil Procedure to amend the Partial Decree for water right number 29-11278 to correct a clerical mistake contained therein. Rule 60(a) provides that clerical mistakes in judgments or orders “may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.”

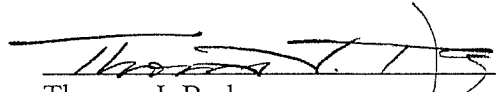
A copy of the Amended Partial Decree entered for water right number 29-11278 on December 29, 2011, is attached hereto as Exhibit A. It was entered pursuant to the *Special Master’s Report and Recommendation on Motion to Set Aside Partial Decree* attached as Exhibit B. As explained in that Report, the Partial Decree was issued pursuant to a *Standard Form 5*, a copy of which is attached as Exhibit C. A comparison of the Partial Decree (Exhibit A) and the *Standard Form 5* (Exhibit C) reveals a clerical mistake in the quantity element of the Partial Decree. The *Standard Form 5* shows the quantity of the domestic use as 0.06 CFS. In contrast, the Partial Decree shows the quantity of the domestic use as 0.06 AFY. The Partial Decree should be amended so that the domestic

use provides 0.06 CFS. In addition, the Partial Decree should be amended to show that the industrial use component provides 0.11 CFS and 7.2 AFY as shown in the *Standard Form 5*.

Since there are no objectors or other parties to this subcase, Rowlands, Inc., respectfully asks the Court to make the foregoing amendments to the Partial Decree for water right 29-11278 without further notice or hearing.

RESPECTFULLY SUBMITTED this 5th day of April, 2012.

RACINE OLSON NYE BUDGE &
BAILEY, CHARTERED



Thomas J. Budge
Attorney for Rowlands, Inc.

CERTIFICATE OF MAILING

I certify that on this 5th day of April, 2012, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

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

2. Copy to Claimant:

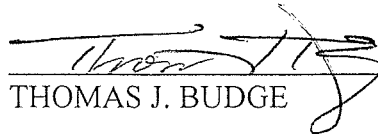
Rowlands, Inc.
1141 Rowland Rd.
Pocatello, Idaho 83204

3. Copies to:

IDWR Document Depository
P.O. Box 83720
Boise, Idaho 83720-0098

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

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, Idaho 83724



THOMAS J. BUDGE

APPENDIX A

Amended Partial Decree
(Entered December 29, 2011)

AMENDED

Water Right 29-11278

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

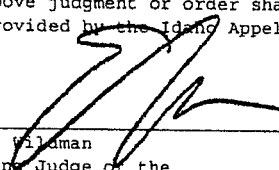
DEC 29 2011

By _____
Clerk
Deputy Clerk

PAGE 1
Oct-26-2011

RULE 54(b) CERTIFICATE

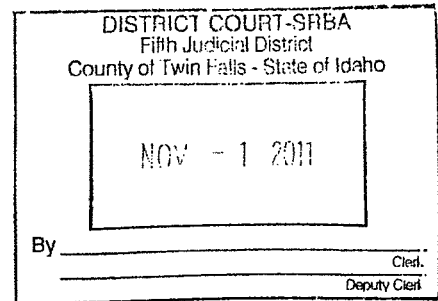
With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment 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. Wilman
Presiding Judge of the
Snake River Basin Adjudication

APPENDIX B

Special Master's Report and Recommendation
on Motion to Set Aside Partial Decree
(Entered November 1, 2011)



**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	)	SPECIAL MASTER'S REPORT AND
	)	RECOMMENDATION ON MOTION
Case No. 39576	)	TO SET ASIDE PARTIAL DECREE
	)	
	)	WATER RIGHT NO.: 29-11278
	)	
_____	)	

I. PROCEDURAL BACKGROUND

The SRBA District Court issued a *Partial Decree* for this water right on March 22, 2004. A *Motion to Set Aside Partial Decree, File Late Objection, and Amend Claim* was filed by Rowlands, Inc. on August 18, 2010. Presiding Judge Eric Wildman issued an *Order of Reference Appointing Special Master Brigitte Bilyeu* on August 30, 2010. A hearing on the *Motion to Set Aside Partial Decree, File Late Objection and Amend Claim* was held on September 8, 2010. There was no opposition to the *Motions*.

II. FINDINGS OF FACT

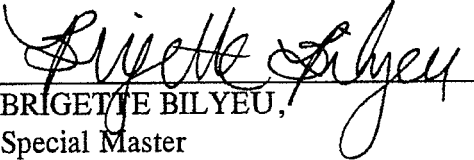
In support of the *Motions*, Rowlands Inc. explained that it has operated a dairy since the early 1900s. Water has been utilized in the dairy. However, the water rights were not licensed or decreed. The rights were perfected by the constitution method. Consequently, it took time and research to uncover evidence such as effluent records from the City of Pocatello. This evidence provided corroboration of Bob Rowland's information on priority. Finally a *Standard Form 5* was filed. No parties to the SRBA opposed the *Motions*. The *Motions* were granted. *Order Granting Motion to Amend Claim and Setting Subcase Deadlines*. (September 10, 2010)

An *Amended Director's Report* was filed on May 31, 2011. Rowlands Inc. filed an *Objection* on June 7, 2011 to the *Amended Director's Report*. The *Objection* was resolved on September 15, 2011 with the filing of a *Standard Form 5*. All parties to the subcase and IDWR are signatories to the *Standard Form 5*.

