

DEPARTMENT OF
WATER RESOURCES

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COPY

Attorneys for James W. & June Mecham

**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

Subcase Nos. 37-1244, 37-4389 & 37-7861

AFFIDAVIT OF JAMES W. MECHAM

STATE OF IDAHO

)

) SS.

County of Twin Falls

)

I, JAMES W. MECHAM, being first duly sworn upon oath, depose and hereby state as follows:

1. I am over the age of 18 and make the following affidavit upon my personal knowledge of the facts and circumstances set forth herein below.
2. I am the owner of the above water rights. I purchased the property in 1959 and have owned the property since that time.
3. I filed my *Motion to Set Aside Partial Decrees* in the above subcases to correct an error in the Partial Decrees. In particular, the condition on each of the water right that limits them all to a 0.714 c.f.s. diversion rate.

4. Since my Lower Waddington Spring and Stoddard Creek Spring water rights have never been used with such a limitation, this condition is in error.

5. In 1979, I was involved in a law suit with Normal Standal. The result of that lawsuit was a decree for my Stoddard Creek Springs water right (37-1244). I have attached a true and correct copy of that Court decree as Exhibit A to my affidavit. There is nothing in the Decree that ties my use of water from Stoddard Creek Springs to my use of water from Lower Waddington Spring.

6. In 2006, I received notice that my senior Stoddard Creek Spring water right (37-1244) and Lower Waddington Spring water right (37-4389) were partially decreed. Each partial decree included the following combined use limitation: "Right Nos. 37-1244 and 37-4389 are limited to a total combined diversion rate of 0.714 c.f.s."

7. Even though this remark is not consistent with the historical development and use of my water rights, I did not object to the condition or immediately seek to set aside the partial decree. At the time, I was not aware that the decrees with this remark would impact my other water right claim for power purposes (37-7861).

8. In 2010, water right 37-7861 was licensed and partially decreed. The partial decree included the same combined use limitation as the previous water rights.

9. I cannot irrigate my property and utilize my power plants with this combined use limitation. The diversion rate is, quite simply, insufficient. If I divert water for irrigation under this limitation, there is not sufficient water to run the power plants. I use this power for my house on the property. We have developed all of the water decreed to us in the 1979 decree.

10. I tried to correct this problem in 2010 and early 2011. I had several communications with the Department of Water Resources ("Department") trying to correct the

error. Copies of letters are attached as Exhibits B, C and D. I even went to Boise and had a meeting with Carter Fritschle. However, I was not able to resolve the error. I was informed that I would have to go to the adjudication court and seek to have my partial decrees set aside.

11. In early 2011, I thought that the adjudication court had completed its process and that I would no longer be able to correct this error. As such, I did not take any action to correct the error.

12. Then, in 2012, I read an article in the local paper that stated the adjudication was ongoing and nearing completion.

13. I went to the Department office in Twin Falls and visited with Doug Jones. It was my hope that I could just file a new claim for the additional water that I needed to make my water rights consistent with the historical development and use. Mr. Jones informed me that I would have to go to the adjudication court to correct the error.

14. I immediately filed the Motion and thereafter, contact an attorney to assist me in this matter.

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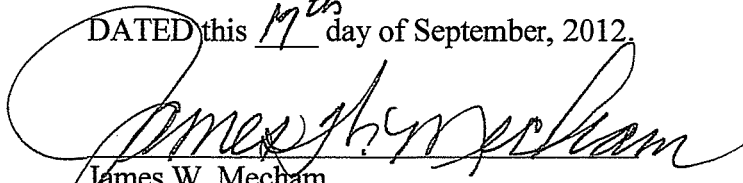
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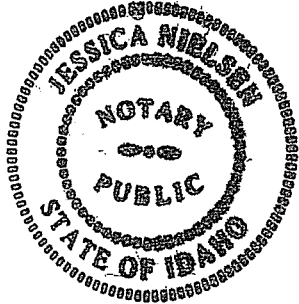
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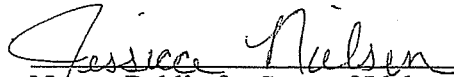
Further your affiant sayeth naught.

DATED this 17th day of September, 2012.


