

RECEIVED

MAY 21 2012

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho
MAY 18 2012
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

) Water Right No.: 75-00017B
)
) AMENDED NOTICE OF COURT'S
) INTENT TO ISSUE AMENDED
) PARTIAL DECREE
)
) ORDER VACATING AND RESETTNG
) HEARING
)
)
)
)
)

A *Partial Decree* was issued for the above-captioned water right on February 29, 2012. The Court subsequently identified an error in the *Partial Decree* with respect to the source element. The *Standard Form 5* ("SF5") filed by the parties on December 27, 2011 included a remark under the source element that referred to "Chipps Creek." The same source element remark contained in the subsequent *Special Master's Report and Recommendation* and *Partial Decree* erroneously refers to Chipps Creek as "Shipps Creek" in one instance. The Court finds this error to be the result of clerical error. The Court entered a *Notice of Court's Intent to Issue Amended Partial Decree* in the above-captioned matter on April 6, 2012, to address the error, and set a hearing for July 17, 2012.

Since that time, the Court received correspondence from the Idaho Department of Water Resources, a copy of which is attached as Exhibit 1, informing the Court of another error in the *Partial Decree* pertaining to the source element. The source element in the SF5 included a remark providing:

The holder of this right will not call for water from Chipps Creek or Pollard Canyon Creek prior to August 1 of any year if diversions under Right Nos. 75-2 or 75-5 would be affected. This condition applies to all current and future splits

of all rights referenced here. *This condition does not limit diversions from Jesse Creek under this right. . . .*

(emphasis added). The same source element remark contained in the subsequent *Special Master's Report and Recommendation* and *Partial Decree* erroneously reads as follows:

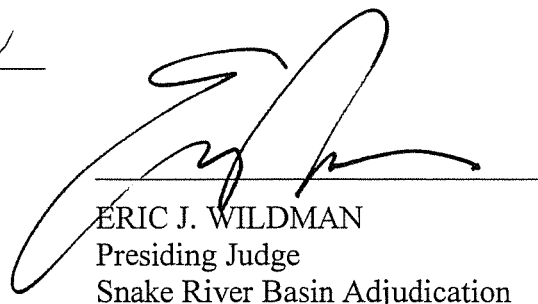
The holder of this right will not call for water from Chipps Creek or Pollard Canyon Creek prior to August 1 of any year if diversions under Right Nos. 75-2 or 75-5 would be affected. This condition applies to all current and future splits of all rights referenced here. *This condition does not limit diversions from Jesse Creek or Pollard Canyon Creek under this right. . . .*

(emphasis added). The Court finds this error to be the result of clerical error. Therefore, it is the intent of the Court to issue an ***Amended Partial Decree*** correcting the above-mentioned clerical errors pursuant to Idaho Rule of Civil Procedure 60(a) in accordance with the attached Exhibit 2.

THEREFORE, THE FOLLOWING ARE HEREBY ORDERED:

1. The hearing previously set in this matter for July 17, 2012, **is hereby vacated.**
2. A hearing will be held on this *Amended Notice of Court's Intent* on **August 21, 2012, at 1:30 p.m.** at the Snake River Basin Adjudication Courthouse, 253 3rd Avenue North, Twin Falls, Idaho. Any party wishing to object or comment on the Court's proposed action shall do so at that time. Attendance at this hearing by the claimant is not required, as the Court will take the proposed action in the absence of any objection to the contrary. Telephone participation will be available by calling 1-215-446-0193 and when prompted entering code 406128 followed by the # sign. **However, no cell phones or speaker phones will be permitted as they interfere with our sound system making the proceeding difficult to accurately record.**

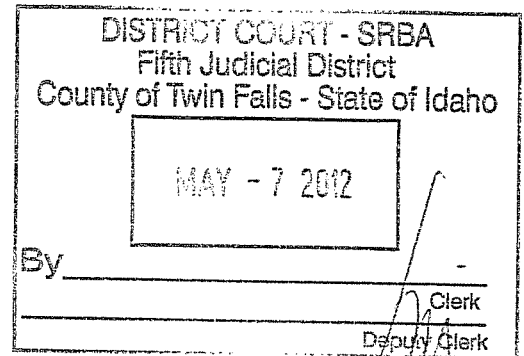
Dated: May 18, 2012


ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

May 3, 2012



Hon. Eric Wildman
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

RE: Notice of Clerical Error in Subcase No. 75-17B (City of Salmon)

Dear Judge Wildman:

It has been brought to IDWR's attention that a clerical error exists in the proposed amended partial decree to be issued for Subcase No. 75-17B (City of Salmon). A hearing on the Court's intent to issue an amended partial decree is scheduled for July 17, 2012.

