

RECEIVED

APR 20 2017

DEPARTMENT OF
WATER RESOURCES

LAWRENCE G. WASDEN
Attorney General

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

SHANTEL M. CHAPPLE KNOWLTON (ISB # 9759)
Deputy Attorney General
Natural Resources Division
700 W. State St, 2nd Floor
Boise, ID 83720-0010
Telephone: (208) 334-4200
Facsimile: (208) 854-8072
Electronic Mail: shantel.knowlton@ag.idaho.gov

Attorneys for the State of Idaho

**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. 45-2275, 45-4103

**NOTICE OF STATE OF IDAHO'S
OBJECTION TO MOTION TO AMEND
PARTIAL DECREES OF WATER**

Pursuant to the Court's *Notice Vacating and Resetting Hearing on Motions to Amend Partial Decrees* (March 2, 2017), the State may object to the *Motion to Amend Partial Decrees of Water* (Jan. 12, 2017) [hereinafter "*Motion*"] filed in the above subcases at the hearing scheduled for April 24, 2017. The State of Idaho ("State"), by and through its attorneys of record, hereby gives notice that it will object to the *Motion* for the reasons set forth below.

Although the *Motion* was filed in January 2017, the Office of the Attorney General, Natural Resources Division, only became aware of the proceedings on the *Motion* a few weeks ago. This proceeding was included on the SRBA Court Docket Sheet, however, the *Motion*,

**NOTICE OF STATE OF IDAHO'S OBJECTION TO MOTION TO AMEND PARTIAL
DECREEES OF WATER - 1**

Memorandum in Support, and *Affidavit of Darrell M. Funk* filed by the Movant were not served on the Chief of the Natural Resources Division, Office of the Attorney General, State of Idaho, as required under SRBA *Administrative Order 1*, § 6(e). Given this defect in service, the State will request that the Court continue the proceedings and allow the State to file a response to the *Motion* before the Court renders a decision. The State has an interest in the finality of the *Final Unified Decree* and believes that allowing the substantive changes to the partial decrees requested by the *Motion* will undermine that finality.

The *Motion* seeks to amend the partial decrees entered in the above subcases to remove the provision stating that the combined use of water rights 45-2275, 45-4103 and 45-7478 “is limited to the irrigation of a combined total of 480 acres in a single irrigation season.” *See, e.g., Partial Decree*, Water Right No. 45-2275 (May 6, 2005). The partial decrees for these rights were issued almost twelve years ago and were incorporated into the *Final Unified Decree* over two years ago. Allowing substantive amendments to the partial decrees at this time has the potential to undermine the finality of the *Final Unified Decree* and to injure other water users. This is especially true where water rights 45-2275 and 45-4103 are located in the Artesian City Critical Ground Water Area.

Contrary to Movant’s assertions, the combined use limitation in the partial decrees was not a mistake. The limitation was included in IDWR’s preliminary recommendations for water rights 45-2275 and 45-1403. *IDWR Preliminary Recommendation of Water Rights Acquired Under State Law*, Water Right No. 45-2275 (Feb. 19, 2003); *IDWR Preliminary Recommendation of Water Rights Acquired Under State Law*, Water Right No. 45-4103 (Feb. 19, 2003).¹ The burden was on Movant to review the recommendations and file objections at that

¹ True and correct copies of IDWR’s Preliminary Recommendations for water rights 45-2275 and 45-1403 obtained from IDWR’s Adjudication Backfile for those rights are attached hereto as Exhibits 1 and 2, respectively.

time. Movant did not. Movant's failure to review the partial decrees and timely object does not make enforcement of those decrees unequitable, nor does it present unique and compelling circumstances that would warrant substantively amending the partial decrees at this time.

For the foregoing reasons, the State will object to the *Motions* at the April 24 hearing and request a continuance so the State may file a response.

Respectfully submitted this 19 day of April, 2017.

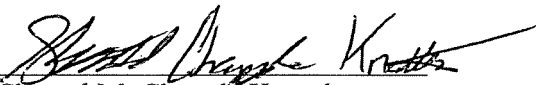
A handwritten signature in black ink, appearing to read "Shantel M. Chapple Knowlton", is written over a horizontal line.

