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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho
MAY 30 2014
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.: 63-367
)
)
) 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 November 3, 2011. 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. 63-292, 63-293 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.

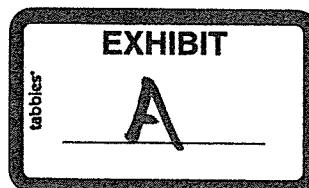
Therefore, IT IS ORDERED that a hearing will be held on this matter on **July 15, 2014 at 1:30 p.m.** at the Snake River Basin Adjudication Courthouse, 253 3rd Avenue North, Twin Falls, Idaho. Any party wishing to object to the Court's proposed action shall file a written objection with the Court on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

AMENDED



1293

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. 63-367

NAME OF OWNER LISTED ON THE PARTIAL DECREE: UNITED STATES OF AMERICA
ACTING THROUGH BUREAU OF RECLAMATION

DISPATCHED
Fifth Judicial District
County of Twin Falls - State of Idaho
MAY 29 2014
By _____

CURRENT OWNER (IF DIFFERENT) _____

TODAY'S DATE May 28, 2014

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

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WATER RESOURCES

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. 63-292, 63-293 and 63-382B and any future splits of these rights.

5. ☐ **Point of Diversion**

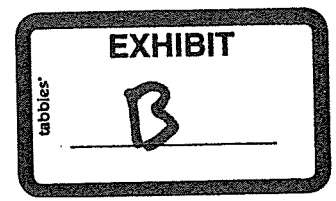
Should be: _____

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

Should be: _____

7. ☐ **Purpose(s) of Use**

Should be: _____



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 63-367: Pursuant to a call in times of scarcity, this right is junior to water right nos. 63-292, 63-293 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 63-367 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

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☐ Regular Mail
☒ Hand-Delivered
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United States of America Acting Through
Bureau of Reclamation
C/O Matt Howard
Regional Director PN Code-3100
1150 N Curtis Rd Ste 100
Boise, ID 83706-1234

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

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

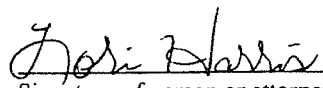
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☐ Facsimile

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

David W. Gehlert
Natural Resources Section
Environment & Nat'l Resources Div.
U.S. Department of Justice
999 18th Street
South Terrace – Suite 370
Denver, CO 80394

☐ 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: 63-367

NAME AND ADDRESS: UNITED STATES OF AMERICA ACTING THROUGH
BUREAU OF RECLAMATION
REGIONAL DIRECTOR PN CODE-3100
1150 N CURTIS RD STE 100
BOISE ID 83706-1234

SOURCE: BOISE RIVER

TRIBUTARY: SNAKE RIVER

QUANTITY: 1,500.000 CFS

PRIORITY DATE: 06/16/1909

This water right may be exercised only when it will not cause the loss of water that could otherwise be stored in the reservoir system. "Reservoir system" shall mean all Federal reservoirs operated by the Bureau of Reclamation and/or the Army Corps of Engineers on the Boise River and its tributaries down to and including Lucky Peak Dam.

Pursuant to a call in times of scarcity, this right is junior to water right nos. 63-292, 63-293 and 63-382B and any future splits of these rights.

POINT OF

DIVERSION: T02N R03E S3 NWSW Lot 9 Within ADA County

PURPOSE AND

PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

POWER

1/01 12/31

1,500.000 CFS

PLACE OF USE:

POWER in ADA County

T02N R03E S03 Lot 9 NWSW

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

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:

IDAHO POWER COMPANY

Represented by:
ADAM T DEVOE
BROWNSTEIN HYATT & FARBER PC
410 17TH ST 22ND FL
DENVER, CO 80202-4437
Phone: 303-223-1100

STATE OF IDAHO

Represented by:
CHIEF NATURAL RESOURCES DIV
OFFICE OF THE ATTORNEY GENERAL
STATE OF IDAHO
PO BOX 44449
BOISE, ID 83711-0449
Phone: 208-334-2400

IDAHO POWER COMPANY

Represented by:
JAMES C TUCKER
IDAHO POWER CO
1221 W IDAHO ST
PO BOX 70
BOISE, ID 83707-0070
Phone: 208-388-2112

UNITED STATES OF AMERICA
USDI BUREAU OF RECLAMATION

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, reading "Julie Murphy", is written over a horizontal line. The signature is in dark ink and is positioned to the right of the printed text "Deputy Clerk".