The source condition in the proposed amended partial decree for 75-5 says, "The holder of this right will not call for water from Chipps Creek or Pollard Canyon Creek prior to August 1 of any year if diversions under Right No. 75-2 or 75-5 would be affected This condition does not limit diversions from Jesse Creek or Pollard Canyon Creek under this right (underline added). A copy of the proposed amended partial decree with the relevant language identified is attached as Exhibit A.

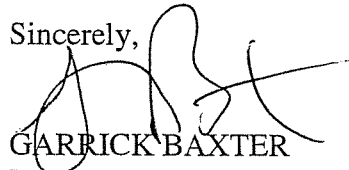
The source condition language as written in the Standard Form 5 (SF5) filed on December 27, 2011 in this subcase reads, "The holder of this right will not call for water from Chipps Creek or Pollard Canyon Creek prior to August 1 of any year if diversions under Right No. 75-2 or 75-5 would be affected This condition does not limit diversions from Jesse Creek under this right (underline added). A copy of the SF5 with the relevant language identified is attached as Exhibit B.

As you can see, the reference to "Pollard Canyon Creek" does not appear in the SF5 filed for this right and but was included in the proposed amended partial decree. The reference to Pollard Canyon Creek in the proposed amended partial decree appears to have been a clerical error. The Department respectfully requests the issuance of a new proposed amended partial decree to fix the clerical error.



Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Garrick Baxter', written over the printed name.

GARRICK BAXTER
Deputy Attorney General
Idaho Department of Water Resources

cc: Josephine P. Beeman
Randall C. Budge
Jerry Rigby
Monica Van Bussum, IDWR

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

AMENDED

In Re SRBA)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Case No. 39576)

Water Right 75-00017B

NAME AND ADDRESS:

CITY OF SALMON
200 MAIN ST
SALMON, ID 83467

SOURCE:

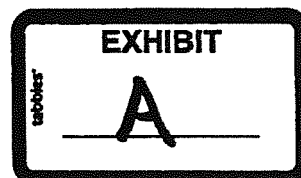
JESSE CREEK TRIBUTARY: SALMON RIVER

For purposes of administration of sources for this right, the water shall first be diverted exclusively from the natural flow of Jesse Creek. When Jesse Creek is no longer sufficient for use under the rights in priority and calling for water, the waters of Pollard Canyon Creek may be diverted as necessary to provide the balance of water required pursuant to this right in its priority. Only when the water supply from Jesse and Pollard Canyon Creeks combined is not sufficient for use under the rights in priority and calling for water may water from Chipps Creek be diverted to provide the balance of water required pursuant to this right in its priority. Water is diverted from Jesse Creek and its tributaries. The holder of this right will not call for water from Chipps Creek or Pollard Canyon Creek prior to August 1 of any year if diversions under Right Nos. 75-2 or 75-5 would be affected. This condition applies to all current and future splits of all rights referenced here. ~~This condition does not limit diversions from Jesse Creek or Pollard Canyon Creek under this right.~~ This condition is not applicable anytime the total flow available for diversion in Water District 75A is 3.8 cfs or less, recognizing that no more than 2.54 cfs can be diverted from Chipps Creek or Pollard Canyon Creek under water rights 75-17B and 75-10075. The holder of this right will not call for water from Chipps Creek prior to August 30 of any year if diversions under Right No. 75-22 would be affected. This condition applies to all current and future splits of all rights referenced here. This condition does not limit diversions from Jesse Creek or Pollard Canyon Creek under this right. This condition is not applicable anytime the total flow available for diversion in Water District 75A is 3.8 cfs or less, recognizing that no more than 2.54 cfs can be diverted from Chipps Creek or Pollard Canyon Creek under water rights 75-17B and 75-10075. The holder of this water right will not make a call on Right Nos. 75-19G or 75-21 diverted from Chipps Creek for domestic use of 12 af per year as to Right No. 75-19G (including all progeny, when owned, controlled and delivered by Arrowhead Water District) and 42.17 af per year as to Right No. 75-21 (including all progeny, when owned controlled and delivered by Arrowhead Water District). This condition applies to all current and future splits of all rights referenced here. This condition does not limit diversions from Jesse Creek or Pollard Canyon Creek under this right.

