

JUN 02 2014
DEPARTMENT OF
WATER RESOURCES

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

MAY 30 2014

By _____

Clark
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

) **Water Right No.: 63-297**

Case No. 39576

) **NOTICE OF COURT'S INTENT TO**
) **ISSUE AMENDED PARTIAL DECREE,**
) **AND NOTICE OF EXPEDITED**
) **HEARING THEREON**

A *Partial Decree* was issued for the above-captioned water right on May 11, 2007. On May 29, 2014, the Idaho Department of Water Resources (“Department”) filed a *Request for Correction of Error*, requesting that this Court correct an error in the priority date element on the *Partial Decree*. The *Request* asserts, for reasons set forth therein, that the following remark should be added to the *Partial Decree* under the priority date element: “Pursuant to a call in times of scarcity, this right is junior to water right nos. 63-191, 63-225, 63-228, 63-229, 63-248, 63-250, 63-251, 63-252, 63-253, 63-285, 63-286, 63-292, 63-293, 63-369 and 63-382B and any future splits of these rights.” Therefore, it is the intent of the Court to issue an *Amended Partial Decree* correcting the above-mentioned error in accordance with the corrected recommendation attached to the Department’s *Request*. A copy of the proposed *Amended Partial Decree* is attached as Exhibit A.

Given the current stage of the Snake River Basin Adjudication, the Court in an exercise of its discretion will set a hearing this *Notice of Court's Intent* on an expedited basis pursuant to *SRBA Administrative Order 1*, § 6.f.(2) as set forth below. The Court will send a copy of this *Notice* as well as the *Request* to each person on the current copy of the *Court Certificate of Mailing for Expedited Hearings*. A copy of the *Request* is attached hereto as Exhibit B.

Therefore, IT IS ORDERED that a hearing will be held on this matter on **July 15, 2014 at 1:30 p.m.** at the Snake River Basin Adjudication Courthouse, 253 3rd Avenue North, Twin Falls, Idaho. Any party wishing to object to the Court's proposed action shall file a written objection with the Court on or before **July 11, 2014**. 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 30, 2014



ERIC J. WILDMAN
Presiding Judge
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

AMENDED

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 63-00297

NAME AND ADDRESS: FARMERS UNION DITCH CO LTD
2153 N POLLARD
STAR, ID 83669

SOURCE: BOISE RIVER TRIBUTARY: SNAKE RIVER

QUANTITY: 54.46 CFS

This right shall receive 100 percent of its decreed quantity until the natural flow of the waters of the Boise River shall decrease so that all rights containing this condition cannot receive 100 percent of their decreed quantities, at which time this right and the other rights containing this condition shall first be cut to 75 percent of their decreed quantities, as the natural flow of the river decreases, beginning with the latest rights containing this condition and preceding to the earliest rights containing this condition in the order of their priority dates, and after all of the rights containing this condition shall have been reduced to 75 percent of their decreed quantities, should the natural flow of the waters of the river decrease below the amount necessary to supply 75 percent of those decreed quantities, then this right and the other rights containing this condition, beginning with the latest and preceding to the earliest, shall be reduced to 60 percent of their decreed quantities.

PRIORITY DATE: 07/02/1894

Pursuant to a call in times of scarcity, this right is junior to water right nos. 63-191, 63-225, 63-228, 63-229, 63-248, 63-250, 63-251, 63-252, 63-253, 63-285, 63-286, 63-292, 63-293, 63-369 and 63-382B and any future splits of these rights.

POINT OF DIVERSION: T03N R02E S05 NESENE Within Ada County

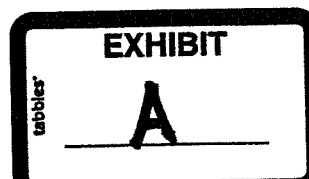
PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Irrigation	03-01 TO 11-15	54.46 CFS

Diversion for irrigation under this water right prior to April 1 and after October 31 shall occur only as authorized by the Water District 63 Water Master and only when water is being released for flood control by the United States from the Lucky Peak Dam outlet under procedures and requirements for the Memorandum of Agreement between the U.S. Department of the Army and the U.S. Department of the Interior for Flood Control Operations of the Boise River Reservoirs, dated November 20, 1953, the Water Control Manual for Boise River Reservoir dated April 1985 and any future amendments or revisions made thereto pursuant to state or federal procedures or law; provided that any such use of this water right prior to April 1 and after October 31 shall be subordinated to water rights for storage in Lucky Peak Reservoir, Lake Lowell, Arrowrock Reservoir, and/or Anderson Ranch Reservoir, as decreed in SRBA Case No. 39576.