James W. Mecham

SUBSCRIBED AND SWORN to before me this 17 day of September, 2012.




Notary Public for State of Idaho
Residing at Twin Falls, Idaho.
Commission Expires: 4/3/18

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of September, 2012, I served true and correct copies of the foregoing **AFFIDAVIT OF JAMES W. MECHAM** by the method indicated below, and addressed to the following:

Director of IDWR
P.O. Box 83720
Boise, Idaho 83720-0098



Paul L. Arrington

Exhibit A

DISTRICT COURT
GOODING CO. IDAHO
FILED

1 NOV 13 1979

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

* * * * *

THOMAS M. HAMILTON and) Case No. 17298
CHARLOTTE HAMILTON, husband)
and wife, JAMES MECHAM and)
SHIRLEY JUNE MECHAM, husband)
and wife, ZANE HARRISON and)
RUTH HARRISON, husband and)
wife, and ROBERT P. REID and)
WAHNITA REID, husband and)
wife,)

Plaintiffs,)

vs.)

NORMAN STANDAL and ANITA J.)
STANDAL, husband and wife,)

Defendants.)

AMENDED FINDINGS OF FACT
AND CONCLUSIONS OF LAW

* * * * *

This case came on regularly for trial at the Gooding County Courthouse on April 9th through April 12th. The plaintiffs were present and were represented by Mr. John Rosholt and Mr. James Tucker. The defendants were present and represented by Mr. Robert Weaver.

FINDINGS OF FACT

1. The defendants Norman and Anita Standal own property riparian to Stoddard Creek. They use the waters of Stoddard Creek to supply power for their home and farm, for fish propagation, and for irrigation. The last two uses are essentially non-domestic. The Standals purchased their land in 1960.

2. The plaintiffs Hamilton own a 34 acre parcel of land on which are situated two homes. They purchased the property in 1974. The Hamiltons rent out the older white cinder block home on the premises. They have built a beautiful new home on the lower portion of the land overlooking the Snake River. The waters diverted to the Hamilton property were beneficially

1 used for irrigation and domestic purposes from the time the
2 pipeline was constructed in 1914. In 1966 Hamiltons'
3 predecessor developed and beneficially used the water diverted
4 to the property in a large pond for recreation, aesthetics, and
5 fish and wildlife propagation purposes as additional uses. The
6 physical consumptive use of the water for irrigation then
7 occurred after the water flowed out of the pond. After 1974
8 Hamilton constructed 4 additional ponds and used the same water
9 in the additional ponds as well as the original large pond for
10 recreation, aesthetics, and fish and wildlife propagation. A
11 multiple size pipe takes water out of the system prior to the
12 flow reaching the ponds above described. Plaintiffs Hamilton
13 take water from their multi-sized pipeline for drinking,
14 domestic water and irrigation for the white cinder blocked home
15 on their property and for irrigation and fire protection
16 purposes for their new home and immediate surroundings. Water
17 not so used feeds Hamilton's bottom pond.

18 3. The plaintiffs Harrison own a 7 acre parcel of
19 land on which they live, and which they irrigate for pasture.
20 The Harrisons graze horses and some cattle on their property
21 year round. They also water stock from open ditches in the non-
22 irrigation season. They have a small pond used for stock water,
23 aesthetic, and fish and wildlife propagation purposes. The
24 Harrisons also obtain their domestic water from Stoddard Creek
25 Springs.

26 4. The plaintiffs Reid are the predecessors in
27 interest of Wilkins, who recently purchased the property. This
28 parcel of approximately 11 acres is used exclusively for
29 pasture, 9.75 acres which are irrigated. There is no dwelling
30 on the property, and no domestic uses are made of water from
31 Stoddard Creek Springs on this property.

1 5. The plaintiffs Mecham own a 21 acre parcel on
2 which they live, and which they irrigate for pasture.
3 Approximately 11 acres are irrigated from Stoddard Creek
4 Springs. The Mechams also use water for stock water year-round.
5 The Mechams do not obtain their domestic water from Stoddard
6 Creek Springs.