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
BOISE, ID 83701

ALBERT P BARKER
JOHN K SIMPSON
SHELLEY M DAVIS
BARKER RSHOLT & SIMPSON LLP
1010 W JEFFERSON ST STE 102
PO BOX 2139
BOISE, ID 83701-2139

PAUL L ARRINGTON
TRAVIS L THOMPSON
BARKER RSHOLT & SIMPSON LLP
195 RIVER VISTA PL STE 204
TWIN FALLS, ID 83301-3029

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

JOSEPHINE P BEEMAN
BEEMAN & ASSOCIATES PC
1019 N 17TH ST
BOISE, ID 83702-3304

BERT L OSBORN
BERT L OSBORN CHARTERED
26 S 9TH ST
PO BOX 158
PAYETTE, ID 83661-0158

ADAM T DEVOE
DAVID G SCOTT
BROWNSTEIN HYATT & FARBER PC
410 17TH ST 22ND FL
DENVER, CO 80202-4437

RON KERL
COOPER & LARSEN CHARTERED
151 N 3RD AVE STE 210
PO BOX 4229
POCATELLO, ID 83205-4229
NOTICE

CRAIG A PRIDGEN
CRAIG A PRIDGEN ATTYS AT LAW
305 W LAKE BLVD
TAHOE CITY, CA 96145

ELIZABETH P EWENS
ELLISON SCHNEIDER & HARRIS LLP
2600 CAPITOL AVE STE 400
SACRAMENTO, CA 95816-5931

UNITED STATES DEPT OF JUSTICE
ENVIRONMENT & NATURAL RESOURCE
550 WEST FORT STREET, MSC 033
BOISE, ID 83724-0101

W KENT FLETCHER
FLETCHER LAW OFFICE
1200 OVERLAND AVE
PO BOX 248
BURLEY, ID 83318-0248

CHRISTOPHER H MEYER
JEFFREY C FEREDAY
MICHAEL C CREAMER
MICHAEL P LAWRENCE
GIVENS PURSLEY LLP
601 W BANNOCK ST
PO BOX 2720
BOISE, ID 83701-2720

RICHARD L HARRIS
HARRIS LAW OFFICE
1023 ARTHUR ST
PO BOX 1438
CALDWELL, ID 83606-1438

MICHAEL B WHITE, SECRETARY
HECLA MINING COMPANY
6500 N MINERAL DR STE 200
COEUR D ALENE, ID 83815-9408

CRAIG D HOBDEY
HOBDEY LAW OFFICE PLLC
125 5TH AVE
PO BOX 176
GOODING, ID 83330-0176

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TERRY G HOGUE
HOGUE & DUNLAP LLP
PO BOX 460
HAILEY, ID 83333-0460

KENT W FOSTER
ROBERT L HARRIS
HOLDEN KIDWELL HAHN &
CRAPO PLLC
1000 RIVERWALK DR, STE 200
PO BOX 50130
IDAHO FALLS, ID 83405-0130

WILLIAM G MYERS III
HOLLAND & HART LLP
101 S CAPITOL BLVD STE 1400
PO BOX 2527
BOISE, ID 83701-2527

CHARLES L HONSINGER
HONSINGER LAW PLLC
PO BOX 517
BOISE, ID 83701-0517

C TIMOTHY HOPKINS
JOHN D HANSEN
HOPKINS RODEN CROCKETT HANSEN
& HOOPEs PLLC
428 PARK AVE
IDAHO FALLS, ID 83402-3609

JAMES C TUCKER
IDAHO POWER CO
1221 W IDAHO ST
PO BOX 70
BOISE, ID 83707-0070

NORMAN M SEMANKO
IDAHO WATER USERS ASSOCIATION
1010 W JEFFERSON ST STE 101
BOISE, ID 83702-5453

GRAY A YOUNG
TERRY T UHLING
J R SIMPLOT COMPANY
999 MAIN ST STE 1300
PO BOX 27
BOISE, ID 83707-0027

JOHN M MARSHALL
JOHN M MARSHALL LAW PLLC
575 W BANNOCK ST STE B
BOISE, ID 83702-5917

LARY C WALKER
LARY C WALKER LAW OFFICE
232 E MAIN ST
PO BOX 828
WEISER, ID 83672-0828

EDWARD A LAWSON
LAWSON LASKI CLARK & POGUE
PLLC
675 SUN VALLEY RD STE A
PO BOX 3310
KETCHUM, ID 83340-3310

ROGER D LING
LING LAW OFFICE
PO BOX 623
RUPERT, ID 83350-0623

J JUSTIN MAY
MAY BROWNING & MAY PLLC
1419 W WASHINGTON
BOISE, ID 83702

CHARLES F MC DEVITT
MC DEVITT & MILLER LLP
420 W BANNOCK ST
PO BOX 2564
BOISE, ID 83701-2564

BROMLEY, CHRIS M
MCHUGH BROMLEY PLLC
380 S 4TH STREET STE 103
BOISE, ID 83702

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DYLAN B LAWRENCE
SCOTT L CAMPBELL
MOFFATT THOMAS BARRETT ROCK
& FIELDS CHARTERED
101 S CAPITOL BLVD 10TH FL
PO BOX 829
BOISE, ID 83701-0829