PLACE OF USE:

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 8394 ACRES WITHIN THE BOUNDARY OF THE FARMERS UNION DITCH COMPANY



RECEIVED
JUN 02 2014
DEPARTMENT OF
WATER RESOURCES

1202

REQUEST FOR CORRECTION OF ERROR

THE IDAHO DEPARTMENT OF WATER RESOURCES (IDWR) HAS IDENTIFIED AN ERROR IN THE SRBA PARTIAL DECREE OF THE WATER RIGHT LISTED BELOW. IDWR REQUESTS THE COURT TO DETERMINE IF IT CAN CORRECT THE ERROR THROUGH ITS NORMAL NOTICE AND HEARING PROCESS, AND IF SO, TO CORRECT THE ERROR ACCORDINGLY. BY COPY OF THIS FORM IDWR IS ALSO NOTIFYING THE OWNER OF THE WATER RIGHT OF THE ERROR IN QUESTION.

WATER RIGHT NO. 63-297

NAME OF OWNER LISTED ON THE PARTIAL DECREE: FARMERS UNION DITCH CO. LTD.

CURRENT OWNER (IF DIFFERENT) _____

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

TODAY'S DATE May 28, 2014

MAY 29 2014

An error exists in the description of the following element of the partial decree:

1. ☐ **Name and Address**

Should be: _____

2. ☐ **Source**

Should be: _____

3. ☐ **Quantity**

Should be: _____

4. ☒ **Priority Date**

The following language should be added to the partial decree: Pursuant to a call in times of scarcity, this right is junior to water right nos. 63-191, 63-225, 63-228, 63-229, 63-248, 63-250, 63-251, 63-252, 63-253, 63-285, 63-286, 63-292, 63-293, 63-369 and 63-382B and any future splits of these rights.

5. ☐ **Point of Diversion**

Should be: _____

6. ☐ **Instream Flow Beginning and/or Ending Point**

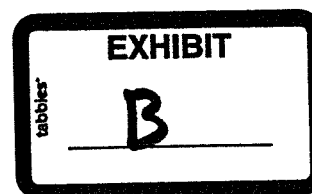
Should be: _____

7. ☐ **Purpose(s) of Use**

Should be: _____

Request for Correction of Error

63-297



8. ☐ **Period of Year**

Should be: _____

9. ☐ **Place of Use**

Should be: _____

10. ☐ **Other Provisions**

Should be: _____

Additional explanation or supporting documentation of the error:

Several water rights in Basin 63 were previously decreed in the case *Pioneer Irrigation District v. American Ditch Association, et al.* (Seventh Judicial District, Canyon County, decree entered by Judge E. L. Bryan on February 14, 1929), commonly referred to as the "Bryan Decree." The Bryan Decree case commenced in 1913, following entry of what generally is referred to as the "Stewart Decree," a decree of the rights on the Boise River in the case of *Farmers' Cooperative Ditch Company, Inc. v. Riverside Irrigation District, Ltd., et al.* (Seventh Judicial District, Canyon County, decree entered by Judge George H. Stewart on January 18, 1906). The purpose of the Bryan Decree case was to adjudicate a small number of rights that for various reasons had not been previously adjudicated and decreed in the Stewart Decree. These rights were decreed in the February 14, 1929, Bryan Decree, but that decree imposed upon them the following limitation:

[A]ll rights and amounts of water herein awarded are and are hereby decreed to be subject, subsequent and inferior to all the rights and priorities established by and awarded in said Stewart Decree.

Eleven rights were originally made subject to this limitation. Two more were added by a subsequent order entered in the case by Judge A.O. Sutton on January 30, 1932, entitled *Order for Distribution of Waters of Boise River for 1932*, which order in turn was extended by a subsequent order entered by Judge Charles E. Winstead on June 23, 1933, entitled *For 1933 and until Further Order of the Court*, an order still in effect today. Three other rights were added to the list of Bryan Decree rights by two subsequent decrees which made the rights contained therein subject to both the Stewart and Bryan Decrees.