7 6. The waters of Stoddard Creek Springs in dispute
8 herein arise out of the lava rocks and originally flowed in a
9 natural channel called Stoddard Creek to Snake River through the
10 property now owned by the defendant Standal. In approximately
11 1914, the Penfolds, predecessors of plaintiffs, (who then owned
12 the parcel which is now owned collectively by plaintiffs)
13 constructed a diversion box at the spring which is located in
14 the NW 1/4 NW 1/4 of Section 27, Township 6 South, Range 13 East,
15 Boise Meridian, Gooding County, Idaho. The diversion box
16 operates to force water into a pipeline (or inverted siphon)
17 which carries the water some 700 to 900 feet to a division box on
18 the property of plaintiff Harrison. The division box
19 facilitates the diversions of Harrison and Wilkins. The
20 remaining water then flows in pipeline and open ditch onto the
21 property of Hamilton. The multi-sized pipe of Hamilton
22 (referred to in Finding No. 2) comes off the pipe. The remainder
23 of the water goes to the large pond of Hamilton, from which
24 Mecham diverts his share, and the water then remaining is used
25 by Hamilton in the large pond and the other ponds Hamilton has
26 constructed (as referred to in Finding No. 2).

27 7. Since 1914 the property of the defendant Standal
28 has only received waters of Stoddard Creek Springs as were not
29 diverted by plaintiffs and their predecessors. Water diverted
30 into the pipeline since 1914 does not return to the natural
31 channel of Stoddard Creek and is unavailable for appropriation
32 by defendant Standal. Water has been diverted into the pipeline

1 by holding the "head" of the water approximately 15 1/2" above
2 the top of the pipeline inside the diversion box. Since the
3 Springs fluctuate seasonally, and the water has been diverted
4 into the pipeline on a year-round basis, the head over the
5 pipeline opening in the diversion box has been maintained by
6 obstructing the overflow section of the diversion box. The
7 water from the spring that overflows when the head above the
8 pipeline is 15 1/2" above the top of the pipe then overflows into
9 Stoddard Creek and follows the natural channel to defendant
10 Standal's land.

11 8. The plaintiffs have historically attempted to
12 allocate the water which passes through the pipeline down to the
13 division box as follows: 7/35th to Wilkins, 7/35th to Mechams,
14 18/35th to Hamiltons, and 3/35th to Harrisons. But the facts
15 developed at trial show the proper allocation among the
16 plaintiffs to be as hereinafter set out.

17 9. The diversion box pushes water through the pipe-
18 line in direct proportion to the level of water above the pipe.
19 On January 29, 1977, there were approximately 15 and 1/2 inches
20 of water above the pipe, and 3.5 cubic feet per second
21 (hereafter c/f/s) traveling through it. 3.5 c/f/s is near the
22 maximum ever been delivered through the pipe historically. On
23 February 2, 1979, there were 9 1/2 inches above the pipe and 3.4
24 c/f/s measured through it. During the Court's view taken on the
25 morning of the trial, there was approximately 9 inches of water
26 above the pipe, and the Court concludes that approximately 3.4/8
27 c/f/s was traveling through the pipe at that time.

28 10. The diversion of water for beneficial use for
29 irrigation on the plaintiffs' lands is reasonable. Plaintiffs
30 Harrison divert and beneficially apply up to 21.8 miners inches
31 of water for irrigation purposes on their 7 acre parcel.
32 Plaintiffs Wilkins divert and beneficially apply up to 26.7

1 miners inches of water for irrigation purposes on their 11 acre
2 parcel, 9.75 acres of which are irrigated. Plaintiffs Mecham
3 divert and beneficially apply up to 35.7 inches of water for
4 irrigation purposes on 11 acres of their 21 acre parcel for
5 irrigation purposes. Plaintiffs Hamilton beneficially use up to
6 90.8 miners inches of water on a year round basis for all of the
7 uses described in Finding No. 2. All amounts of water listed in
8 this finding include transmission losses.

