

5-12

ALAN G. LANCE
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

A. LYNNE KROGH
NICHOLAS B. SPENCER
Deputy Attorneys General
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098
Telephone: (208) 327-7920
FAX: (208) 327-7866

ATTORNEYS FOR IDAHO
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	)	Subcase No. 36-04009
	)	
Case No. 39576	)	STIPULATION TO PARTIALLY
	)	RESOLVE OBJECTION;
	)	STIPULATION AND ORDER
	)	GRANTING LEAVE TO FILE AMENDED
	)	OBJECTION
	)	

Descriptive Summary

This is a stipulation of the parties to the subcase confirming that Rustic Ag, Inc., is the owner of this water right and correcting the description of its place of use; it is also a stipulation of the parties to the subcase and order of the Special Master permitting Rustic Ag, Inc., to file an amended objection objecting to the period of use recommended for this water right.

STIPULATION TO PARTIALLY RESOLVE OBJECTION;
STIPULATION AND ORDER GRANTING LEAVE TO FILE
AMENDED OBJECTION, Page 1

Stipulation to Partially Resolve Objection

The parties to this subcase, Triple Ace, Inc., Rustic Ag, Inc., and the Idaho Department of Water Resources (IDWR), by and through their undersigned counsel of record, hereby stipulate and agree as follows:

1. This water right was originally claimed in the Snake River Basin Adjudication (SRBA) by Patterson Farms of Idaho, Inc., predecessor in interest to Triple Ace, Inc., Desert Ridge Farms, Inc., and Rustic Ag, Inc. (successor corporations). Following the conveyance of various parcels of property, including appurtenant water rights, by Patterson Farms of Idaho, Inc., to the successor corporations individually, Triple Ace, Inc., filed with IDWR a change of ownership form that mistakenly asserted that this water right had been conveyed to Triple Ace, Inc. Thereafter, the water right was recommended in the name of Triple Ace, Inc., in the director's report for Reporting Area 3 (Basin 36).

2. Timely objection to the recommended water right was filed on behalf of Rustic Ag, Inc. The objection asserted, inter alia, that Rustic Ag, Inc., was the true owner of the water right. Triple Ace, Inc., did not file a response to this objection. In its response to the objection, IDWR concurred in the assertion that Rustic Ag, Inc., is the true owner of the water right.

3. IDWR has corrected its records to reflect that Rustic Ag, Inc., is the owner of this water right. However, to the knowledge of the parties to this subcase, the SRBA Court has not corrected

its records in this regard. The purpose of this stipulation is, in part, to provide the SRBA Court the legal foundation upon which to correct its records to show that Rustic Ag, Inc., is the owner of this water right.

4. Rustic Ag, Inc., also objected to the number of irrigated acres recommended within each forty (40) acre subdivision within the place of use recommended for this water right. In its response to this element of the objection IDWR agreed that the description of irrigated acres contained in the recommendation of this water right in the director's report was incorrect; and that the irrigated acres were as described in the objection.

5. When IDWR filed with the SRBA Court its response to this objection it attached thereto a corrected recommendation listing Rustic Ag, Inc., as the owner of the water right and correcting the description of the irrigated acreage in the place of use. A true and correct copy of this corrected recommendation is attached hereto and incorporated herein by reference.

6. Legal counsel for Rustic Ag, Inc., also is legal counsel for Triple Ace, Inc., and has legal authority to bind both corporations to the terms of this stipulation.

Stipulation for Leave to File Amended Objection

IDWR and Rustic Ag, Inc., by and through their undersigned counsel of record further stipulate and agree as follows:

1. Numerous water right claimants in Reporting Area 3 (Basin 36) have filed objections to the period of use recommended for their water rights in the director's report for Reporting Area 3 (Basin 36). At the time it filed the present objection Rustic Ag, Inc., did not realize that the recommended periods of use for irrigation water rights located in Basin 36 would be the subject of numerous objections asserting common--and significant--legal issues. A number of these objections raising common legal and factual issues have been informally consolidated for purpose of avoiding duplication and unnecessary legal expense to claimants, and for purpose of judicial economy.

2. Rustic Ag, Inc., wishes to participate in the resolution of the common issues raised by these objections. IDWR does not oppose Rustic Ag, Inc., participating by means of filing an amended objection to this water right objecting to the period of use recommended for it.