The Bryan Decree rights all have priority dates senior to one or more rights contained in the Stewart Decree, but because of the limitation quoted above the watermaster historically subordinated them to the Stewart Decree rights junior to them. This subordination was carried over into the SRBA recommendations for Basin 63. However, in making its recommendations IDWR placed language referencing the subordination not on the Bryan Decree Rights that were subordinated to one or more Stewart Decree rights, but rather on the Stewart Decree rights that receive the benefit of the subordination. IDWR has now determined that this approach was flawed because IDWR did not likewise place notice of the subordination on the rights that are subject to the burden of the subordination. IDWR should have placed language referencing the subordination also on the Bryan Decree rights to better communicate how they historically have been administered and to provide clear instruction to the watermaster.

Therefore, IDWR requests that the following language be added to the priority date element of the partial decree for water right number 63-297: Pursuant to a call in times of scarcity, this right is junior to water right nos. 63-191, 63-225, 63-228, 63-229, 63-248, 63-250, 63-251, 63-252, 63-253, 63-285, 63-286, 63-292, 63-293, 63-369 and 63-382B and any future splits of these rights.

For more information about the error the Court and/or water right holder should contact the person identified below.

CONTACT PERSON: Emmi Blades
TELEPHONE NUMBER: 208-287-4809
E-MAIL ADDRESS: emmi.blades@idwr.idaho.gov
MAILING ADDRESS: IDWR
322 E. Front St.
P.O. Box 83720
Boise, ID 83720-0098

Corrected Recommendation for 63-297 is attached.

CERTIFICATE OF SERVICE

I certify that on May 28, 2014, I caused to be served true and correct copies of this REQUEST FOR CORRECTION OF ERROR, to the following persons, in the manner indicated 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

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

2. Copies to:

IDWR Document Repository
P.O. Box 83720
Boise, ID 83720-0098

☐ Overnight Mail
☐ Regular Mail
☒ Hand-Delivered
☐ Facsimile

Farmers Union Ditch Company LTD
C/O Jerry A. Kiser, Attorney at Law
P.O. Box 8389
Boise, ID 83707

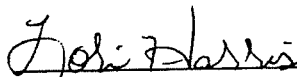
☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

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

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

U.S. Department of Justice
Environment & Nat'l Resources Div.
550 W. Fort St., MSC 033
Boise, ID 83724

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile



Signature of person or attorney mailing the form

05/21/2014

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

RIGHT NUMBER: 63-297

NAME AND ADDRESS: FARMERS UNION DITCH CO LTD
2153 N POLLARD
STAR ID 83669

SOURCE: BOISE RIVER

TRIBUTARY: SNAKE RIVER

QUANTITY: 54.460 CFS

This right shall receive 100 percent of its decreed quantity until the natural flow of the waters of the Boise River shall decrease so that all rights containing this condition cannot receive 100 percent of their decreed quantities, at which time this right and the other rights containing this condition shall first be cut to 75 percent of their decreed quantities, as the natural flow of the river decreases, beginning with the latest rights containing this condition and preceding to the earliest rights containing this condition in the order of their priority dates, and after all of the rights containing this condition shall have been reduced to 75 percent of their decreed quantities, should the natural flow of the waters of the river decrease below the amount necessary to supply 75 percent of those decreed quantities, then this right and the other rights containing this condition, beginning with the latest and preceding to the earliest, shall be reduced to 60 percent of their decreed quantities.

PRIORITY DATE: 07/02/1894

Pursuant to a call in times of scarcity, this right is junior to water right nos. 63-191, 63-225, 63-228, 63-229, 63-248, 63-250, 63-251, 63-252, 63-253, 63-285, 63-286, 63-292, 63-293, 63-369 and 63-382B and any future splits of these rights.