QUANTITY:

0.24 CFS

Right Nos. 75-4, 75-7, 75-17A, 75-17B, 75-19B, 75-19C, 75-26A, 75-114, 75-2167, 75-7563 and 75-10075 are limited to a total combined diversion rate of 11.793 cfs.
Right Nos. 75-4, 75-7, 75-17A, 75-17B, 75-19B, 75-19C, 75-26A, 75-114, and 75-10075 are limited to a total combined annual diversion volume of 1740.5 AF, with no more than 970.5 AF diverted from Chipps and Pollard Canyon Creeks.
The total flow available for diversion in Water District 75A is



SRBA Partial Decree Pursuant to I.R.C.P. 54(b) (continued)

QUANTITY (continued)

the sum of all water being diverted above the Farmer's Ditch, water being diverted into the Farmer's Ditch, and the quantity of water spilling and seeping past the Farmer's Ditch diversion. The Farmer's Ditch diversion is located in T21N, R21E, S1, SWNW.

PRIORITY DATE: 06/01/1867

POINT OF DIVERSION: T21N R21E S02 LOT 1 (NENE) Within Lemhi County
LOT 1 (NENE)(Rediversion)
LOT 1 (NENE)(Injection)
S10 NENE (Injection)
NENE
NENE (Rediversion)
S11 NWNW

The point of diversion in T21N, R21E, S11, NWNW is from Chipps Creek. The point of injection in T21N, R21E, S10, NENE is into Pollard Canyon Creek. The point of diversion and the point of rediversion in T21N, R21E, S10, NENE are from Pollard Canyon Creek. The point of injection in T21N, R21E, S02, Lot 1 (NENE) is into Jesse Creek. The point of diversion and the point of rediversion in T21N, R21E, S02, Lot 1 (NENE) are from Jesse Creek.

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Municipal	04-01 TO 10-31	0.24 CFS

PLACE OF USE:

Place of use is within the service area of the City of Salmon municipal water supply system as provided for under Idaho Law.

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

This water right is subject to a private agreement among the City of Salmon, Myrtle, Dale and Laura Edwards and Arrowhead Water District, and recorded in the Lemhi County Recorder's office on December 1, 2011 as instrument no. 288296. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.

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. Wildman
Presiding Judge of the
Snake River Basin Adjudication

10/07/2011

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

RIGHT NUMBER: 75-17B

NAME AND ADDRESS: CITY OF SALMON
200 MAIN ST
SALMON ID 83467

SOURCE: JESSE CREEK

TRIBUTARY: SALMON RIVER

Water is diverted from Jesse Creek and its tributaries.

For purposes of administration of sources for this right, the water shall first be diverted exclusively from the natural flow of Jesse Creek. When Jesse Creek is no longer sufficient for use under the rights in priority and calling for water, the waters of Pollard Canyon Creek may be diverted as necessary to provide the balance of water required pursuant to this right in its priority. Only when the water supply from Jesse and Pollard Canyon Creeks combined is not sufficient for use under the rights in priority and calling for water may water from Chipps Creek be diverted to provide the balance of water required pursuant to this right in its priority.

The holder of this right will not call for water from Chipps Creek or Pollard Canyon Creek prior to August 1 of any year if diversions under Right Nos. 75-2 or 75-5 would be affected. This condition applies to all current and future splits of all rights referenced here. This condition does not limit diversions from Jesse Creek under this right. This condition is not applicable anytime the total flow available for diversion in Water District 75A is 3.8 cfs or less, recognizing that no more than 2.54 cfs can be diverted from Chipps Creek or Pollard Canyon Creek under water rights 75-17B and 75-10075.

The holder of this right will not call for water from Chipps Creek prior to August 30 of any year if diversions under Right No. 75-22 would be affected. This condition applies to all current and future splits of all rights referenced here. This condition does not limit diversions from Jesse Creek or Pollard Canyon Creek under this right. This condition is not applicable anytime the total flow available for diversion in Water District 75A is 3.8 cfs or less, recognizing that no more than 2.54 cfs can be diverted from Chipps Creek or Pollard Canyon Creek under water rights 75-17B and 75-10075.