9 11. In the non-irrigation season, the pipeline from
10 the division box on Harrison property which serves plaintiff
11 Wilkins is shut off. Harrison diverts in a pipeline system for
12 domestic purposes at his house year-round. Any overflow from
13 his domestic pipe feeds a small pond on Harrison's property. In
14 the non-irrigation season, Harrison diverts water into open
15 ditches for stock watering purposes, and also to keep the water
16 level in the pond at a stable level. The pond is used for
17 stockwater and for aesthetic and fish and wildlife propagation
18 purposes. All water in the division box on the Harrison
19 property not diverted to the Wilkins or Harrison property is
20 conveyed to Mr. Hamilton's property. Mecham has diverted winter
21 stock water from the large pond on the Hamilton property through
22 open ditches to and through the Mecham property. All water not
23 used by Harrison and Mecham in the non-irrigation season has
24 been beneficially used by Hamilton and his predecessors in the
25 ponds.

26 12. The irrigation season extends from March 15th to
27 November 1st each year in the Hagerman Valley.

28 13. The present highest and best use of all the land
29 involved in the lawsuit is single family residential use. The
30 diversions and impounding 90.8 miners inches of water diverted
31 by the Hamiltons (including the diversion in the multi-sized
32 pipe discussed in Finding No. 13) have beautified their

1 property, and has substantially raised the market value for
2 residential purposes. Small water falls connect each of the
3 ponds. The overflow from the last pond is transported via a
4 concrete spillway underneath the Hamilton driveway and over a
5 steep decline or rock rim. These uses for recreation,
6 aesthetics, and fish and wildlife propagation are beneficial.

7 14. The amount of water flowing from Stoddard Creek
8 Springs varies from year to year. The flow declined sharply in
9 1977, the year of the drought. Furthermore, the flow varies
10 somewhat during each year with the lowest flow being sometime in
11 April or May.

12 15. The defendants Standal or members of their family
13 interferred with the first diversion box during 1977 to increase
14 the flow down Stoddard Creek and to decrease the flow which went
15 through the piepline to plaintiffs' property.

16 16. Disorder could follow in future years if the
17 diversions are controlled by other than a duly authorized water-
18 master of the State of Idaho.

19 17. Defendants Standal have made various applications
20 with the Department of Water Resources for water permits on
21 Stoddard Creek for up to 16 c/f/s of water. Defendant Standal
22 can put to beneficial use all waters flowing down Stoddard Creek
23 up to 16 c/f/s, but only as subordinated to the rights of
24 plaintiffs herein above-described.

25 CONCLUSIONS OF LAW

26 1. Plaintiffs Harrison are entitled to divert and
27 beneficially apply 21.8 miners inches of water with a priority
28 of 1914 from Stoddard Creek Springs for irrigation purposes
29 during the irrigation season of March 15th to November 1st of
30 each year. Plaintiffs Harrison are entitled to divert and
31 beneficially apply an amount in miners inches equivalent to
32 their domestic use year round in their pipeline system, plus

1 non-irrigation season stock water diverted through open ditches,
2 and waters diverted periodically during the non-irrigation used
3 to fill the pond on the property, for aesthetic, and fish and
4 wildlife propagation purposes. A total of 10 miners inches is
5 the non-irrigation season entitlement of Harrison.

6 2. Plaintiffs Reid are entitled to divert and
7 beneficially apply 26.7 miners inches of water with a priority
8 of 1914 from Stoddard Creek Springs for irrigation purposes
9 during the irrigation season of March 15th to November 1st of
10 each year.

11 3. Plaintiffs Mecham are entitled to divert and
12 beneficially apply 35.7 miners inches of water with a 1914
13 priority from Stoddard Creek Springs for irrigation purposes
14 during the irrigation season from March 15th to November 1st of
15 each year, plus 15 miners inches used in open ditches for stock
16 water in the non-irrigation season.

17 4. Plaintiffs Hamilton are entitled to divert and
18 beneficially apply year around the amount of the waters of
19 Stoddard Creek Springs in miners inches which typically flows
20 down the multiple size pipe year round for domestic, irrigation,
21 and fire protection purposes. Plaintiffs Hamilton are also
22 entitled to divert and beneficially apply year around an amount
23 of water from Stoddard Creek Springs up to 90.8 miners inches
24 (less the amount in the multi-sized pipe) that amount being
25 ample to keep the large pond and smaller ponds on his premises
26 filled for recreation, aesthetics, and fish and wildlife
27 propagation purposes, and to keep the water falls flowing in
28 sufficient volume to achieve the desired aesthetic effect. The
29 Hamiltons are entitled to said 90.8 inches of water year round
30 with a 1914 priority.