POINT OF
DIVERSION:

T03N R02E S5 NESENE Within ADA County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	03/01 11/15	54.460 CFS

Diversion for irrigation under this water right prior to April 1 and after October 31 shall occur only as authorized by the Water District 63 Water Master and only when water is being released for flood control by the United States from the Lucky Peak Dam outlet under procedures and requirements for the Memorandum of Agreement between the U.S. Department of the Army and the U.S. Department of the Interior for Flood Control Operations of the Boise River Reservoirs, dated November 20, 1953, the Water Control Manual for Boise River Reservoir dated April 1985 and any future amendments or revisions made thereto pursuant to state or federal procedures or law; provided that any such use of this water right prior to April 1 and after October 31 shall be subordinated to water rights for storage in Lucky Peak Reservoir, Lake Lowell, Arrowrock Reservoir, and/or Anderson Ranch Reservoir, as decreed in SRBA Case No. 39576.

PLACE OF USE:

The boundary encompassing the place of use for this water right is described with a digital boundary as defined by I.C. Section 42-202B(2) and authorized pursuant to I.C. Section 42-1411(2)(h). The data comprising the digital boundary are incorporated herein by reference and are stored on a CD-ROM disk issued in duplicate originals on file with the SRBA District Court and the Idaho Department of Water Resources. A map depicting the place of use is attached hereto to illustrate the place of use described by the digital boundary.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 8394 ACRES WITHIN THE BOUNDARY OF THE FARMERS UNION DITCH COMPANY

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH POINT OF
DIVERSION DESCRIBED ABOVE: 63-123C, 63-123D, 63-123E, 63-123F,
63-123G, 63-124Q, 63-125J, 63-126F, 63-165M, 63-198AG, 63-248,
63-120G, 63-2360, 63-21729, 63-18700, 63-31832, 63-31937

WATER IS DELIVERED THROUGH THE FARMERS UNION CANAL

CERTIFICATE OF MAILING

I certify that a true and correct copy of the NOTICE OF COURT'S INTENT TO ISSUE AMENDED PARTIAL DECREE AND NOTICE OF EXPEDITED HEARING THEREON was mailed on May 30, 2014, with sufficient first-class postage to the following:

FARMERS UNION DITCH CO LTD

Represented by:

JERRY A. KISER

620 WEST HAYES

BOISE, ID 83702

Phone: 208-336-1020

UNITED STATES OF AMERICA

Represented by:

US DEPARTMENT OF JUSTICE

ENVIRONMENT & NATL' RESOURCES

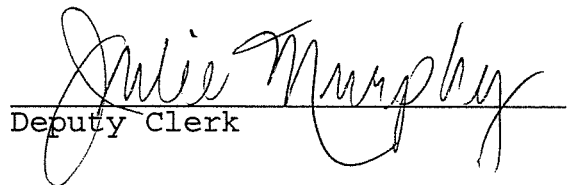
550 WEST FORT STREET, MSC 033

BOISE, ID 83724

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 and last names being clearly legible despite the cursive style.

CERTIFICATE OF MAILING

I certify that a true and correct copy of the NOTICE OF COURT'S INTENT TO ISSUE AMENDED PARTIAL DECREE AND NOTICE OF EXPEDITED HEARING THEREON was mailed on May 30, 2014, with sufficient first-class postage to the following:

C THOMAS ARKOOSH
ARKOOSH LAW OFFICES
802 W BANNOCK ST SUITE 900
PO BOX 2900
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PAUL L ARRINGTON
TRAVIS L THOMPSON
BARKER RSHOLT & SIMPSON LLP
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TWIN FALLS, ID 83301-3029

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BEARD ST CLAIR GAFFNEY PA
2105 CORONADO ST
IDAHO FALLS, ID 83404-7495

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BEEMAN & ASSOCIATES PC
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BOISE, ID 83702-3304

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PAYETTE, ID 83661-0158

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410 17TH ST 22ND FL
DENVER, CO 80202-4437

RON KERL
COOPER & LARSEN CHARTERED
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POCATELLO, ID 83205-4229
NOTICE

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ELLISON SCHNEIDER & HARRIS LLP
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SACRAMENTO, CA 95816-5931

UNITED STATES DEPT OF JUSTICE
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GOODING, ID 83330-0176

(Certificate of mailing continued)

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1010 W JEFFERSON ST STE 101
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999 MAIN ST STE 1300
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NOTICE

Page 2
5/30/14

(Certificate of mailing continued)

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(Certificate of mailing continued)

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MOUNTAIN HOME, ID 83647-6017