BRUCE M. SMITH
MOORE SMITH BUXTON & TURCKE
CHTD
950 W BANNOCK ST STE 520
BOISE, ID 83702-6118

JULIE K FISCHER
MORROW & FISCHER PLLC
332 N BROADMORE WAY STE 102
NAMPA, ID 83687-5123

DON B MILLER
NATIVE AMERICAN RIGHTS FUND
1506 BROADWAY ST
BOULDER, CO 80302-6217

DAVID J CUMMINGS
NEZ PERCE TRIBAL EXEC COMM
100 AGENCY ROAD
PO BOX 305
LAPWAI, ID 83540-0305

CHIEF NATURAL RESOURCES DIV
OFFICE OF THE ATTORNEY GENERAL
STATE OF IDAHO
PO BOX 44449
BOISE, ID 83711-0449

DAVID F SHIRLEY
WILLIAM A PARSONS
PARSONS SMITH STONE LOVELAND
AND SHIRLEY LLP
137 W 13TH ST
PO BOX 910
BURLEY, ID 83318-0910

PATRICK D BROWN
PATRICK D BROWN PC
335 BLUE LAKES BLVD N
TWIN FALLS, ID 83301-4828

JAMES A PENDLEBURY
PENDLEBURY LAW OFFICE PA
151 N RIDGE AVE STE 260
IDAHO FALLS, ID 83402-4042

ERIKA E MALMEN
PERKINS COIE LLP
1111 W JEFFERSON ST STE 500
PO BOX 737
BOISE, ID 83701-0737

RICHARD A CUMMINGS
PO BOX 1545
BOISE, ID 83701-1545

IDWR DOCUMENT DEPOSITORY
PO BOX 83720
BOISE, ID 83720-0098

DAVID HEIDA
PO BOX 956
KUNA, ID 83634-0900

RANDALL C BUDGE
RACINE OLSON NYE BUDGE &
BAILEY CHARTERED
201 E CENTER ST STE A2
PO BOX 1391
POCATELLO, ID 83204-1391

JERRY R RIGBY
RAY W RIGBY
RIGBY ANDRUS & RIGBY CHARTERED
25 N 2ND E
PO BOX 250
REXBURG, ID 83440-0250

DANIEL V STEENSON
SAWTOOTH LAW OFFICES PLLC
1101 W RIVER ST STE 110
PO BOX 7985
BOISE, ID 83707

NOTICE

(Certificate of mailing continued)

BRANDELLE G WHITWORTH
WILLIAM F BACON
SHOSHONE-BANNOCK TRIBES
TRIBAL COUNSEL OFFICE
PO BOX 306
FORT HALL, ID 83203-0306

B J DRISCOLL
SMITH DRISCOLL & ASSOCIATES
PLLC
PO BOX 50731
IDAHO FALLS, ID 83405-0731

DOUGLAS B L ENDRESON
REID PEYTON CHAMBERS
SONOSKY CHAMBERS SACHSE
ENDRESON & PERRY LLC
1425 K ST NW STE 600
WASHINGTON, DC 20005-3498

JAMES P SPECK
SPECK & AANESTAD
A PROFESSIONAL CORPORATION
120 EAST AVENUE
PO BOX 987
KETCHUM, ID 83340-0987

CLIFF S BENTZ
YTURRI ROSE LLP
89 SW 3RD AVE
ONTARIO, OR 97914-0058

JAMES W GIVENS
1026 F ST
PO BOX 875
LEWISTON, ID 83501-0875

ANGELO L ROSA
1168 EAST 1700 SOUTH
SALT LAKE CITY, UT 84105-3522

JAMES ANNEST
1742 OVERLAND AVE
PO BOX 686
BURLEY, ID 83318-0686

DANA L HOFSTETTER
608 W FRANKLIN ST
BOISE, ID 83702-5509

CHARLES J OLSON
8813 OLD HIGHWAY 30
MOUNTAIN HOME, ID 83647-6017