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Department of Water Resources
Adjudication Bureau

**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	)	Sub-case No. 34-10167
	)	
Case No. 39576	)	
	)	STIPULATION
	)	
	)	

DESCRIPTIVE SUMMARY

This is a stipulation to resolve the objection to the above-captioned water right.

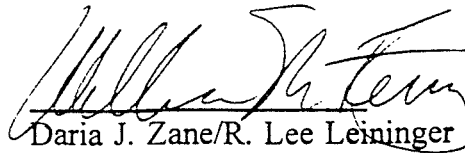
STIPULATION

To resolve the dispute over the above-captioned water right, the parties stipulate and agree that:

1. The Standard Form 5 for the water right attached hereto and incorporated by reference herein, sets forth the description of the water right as agreed by the parties. All decrees, whether partial or final, should describe the water right as shown in the Standard Form 5.
2. The Standard Form 5 and this stipulation have been reached through good faith negotiations for the purpose of resolving legal disputes, including pending litigation, and all parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal proceeding, and that this agreement is not and shall not be used as precedent for any other claim to a water right.
3. All parties agree to bear their own costs and attorney's fees in connection with this matter.

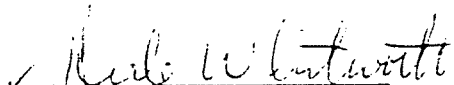
4. The Standard Form 5 and this stipulation were entered into and executed voluntarily by all parties in good faith, and without any fraud, misunderstanding, overreaching, misrepresentation, duress, or undue influence whatsoever.

Dated this 20 day of November



Daria J. Zane/R. Lee Leininger
William M. Ferry Attorneys
Environment and Natural Res.
Division/US Dept. of Justice

✓ Dated this 1st day of November


Herb Whitworth

**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	)	STANDARD FORM 5
	)	
	)	
Case No. 39576	)	SUBCASE NO: 34-10167
	)	
	)	PROPOSED ELEMENTS OF A
_____	)	WATER RIGHT

This form is used to report the proposed elements of one federal reserved water right or one water right acquired under state law. Submission of this form will not result in the automatic 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; and they have been served with sufficient process, according to the law, and have appeared, prosecuted and defended their positions with regard to this water right dispute.

Instructions For Use

A copy of this water right as recommended in the director's report shall be submitted with this form. A statement shall accompany **each** element of a water right.

Elements where there has been no objection should be listed exactly as they appear in the director's report. The statement as to an uncontested element shall state "as recommended in the director's report."

Contested elements that are the result of an objection filed with the court shall be accompanied by a statement fully describing all facts, documents, expert opinions and law which support the element of the water right (attach additional pages if necessary).

1. The name and address of the claimant is:

HERB WHITWORTH
STAR ROUTE
MACKAY ID 83251

Required Statement: As recommended in the director's report.

2. The source of water is:

Source: THOUSAND SPRINGS CREEK Tributary: BIG LOST RIVER

Required Statement: As recommended in the director's report.

3. The quantity of water used in cubic feet per second or the quantity of water stored in acre-feet per year is:

IRRIGATION	6.34 CFS
STOCKWATER	0.02 CFS
TOTAL QUANTITY:	6.34 CFS

THE APPROPRIATOR IS ENTITLED TO THE AMOUNT OF WATER DESCRIBED ABOVE FOR STOCKWATER PURPOSES AT A POINT OF MEASUREMENT WHERE THE DELIVERY DITCH ENTERS THE PLACE OF USE DESCRIBED BELOW. THE PORTION OF THIS RIGHT FOR STOCKWATER PURPOSES MAY BE DIVERTED SO LONG AS THE AMOUNT OF WATER DIVERTED AT THE POINT OF DIVERSION FOR STOCKWATER PURPOSES DOES NOT CONSTITUTE UNREASONABLE WASTE AND DOES NOT CONFLICT WITH THE PUBLIC INTEREST, AS DETERMINED BY THE DIRECTOR.

USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 31.44 CFS. COMBINED RIGHT NOS.: 34-00755, 34-00757, 34-00758, 34-00766, 34-10164, 34-10167, 34-00363, 34-00364, 34-00760, 34-00764, 34-10166, 34-10165.

0.90 CFS OF 34-00363, 1.6 CFS OF 34-00760, 1.3 CFS OF 34-00764, 2.1 CFS OF 34-00364, 3.14 CFS OF 34-10166 IS LIMITED TO USE FOR CONVEYANCE LOSSES IN DELIVERY OF THOSE RIGHTS LISTED ABOVE.

1.91 CFS OF THIS RIGHT IS LIMITED TO USE FOR CONVEYANCE LOSSES IN DELIVERY OF THIS RIGHT.

Required Statement: Diversion rate for this right, and total combined diversion rate for this right and the other listed rights, are reduced consistent with the stipulated place of use. In

addition, the amount of this right and right no. 34-10166 that is limited to use for conveyance losses is reduced consistent with the reduction in total combined diversion rate.

4. The priority date is: ~~05/01/1937~~ 01/1/1875 H.W. WNV

Required Statement: As recommended in the director's report. This Standard Form 5 resolves the objection of the United States to this water right. It does not resolve the claimant's objection to the priority date recommended in the director's report. The claimant's objection to the recommended priority date is the only outstanding contested issue as to this water right.

5. The legal description of the point(s) of diversion is; if the claim is for an instream flow, then a legal description of the beginning and ending points of the claimed instream flow:

T08N R22E S03 SENWNE
T09N R22E S34 SWSENW

Required Statement: As recommended in the director's report. The claim is not for an instream flow.

6. The purpose of use is:

IRRIGATION
STOCKWATER

Required Statement: As recommended in the director's report.

7. The period of year when the water is to be used is:

IRRIGATION 05-01 to 10-15
STOCKWATER 10-16 to 04-30

Required Statement: As recommended in the director's report.

8. The legal description of the place of use or of the reservation is:

PLACE OF USE: IRRIGATION
T08N R22E S02 Lot 4 (NWNW) 31.0 acres, SWNW 40.0 acres, NESW 20.0 acres,
NWSW 9.0 acres, SESW 3.0 acres
T08N R22E S03 Lot 1 (NENE) 39.0 acres, Lot 2 (NWNE) 12.0 acres, SWNE 6.0 acres,
SENE 29.0 acres
T09N R22E S34 SWSE 16.0 acres, SESE 17.0 acres
222.0 ACRES TOTAL

PLACE OF USE: STOCKWATER
SAME AS OTHER USE

USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 786 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED RIGHT NOS.: 34-00755, 34-00757, 34-00758, 34-00766, 34-10164, 34-10167, 34-00363, 34-00364, 34-00760, 34-00764, 34-10166, 34-10165.

Required Statement: IDWR and the parties stipulate that this is the correct description of the place of use. Where all or part of the place of use is identified by government lot no., the legal description is the government lot; quarter-quarter descriptions are also provided in parentheses for the convenience of those who do not have ready access to U.S. government plat maps. The place of use is located in Custer County, Idaho.

9. The annual volume of consumptive use is:

USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 1965 AF. COMBINED RIGHT NOS.: 34-00755, 34-00757, 34-00758, 34-00766, 34-10164, 34-10167, 34-00363, 34-00364, 34-00760, 34-00764, 34-10166, 34-10165.

Required Statement: Annual volume of consumptive use is reduced consistent with the stipulated place of use.

10. Other matters necessary to define this water right: Not applicable.

These matters are necessary because: Not applicable.

These matters do not fall within the 9 elements listed above because: Not applicable.

Signatures and Address of Parties and their Attorney of Record

I have read this form and know its contents and that the statements are true to the best of my knowledge and belief.