The holder of this water right will not make a call on Right Nos. 75-19G or 75-21 diverted from Chipps Creek for domestic use of 12 af per year as to Right No. 75-19G (including all progeny, when owned, controlled and delivered by Arrowhead Water District) and 42.17 af per year as to Right No. 75-21 (including all progeny, when owned, controlled and delivered by Arrowhead Water District). This condition applies to all current and future splits of all rights referenced here. This condition does not limit diversions from Jesse Creek or Pollard Canyon Creek under this right.

QUANTITY: 0.240 CFS

Right Nos. 75-4, 75-7, 75-17A, 75-17B, 75-19B, 75-19C, 75-26A, 75-114, 75-2167, 75-7563 and 75-10075 are limited to a total combined diversion rate of 11.793 af 6 cfs.

Right Nos. 75-4, 75-7, 75-17A, 75-17B, 75-19B, 75-19C, 75-26A, 75-114, and 75-10075 are limited to a total combined annual diversion volume of 1740.5 AF, with no more than 970.5 AF diverted from Chipps and Pollard Canyon Creeks.

The total flow available for diversion in Water District 75A is the sum of all water being diverted above the Farmer's Ditch, water being diverted into the Farmer's Ditch, and the quantity of water spilling and seeping past the Farmer's Ditch diversion. The Farmer's Ditch diversion is located in T21N, R21E, S1, SWNW.

PRIORITY DATE: 06/01/1867



10/07/2011

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

POINT OF
DIVERSION:

T21N R21E S2 NENE Lot 1 Within LEMHI County
T21N R21E S2 NENE Lot 1 Rediversion Within LEMHI County
T21N R21E S2 NENE Lot 1 Injection Within LEMHI County
T21N R21E S2-SWSW S10 NENE Injection Within LEMHI County
T21N R21E S2-SWSW S10 NENE Within LEMHI County
T21N R21E S2-SWSW S10 NENE Rediversion Within LEMHI County
T21N R21E S11 NWNW Within LEMHI County

The point of diversion in T21N, R21E, S11, NWNW is from Chipps Creek. The point of injection in T21N, R21E, ~~S02, SWSW~~ S10 NENE is into Pollard Canyon Creek. The point of diversion and the point of rediversion in T21N, R21E, ~~S02, SWSW~~ S10 NENE are from Pollard Canyon Creek. The point of injection in T21N, R21E, S02, Lot 1 (NENE) is into Jesse Creek. The point of diversion and the point of rediversion in T21N, R21E, S02, Lot 1 (NENE) are from Jesse Creek.

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
MUNICIPAL	04/01 10/31	0.240 CFS

PLACE OF USE:

Place of use is within the service area of the City of Salmon municipal water supply system as provided for under Idaho 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.

This water right is subject to a private agreement among the City of Salmon, Myrtle, Dale and Laura Edwards and Arrowhead Water District, and recorded in the Lemhi County Recorder's office on December 1, 2011 as instrument no. 288296.

The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

Right includes accomplished change in point of diversion pursuant to Section 42-1425, Idaho Code.

This right is a split from former right 75-17.

Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 75A.

JPB
AB
MLB
RUB

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

AMENDED

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 75-00017B

NAME AND ADDRESS: CITY OF SALMON
200 MAIN ST
SALMON, ID 83467

SOURCE: JESSE CREEK TRIBUTARY: SALMON RIVER

For purposes of administration of sources for this right, the water shall first be diverted exclusively from the natural flow of Jesse Creek. When Jesse Creek is no longer sufficient for use under the rights in priority and calling for water, the waters of Pollard Canyon Creek may be diverted as necessary to provide the balance of water required pursuant to this right in its priority. Only when the water supply from Jesse and Pollard Canyon Creeks combined is not sufficient for use under the rights in priority and calling for water may water from Chipps Creek be diverted to provide the balance of water required pursuant to this right in its priority.

Water is diverted from Jesse Creek and its tributaries.

The holder of this right will not call for water from Chipps Creek or Pollard Canyon Creek prior to August 1 of any year if diversions under Right Nos. 75-2 or 75-5 would be affected. This condition applies to all current and future splits of all rights referenced here. This condition does not limit diversions from Jesse Creek under this right. This condition is not applicable anytime the total flow available for diversion in Water District 75A is 3.8 cfs or less, recognizing that no more than 2.54 cfs can be diverted from Chipps Creek or Pollard Canyon Creek under water rights 75-17B and 75-10075. The holder of this right will not call for water from Chipps Creek prior to August 30 of any year if diversions under Right No. 75-22 would be affected. This condition applies to all current and future splits of all rights referenced here. This condition does not limit diversions from Jesse Creek or Pollard Canyon Creek under this right. This condition is not applicable anytime the total flow available for diversion in Water District 75A is 3.8 cfs or less, recognizing that no more than 2.54 cfs can be diverted from Chipps Creek or Pollard Canyon Creek under water rights 75-17B and 75-10075.