III. CONCLUSIONS AND RECOMMENDATIONS

Therefore, based on the file and record herein, IT IS RECOMMENDED that the *Motions to Set Aside Partial Decree* be **granted**, and that an *Amended Partial Decree* be issued with the elements set forth in the attached *Special Master's Recommendation for Amended Partial Decree*. The recommended elements are consistent with the *Standard Form 5*.

Dated: November 1, 2011.


BRIGETTE BILYEU,
Special Master
Snake River Basin Adjudication

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

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

NOV - 1 2011

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 29-11278

By _____
Clerk,
Deputy Clerk

NAME AND ADDRESS: ROWLANDS INC
1141 ROWLAND RD
POCATELLO, ID 83204-7416

SOURCE: GROUND WATER

QUANTITY: 0.11 CFS
7.20 APY

The quantity of water under this right for domestic use shall
not exceed 13,000 gallons per day.
The rights listed below are limited to a total combined diversion
rate of 0.11 cfs. Combined Right Nos.: 29-11278, 29-13956, and
29-14000.

PRIORITY DATE: 12/31/1937

POINT OF DIVERSION: T06S R34E S07 LOT 2 (NWNE) Within Power County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Domestic	01-01 TO 12-31	0.06 APY
	Industrial	01-01 TO 12-31	0.11 CFS
			7.20 APY

Domestic use is for a duplex.
Industrial use is in a milk processing plant.

PLACE OF USE:	Industrial	Within Power County
	T06S R34E S07 LOT 2 (NWNE)	
	Domestic	Within Power County
	T06S R34E S07 LOT 2 (NWNE)	

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

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

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).

RECOMMENDATION

NOV 01 2011

Regella Silvey
SPECIAL MASTER

APPENDIX C

Standard Form 5
(Entered September 15, 2011)

527

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
SEP 15 2011	
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	)	Subcase No. 29-11278
	)	
	)	
Case No. 39576	)	STANDARD FORM 5
	)	
	)	STIPULATED ELEMENTS OF A WATER RIGHT

This form is used to report the stipulated elements of one water right acquired under state law and/or one federal reserved water right. Submission of this form will not automatically result in the issuance of a partial decree. The Presiding Judge or Special Master will conduct any hearing necessary to determine whether the facts, data, expert opinions and law support the issuance of a partial decree for the water right.

The parties agree that the Snake River Basin Adjudication Court has jurisdiction of the parties and subject matter to enter a partial decree for this water right; that they have been served with sufficient process, according to the law; and that they have appeared, prosecuted, and defended their positions with regard to this water right dispute.

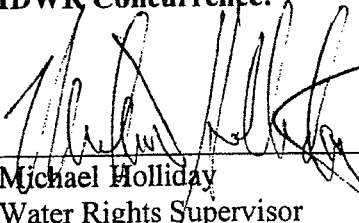
The parties and IDWR agree and stipulate that the elements of this water right should be described as per the attached. The parties and IDWR have further indicated their concurrence by initialing each of the attached pages.

CLAIMANT/ OBJECTOR:

Rowlands, Inc.

 Thomas J. Budge Attorney for Claimant/Objector	9-7-2011 Date
---	------------------

IDWR Concurrence:



Michael Holliday
Water Rights Supervisor

9/9/2011

Date



Chris Bromley
Deputy Attorney General
Attorney for IDWR

9/13/11

Date

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

RIGHT NUMBER: 29-11278

NAME AND ADDRESS:

ROWLANDS INC
1141 ROWLAND RD
POCATELLO ID 83204-7416

SOURCE:

Source:
GROUND WATER

Tributary:

QUANTITY:

0.110 CFS
7.200 AFY

0.060 CFS

The rights listed below are limited to a total combined diversion rate of 0.11 cfs. Combined Right Nos.: 29-11278, 29-13956, and 29-14000.

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

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

PRIORITY DATE:

12/31/1937
08/17/1949

POINT OF DIVERSION:

T06S R34E S7 Lot 2 NWNE
Within POWER County

PURPOSE AND
PERIOD OF USE:

Purpose of use:

Period of use:

Quantity:

INDUSTRIAL

01/01 12/31

0.110 CFS 7.20 AFY

DOMESTIC

01/01 12/31

0.060 CFS

Industrial use is in a milk processing plant.

Domestic use is for a duplex.

PLACE OF USE:

INDUSTRIAL within POWER County

T06S R34E S07 Lot 2 NWNE

DOMESTIC within POWER County

T06S R34E S07 Lot 2 NWNE

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

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 for domestic use is not a determination of historical beneficial use.

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

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

The following rights are diverted through point of diversion described above: 29-4443, 29-11278, 29-13956, 29-13957, 29-13958, and 29-14000.

Right No. 29-14000 is an enlargement of this right pursuant to Section 42-1426, Idaho Code.

~~The following rights are diverted through point of diversion described above: 29-4443, 29-11278, 29-13956, 29-13957, and 29-13958.~~

TB
CB
MNA