Claimant:

Name: Mr. Herb Whitworth
Address: Star Route
Mackay, Idaho 83251

Herb Whitworth
Party's Signature

11/1/95
Date

Attorney's Signature

Date

Objector:

Name: United States through
Department of Justice
Address: Dept. of Justice
601 Pennsylvania Ave NW
City/State: Washington, D.C. 20004
Attorney of Record:

Daria J. Zane
R. Lee Leininger
William M. Ferry

William M. Ferry
Attorney's Signature

November 20, 1995
Date

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
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SOURCE: THOUSAND SPRINGS CREEK TRIBUTARY: BIG LOST RIVER

34-10167

MERB WHITWORTH
STAR ROUTE
MACKAY ID 83251

05/01/1937

IRRIGATION

05-01 10-15

6.78

CFS

BENEFICIAL USE

NON-IRRIGATION-USES:

STOCKWATER 800 HEAD CATTLE

POINT OF DIVERSION:

T08N R22E S03 SENEW

T09N R22E S34 SUSEW

PLACE OF USE: IRRIGATION

T08N R22E S02

Lot 3 (NEW)

Lot 4 (NEW)

SUNW 40.0

SEW 10.0

T09N R22E S34

Lot 1 (NEW)

Lot 2 (NEW)

SEW 3.0

SEW 29.0

T09N R22E S34

Lot 8 (NEW)

SUSE 16.0

SESE 17.0

237.0 ACRES TOTAL

PLACE OF USE: STOCKWATER

SAME AS OTHER USE

REMARKS: THE PORTION OF THIS RIGHT FOR STOCKWATER PURPOSES MAY BE DIVERTED SO LONG AS THE AMOUNT OF WATER DIVERTED AT THE POINT OF DIVERSION FOR STOCKWATER PURPOSES DOES NOT CONSTITUTE UNREASONABLE WASTE AND DOES NOT CONFLICT WITH THE PUBLIC INTEREST, AS DETERMINED BY THE DIRECTOR.

2.04 CFS OF THIS RIGHT IS LIMITED TO USE FOR CONVEYANCE

LOSSES IN DELIVERY OF THIS RIGHT.

USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A TOTAL

COMBINED DIVERSION RATE OF 32.04 CFS, A TOTAL COMBINED ANNUAL

CONSUMPTIVE USE VOLUME OF 2002.5 AF, AND TO THE IRRIGATION OF A

COMBINED TOTAL OF 801 ACRES IN A SINGLE IRRIGATION SEASON.

COMBINED RIGHT NOS.: 34-00755, 34-00757, 34-00758, 34-00766,

34-10164, 34-10167, 34-00363, 34-00364, 34-00760, 34-00764,

34-10166, 34-10165

0.90 CFS OF 34-00363, 1.6 CFS OF 34-00760, 1.3 CFS OF 34-00764,

2.1 CFS OF 34-00364, 3.2 CFS OF 34-10166 IS LIMITED TO USE FOR

CONVEYANCE LOSSES IN DELIVERY OF THOSE RIGHTS LISTED

ABOVE.

INSTRUCTIONS FOR MAILING

You must mail the form, including all attachments, to the Clerk of the SRBA Court and to the parties identified in the Certificate of Mailing. **FAX filings will not be accepted by the SRBA Clerk of the Court.**

You must sign the Certificate of Mailing to show that you followed these steps.

CERTIFICATE OF MAILING

I certify that on Nov 21, 19995, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

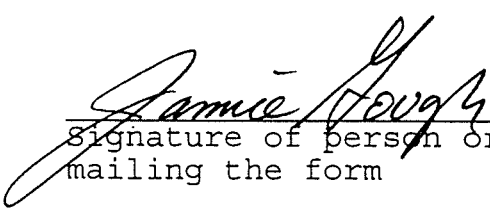
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

2. Copies to:

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

U.S. Department of Justice
Environment and Natural Resources Division
550 West Fort Street, MSC 033
Boise, ID 83724

Herb Whitworth
Star Route
Mackay, ID 83251



Signature of person or attorney
mailing the form