31 5. Defendants Standal are entitled to all waters
32 flowing from Stoddard Creek Springs not previously allocated
above.

1 6. The plaintiffs' current diversion works are
2 adequate, and the plaintiffs are entitled to a water level 15
3 1/2 inches above the pipeline in the diversion box to provide
4 head to supply their water rights. Plaintiffs have a priority
5 to a flow of 3.5 cfs through plaintiffs' system, this being the
6 amount beneficially used during the irrigation season.
7 Plaintiffs have a priority to non-irrigation season rights
8 totaling 2.32 c/f/s for beneficial uses. The defendants Standal
9 may, at their own expense, install more efficient works to
10 divert Stoddard Creek Springs water above 2.32 c/f/s previously
11 diverted by plaintiffs during the non-irrigation season of
12 November 1st to March 15th if such works are approved by all of
13 the parties, the consent for which works cannot be unreasonably
14 withheld.

15 7. Evidence in this case established that property in
16 Hagerman Valley with live streams is much more valuable than
17 those without for aesthetic and economic purposes. It follows
18 that such lands are therefore benefited by the beneficial use of
19 the water whether it be for strictly irrigation, aesthetics, or
20 other purposes. The evidence also established that Hagerman
21 Valley, like Sun Valley, is a unique area of Idaho where
22 subdivisions of land are prevalent, and this constitutes the
23 highest and best use of this marginal land.

24 COURT'S OBSERVATIONS

25 Appropriate judgment will be prepared by counsel for
26 plaintiff and only such costs as are mandated by law or rule will
27 be allowed. All discretionary costs are denied.

28 DATED this 15 day of November, 1979.

29
30 =
31 Douglas D. Kramer
32 District Judge

Exhibit B



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

December 14, 2010

JAMES MECHAM
PO BOX 3119
TWIN FALLS, ID 83303-3119

RE: Water Right No. 37-7861

Dear Mr. Mecham:

Your letter dated October 25, 2010 was forwarded to me from Cindy Yenter's office in Southern Region. I understand that you are dissatisfied with water right license 37-7861, which was issued to you in December 2009. I have taken another look at my review memorandum and at the support documents and I have discussed your concerns with state office staff. This letter is my response to your request to reconsider the limits on license 37-7861.

License 37-7861 is limited to the same 0.714 cfs from two different perspectives.

1) By decree

Your Stoddard Spring Creek water is limited to 0.714 cfs, by the Hamilton decree and this rate has been confirmed by the SRBA through decree 37-1244. If we agree that a rate limit is appropriate to SRBA decree 37-1244 and, that Stoddard Spring Creek water is used in right 37-7861, then that same limit must also be applied to all subsequent uses of water from the same source. I was required by the SRBA decree to limit uses of water Stoddard Creek Spring to the decreed rate 0.714 cfs.

2) By the appropriation and permitting process

Your permit limited the rate to 0.714 cfs and your examiner found that you had put that much water to beneficial use. Even if your SRBA decrees had not yet been issued to you, I would still have been required to limit 37-7862 to 0.714 cfs by the permit and by the beneficial use found.

A re-examination of the water right file has confirmed that a license issued for 37-7861 must be confined to boundaries which were set either by the SRBA court or by the permitting process. I could not issue license 37-7861 with the rate change you have requested.

The SRBA court recognized that the uses authorized by your Lower Waddington Creek water right 37-4389, overlap some uses authorized by your Stoddard Spring Creek water right 37-1244. The court tied those two rights together by the condition that both

rights would be limited to 0.714 cfs. No objections to that limit were filed at the time that those rights were decreed in 2006.

License 37-7861 was issued in December 2009. The period to object to that license has passed.

To reopen license 37-7861 would first require that the SRBA court set aside decreed right 37-1244, which is its foundation, and decreed right 37-4389 which is tied to it. Although it is not impossible to have a decree set aside, it is a challenge. If you wish to pursue that option, you will need to write a letter to the court explaining why the decrees are incorrect and petition the court to set them aside.