SHANTEL M. CHAPPLE KNOWLTON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19 day of April, 2017, I caused to be served a true and correct copy of the foregoing document by the methods indicated:

CLERK OF THE DISTRICT COURT SNAKE RIVER BASIN ADJUDICATION 253 THIRD AVENUE NORTH P.O. BOX 2707 TWIN FALLS, ID 83303- 2707	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Federal Express ☒ Facsimile: 208.736.2121 ☐ Statehouse Mail
THEODORE R. LARSON WILLIAMS MESERVY & LOTHSPREICH 153 E. MAIN STREET P.O. BOX 168 JEROME, ID 83338	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Federal Express ☒ Facsimile: 208.324.3135 ☐ Statehouse Mail
DIRECTOR OF IDWR PO BOX 83720 BOISE, ID 83720- 0098	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: _____ ☒ Statehouse Mail
IDWR DOCUMENT DEPOSITORY PO BOX 83720 BOISE, ID 83720-0098	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: _____ ☒ Statehouse Mail
US DEPARTMENT OF JUSTICE ENVIRONMENT & NATL' RESOURCES 550 WEST FORT STREET, MSC 033 BOISE, ID 83724	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: _____ ☐ Statehouse Mail


Shantel M. Chapple Knowlton
Deputy Attorney General

02/19/2003

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 45-2275

NAME AND ADDRESS: DARRELL M FUNK
3173 N 4900 E
MURTAUGH ID 83344

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 2.510 CFS
800.000 AFY

USE OF THIS RIGHT WITH RIGHT NO. 45-4103 IS LIMITED TO A TOTAL
COMBINED DIVERSION RATE OF 2.51 CFS AND TO A TOTAL COMBINED
ANNUAL DIVERSION VOLUME OF 800 AF.

PRIORITY DATE: 10/05/1948

POINT OF DIVERSION:

T11S R20E S26 NWSWNE Within TWIN FALLS County Source: GROUND WATER

T11S R20E S26 NWSWNE Within TWIN FALLS County Source: GROUND WATER

T11S R20E S26 NENENW Within TWIN FALLS County Source: GROUND WATER

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

IRRIGATION

03/15 11/15

2.510 CFS
800.00 AFY

PLACE OF USE:

IRRIGATION Within TWIN FALLS County

T11S R20E S26	NENE	39.0	T11S R20E S26	NWNE	35.0
T11S R20E S26	SWNE	40.0	T11S R20E S26	SENE	35.0
T11S R20E S26	NENW	39.0	T11S R20E S26	NWNW	38.0
T11S R20E S26	SWNW	39.0	T11S R20E S26	SENW	40.0

305 ACRES TOTAL

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 480 ACRES IN A SINGLE
IRRIGATION SEASON. COMBINED RIGHT NOS.: 45-4103, 45-7478

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 200 ACRES WITHIN THE
PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

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: License

RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION
PURSUANT TO SECTION 42-1425, IDAHO CODE.

RIGHT NO. 45-4103 IS AN EXPANSION OF THIS RIGHT PURSUANT TO
SECTION 42-1416B, IDAHO CODE.

Water Right 45-2275

1

EXHIBIT

1

tabbles

02/19/2003

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 45-4103

NAME AND ADDRESS: DARRELL M FUNK
3173 N 4900 E
MURTAUGH ID 83344

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 1.600 CFS

USE OF THIS RIGHT WITH RIGHT NO. 45-2275 IS LIMITED TO A TOTAL
COMBINED DIVERSION RATE OF 2.51 CFS AND TO A TOTAL COMBINED
ANNUAL DIVERSION VOLUME OF 800 AF.

PRIORITY DATE: 06/30/1985

POINT OF DIVERSION:

T11S R20E S26 NWSWNE Within TWIN FALLS County Source: GROUND WATER

T11S R20E S26 NWSWNE Within TWIN FALLS County Source: GROUND WATER

T11S R20E S26 NENENW Within TWIN FALLS County Source: GROUND WATER

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE
IRRIGATION

PERIOD OF USE
03/15 11/15

QUANTITY
1.600 CFS

PLACE OF USE: IRRIGATION Within TWIN FALLS County

T11S R20E S26	NENE	39.0	T11S R20E S26	NWNE	35.0
T11S R20E S26	SWNE	40.0	T11S R20E S26	SENE	35.0
T11S R20E S26	NENW	39.0	T11S R20E S26	NWNW	38.0
T11S R20E S26	SWNW	39.0	T11S R20E S26	SENW	40.0

305 ACRES TOTAL

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 480 ACRES IN A SINGLE
IRRIGATION SEASON. COMBINED RIGHT NOS.: 45-2275, 45-7478.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 105 ACRES WITHIN THE
PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

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.

THIS RIGHT IS AN EXPANSION OF RIGHT NO. 45-2275 PURSUANT TO
SECTION 42-1416B, IDAHO CODE.

EXPLANATORY MATERIAL: Beneficial Use

Water Right 45-4103

1

EXHIBIT

2

tabbles