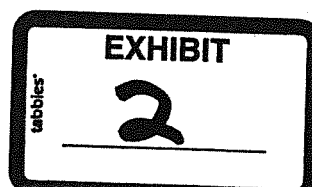
The holder of this water right will not make a call on Right Nos. 75-19G or 75-21 diverted from Chipps Creek for domestic use of 12 af per year as to Right No. 75-19G (including all progeny, when owned, controlled and delivered by Arrowhead Water District) and 42.17 af per year as to Right No. 75-21 (including all progeny, when owned controlled and delivered by Arrowhead Water District). This condition applies to all current and future splits of all rights referenced here. This condition does not limit diversions from Jesse Creek or Pollard Canyon Creek under this right.

QUANTITY: 0.24 CFS

Right Nos. 75-4, 75-7, 75-17A, 75-17B, 75-19B, 75-19C, 75-26A, 75-114, 75-2167, 75-7563 and 75-10075 are limited to a total combined diversion rate of 11.793 cfs.

Right Nos. 75-4, 75-7, 75-17A, 75-17B, 75-19B, 75-19C, 75-26A, 75-114, and 75-10075 are limited to a total combined annual diversion volume of 1740.5 AF, with no more than 970.5 AF diverted from Chipps and Pollard Canyon Creeks.

The total flow available for diversion in Water District 75A is



SRBA Partial Decree Pursuant to I.R.C.P. 54(b) (continued)

QUANTITY (continued)

the sum of all water being diverted above the Farmer's Ditch, water being diverted into the Farmer's Ditch, and the quantity of water spilling and seeping past the Farmer's Ditch diversion. The Farmer's Ditch diversion is located in T21N, R21E, S1, SWNW.

PRIORITY DATE: 06/01/1867

POINT OF DIVERSION: T21N R21E S02 LOT 1 (NENE) Within Lemhi County
LOT 1 (NENE) (Rediversion)
LOT 1 (NENE) (Injection)
S10 NENE (Injection)
NENE
NENE (Rediversion)
S11 NWNW

The point of diversion in T21N, R21E, S11, NWNW is from Chipps Creek. The point of injection in T21N, R21E, S10, NENE is into Pollard Canyon Creek. The point of diversion and the point of rediversion in T21N, R21E, S10, NENE are from Pollard Canyon Creek. The point of injection in T21N, R21E, S02, Lot 1 (NENE) is into Jesse Creek. The point of diversion and the point of rediversion in T21N, R21E, S02, Lot 1 (NENE) are from Jesse Creek.

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Municipal	04-01 TO 10-31	0.24 CFS

PLACE OF USE: Place of use is within the service area of the City of Salmon municipal water supply system as provided for under Idaho Law.

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

This water right is subject to a private agreement among the City of Salmon, Myrtle, Dale and Laura Edwards and Arrowhead Water District, and recorded in the Lemhi County Recorder's office on December 1, 2011 as instrument no. 288296. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.

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. Wildman
Presiding Judge of the
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the AMENDED NOTICE OF COURT'S INTENT TO ISSUE AMENDED PARTIAL DECREE / ORDER VACATING AND RESETTING HEARING was mailed on May 18, 2012, with sufficient first-class postage to the following:

CITY OF SALMON

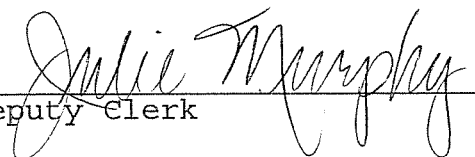
Represented by:
JOSEPHINE P BEEMAN
409 W JEFFERSON ST
BOISE, ID 83702
Phone: 208-331-0950

EDGAR & MYRTLE EDWARDS

Represented by:
RANDALL C BUDGE
201 E CENTER, STE A2
PO BOX 1391
POCATELLO, ID 83204-1391
Phone: 208-232-6101

DIRECTOR OF IDWR

PO BOX 83720
BOISE, ID 83720-0098

A handwritten signature in cursive script, appearing to read "Julie Murphy", is written over a horizontal line. The signature is fluid and stylized, with the first name "Julie" and last name "Murphy" clearly distinguishable.