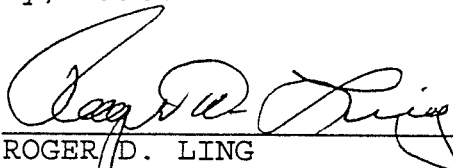
3. Accordingly, the parties to this subcase, by and through their undersigned legal counsel, hereby stipulate that Rustic Ag, Inc., may file an amended objection which objects to the period of use recommended for this water right in the director's report for Reporting Area 3 (Basin 36). Rustic Ag, Inc., will file its

amended objection within thirty (30) days following the date of approval of this stipulation by the SRBA Court. IDWR will file its response to the amended objection within sixty (60) days following the date of filing of the amended objection.

DATED this 9TH day of May, 1995.


NICHOLAS B. SPENCER
Deputy Attorney General
Idaho Department of Water Resources

DATED this 11th day of May, 1995.


ROGER D. LING
Attorney for Triple Ace, Inc., and
Rustic Ag, Inc.

Order Approving Stipulation
and Granting Leave to File Amended Objection

The Court, having reviewed the above-stated Stipulation for Leave to File Amended Objection, being familiar with the present nature and status of the other period of use objections raised in Reporting Area 3 (Basin 36), and being fully advised in the premises, hereby approves the Stipulation for Leave to File Amended Objection and grants leave to Rustic Ag, Inc. to file an amended objection as described in the stipulation.

IT IS HEREBY ORDERED that Rustic Ag, Inc. will file an amended objection, limited solely to the period of use recommended for this water right in the director's report for Reporting Area 3 (Basin 36), within thirty (30) days of the date of entry of this order; and

IT IS FURTHER ORDERED that IDWR will file a response to the amended objection within sixty (60) days following the filing of the amended objection.

DATED this _____ day of May, 1995.

TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of May, 1995, I served a true and correct copy of the foregoing ORDER APPROVING STIPULATION AND GRANTING LEAVE TO FILE AMENDED OBJECTION on the each of the following persons by first class mail, postage prepaid, to the address or addresses listed below.

Nicholas B. Spencer
Deputy Attorney General
Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

U.S. Department of Justice
Environment and Natural
Resources Division
550 West Fort Steet, Box 33
Boise, Idaho 83734

Roger D. Ling, Esq.
LING, NIELSEN & ROBINSON
P.O. Box 396
Rupert, Idaho 83350

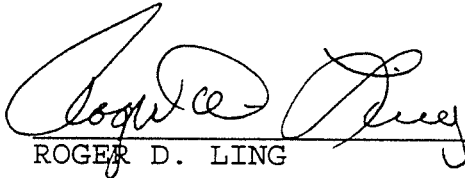
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of May, 1995, I served a true and correct copy of the foregoing STIPULATION TO PARTIALLY RESOLVE OBJECTION; STIPULATION AND ORDER GRANTING LEAVE TO FILE AMENDED OBJECTION on the each of the following persons by first class mail, postage prepaid, to the address or addresses listed below.

Nicholas B. Spencer
Deputy Attorney General
Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

U.S. Department of Justice
Environment and Natural
Resources Division
550 West Fort Steet, Box 33
Boise, Idaho 83734



ROGER D. LING

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
-----------------	----------------	------------------	----------------	--------------------------	---------------------	-------------------

SOURCE: GROUNDWATER

36-04009	TRIPLE AGE INERUSTIC AG INC RT-2 BOX 2778 PO BOX 539 PAUL ID 83347	04/16/1963	IRRIGATION	04-01 10-31	.5 CFS 100.0 AFY	BENEFICIAL USE
----------	--	------------	------------	-------------	---------------------	----------------

TOTAL QUANTITY: .5 CFS
100.0 AFY
CONSUMPTIVE USE: 75.0 AFY

POINT OF DIVERSION:
T09S R23E S07 LOT 4 (SWSWSE)
PLACE OF USE: IRRIGATION

T09S R23E S07 Lot 4 (SWSE) 21.0 25.6 SESE 4.0 1.0

25.0 26.6 ACRES TOTAL
REMARKS: USE OF THIS RIGHT IS COMBINED WITH WATER FROM
MINIDOKA IRRIGATION DIST.