Respectfully,

A handwritten signature in cursive script, appearing to read "Michele Edl".

Michele Edl
Associate Engineer

cc: IDWR Southern Region

Exhibit C

MICHELLE EDL, ASSOCIATE ENGINEER
IDAHO DEPT. OF WATER RESOURCES
P.O. BOX 83720
BOISE, IDAHO 83720-0098

DECEMBER 20, 2010

DEAR MS EDL:

RECEIVED YOUR LETTER OF THE FOURTEENTH. AM CONFUSED AT THE LAST SENTENCE OF PARAGRAPH ONE. NOWHERE HAVE I ASKED FOR MORE WATER THAN THE STODDARD SPRING DECREE OF 1979.

PARAGRAPH TWO: NO PROBLEM

PARAGRAPH THREE: (LICENSE # 37-7862) HAS CONNECTION ONLY THAT THAT LICENSE (ALREADY GRANTED) REGARDS 'WASTE' WATER FROM PERMIT 37-7861 AS WELL AS OUR NEIGHBORS'. IT SHOULD HAVE NO CONCERN FOR, NOR BEARING ON, 37-7861.

PARAGRAPH FOUR: RATE CHANGE? CONFUSED AGAIN.

PARAGRAPH SIX: LICENSE WAS NEVER RECEIVED.

PARAGRAPH SEVEN: SETTING ASIDE ANYTHING IS COMPLETELY UNNECESSARY. HEAVEN FORBID ANY SUCH COMPLICATIONS!

PARAGRAPH FIVE: 37-4389 AND 37-1244 CONCERN STOCK WATER AND IRRIGATION. THAT THEY ARE CONSIDERED TOGETHER IS NOT A PROBLEM. BUT TYING 37-7861 TO THEM IS THE KILLER! WHY SHOULD THOSE WATER RIGHTS AFFECT 37-7861??? 37-7756 AND 37-7861 ARE DIFFERENT RIGHTS, FOR ADDITIONAL AND DIFFERENT USES, AND USE DIFFERENT WATERS. THEIR USES CANNOT BE COMBINED IN ANY WAY. WATER USED FOR IRRIGATION CANNOT BE USED FOR DOMESTIC AND POWER PRODUCTION! 37-7756 AND 37-7861 ARE FOR SEPARATE USES THAT REQUIRE "OUR" REMAINING STODDARD SPRING WATER FROM THE 1979 DECREE.

DOES THAT MAKE ANY SENSE??? 37-7861 IS COMPLETELY USELESS AS IT NOW STANDS. IT SPEAKS OF WATER ALREADY USED (AND ADJUDICATED) FOR IRRIGATION!

WE ARE NOT ASKING FOR THE WORLD—JUST SOME WHITE-OUT FOR THAT PROBLEMATIC LINE IN 7861. THAT SECOND LINE UNDER "QUANTITY".(AND CHANGE .714 TO .523 CFS, IF YOU WISH). CAN YOU ASK THE COURT TO DO THAT FOR US?

SINCERELY AND FOREVER GRATEFUL,

JIM MECHAM

Exhibit D



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

February 15, 2011

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

JAMES W MECHAM
PO BOX 3119
TWIN FALLS IDAHO 83301

RE: Letter and request dated December 20, 2010

Dear Mr. Mecham:

Both Cindy Yenter (IDWR Southern Region) and I have explained that if you are unhappy with your water right decrees 37-1244, 37-4389 and 37-7861, your only option is to petition the SRBA court to set them aside.

In the last sentence of your letter dated December 20, 2010, you asked me to act on your behalf and take your change request to the SRBA. Please consider this letter as the formal response to that request. It is your responsibility to pursue your personal, legal matters with the SRBA court. I can not. You are legally obligated to do so and I am legally prohibited from doing so. Again, it is your responsibility.

Regarding license 37-7861; that administrative action is a closed matter. I can take no further action. You may approach the court to correct the license. But the court has no control over administrative actions made by IDWR.

The phone number for the SRBA court is 736-3011.

Sincerely,

Michele Edl
Water Rights Section
Idaho Department of Water Resources
322 East Front Street
Boise, ID 83720-0098
Phone: 208-287-4946