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DEC 06 2021

DEPT OF WATER RESOURCES
SOUTHERN REGION

FRITZ X. HAEMMERLE (ISB# 3862)
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Attorneys for the Objectors

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION	)	Transfer No. 83485
FOR TRANSFER NO. 83485 IN THE	)	
NAME OF ECCLES FLYING HAT	)	DECLARATION OF FRITZ X.
RANCH, LLC	)	HAEMMERLE
	)	
	)	
	)	
	)	
	)	

I, Fritz Haemmerle, Esq. declare as follows:

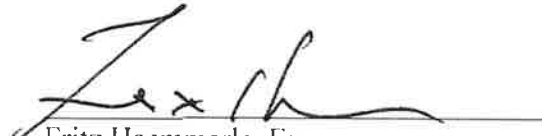
1. I am at least eighteen (18) years of age and am competent to testify regarding the matters set forth herein. I am an attorney licensed to practice law in the State of Idaho. I represented the Objector, Hiawatha Canal Company ("Canal").

2. On or about November 30, 2021, I obtained or downloaded various documents on file with the Idaho Department of Water Resources, relating to water right 37-577BP, including:

- a. Preliminary Order Approving Transfer No. 68526, attached hereto as Exhibit 1;
- b. Standard Form Objection (to water right 37-577BP), attached as Exhibit 2;
- c. Partial Decree for Water Right 37-577BP, attached as Exhibit 3; and
- d. Final Unified Decree, attached as Exhibit 4.

I declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 1st day of December, 2021.



Fritz Haemmerle, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of December 2021, I have caused to be presented the foregoing to:

Evan Robertson
ROBERTSON & SLETTE
P.O. Box 1906
Twin Falls, ID 83303-1906
erobertson@rsidaholaw.com

By U.S. Mail and Email

Angela Hansen
And Denise Maline
Idaho Department of Water Resources
650 Addison Ave. W. Ste 500
Twin Falls, ID 83301-5858
Angela.Hansen@idwr.idaho.gov
Denise.Maline@idwr.idaho.gov

By U.S. Mail and Email



Fritz X. Haemmerle

EXHIBIT 1

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF TRANSFER NO. 68526)
IN THE NAME OF FLYING HAT RANCH)
_____)

**PRELIMINARY ORDER
CORRECTING
TRANSFER APPROVAL**

FINDINGS OF FACT

1. On June 15, 2001 Spencer F. Eccles (representative of applicant) filed Application for Transfer No. 5843 renumbered to 68526 (transfer) to add and change points of diversion, and to change the place of use for the following water rights:

37-481D	37-577BP	37-11976
37-482J	37-917	37-11977
37-483D	37-11975	37-11978

2. On May 6, 2002 the Department approved the transfer showing the following condition on all the rights incorrectly identifying Rights 37-481D, 37-482J, 37-483D, 37-11975, 37-11976, 37-11977 and 37-11978. Only Rights 37-577BP and 37-917 have historically been diverted into the Hiawatha Canal.

A portion of Right 37-577BP, 1.40 cfs, shall continue to be diverted into the Hiawatha Canal to mitigate the removal of Rights 37-481D, 37-482J, 37-483D, 37-577BP, 37-917, 37-11975, 37-11976, 37-11977 and 37-11978 diverted into Cove Canal and Kohler Ditch under Transfer 68526 until such time as the canal ceases operation. The Department retains jurisdiction in this matter for a period of five (5) years to modify the diverted amount should justification for a lesser amount be provided by the right holder within that period of time.

CONCLUSIONS OF LAW

1. The transfer approval should accurately describe each established water right as changed by the transfer pursuant to Section 42-222, Idaho Code.

2. The transfer approval incorrectly lists Rights 37-481D, 37-482J, 37-483D, 37-11975, 37-11976, 37-11977 and 37-11978 in a condition of approval and included it on all rights.
3. The Department should correct the transfer approval to show the correct Right numbers, apply the corrected condition only to affected Right 37-577BP removing the original condition from all other rights under the approval.

ORDER

IT IS THEREFORE HEREBY ORDERED that Transfer Approval No. 68526 is **CORRECTED** by changing the condition of approval to identify only Rights 37-577BP and 37-917, and removing it from all the unaffected rights as shown on the amended transfer approval document issued in conjunction with this order.

Dated this 3rd day of June, 2002.



L. GLEN SAXTON
Chief, Water Allocation Bureau

EXHIBIT 2

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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

)

A.

Subcase 37-577BP

(Insert water right number)

Case No. 39576

)

)

)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Eccles Flying Hat Ranch LLC

Address: P.O. Box 3028 Salt Lake City, UT 84110

Daytime Phone: 801-246-5329

Name & Address of Attorney, if any:

Evan Robertson, Robertson & Slette

134 Third Avenue East

Twin Falls, ID 83303

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Eccles Flying Hat Ranch LLC

Address: P.O. Box 3028 Salt Lake City, UT 84110

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☒ **Quantity**
Should be: 7.0 cfs total for irrigation as long as Hiawatha
Canal is in operation, instead of 5.6 cfs for
irrigation and 1.4 cfs for mitigation as was
recommended. See reasons supporting objection.
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Point of Diversion**
Should be: _____
6. ☐ **Instream Flow Beginning and Ending Point**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☐ **Place of Use**
Should be: _____
10. ☐ **I object because:**
☐ This water right Should not exist.

☐ This water right was not recommended, but Should be recommended with the elements described above.

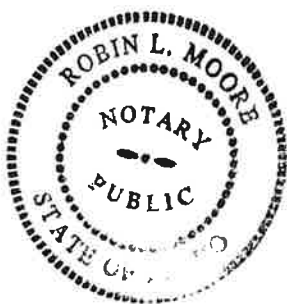
E. **REASONS SUPPORTING OBJECTIONS(S):** Claimant seeks to restore this right to a total of 7.0 cfs should the Hiawatha canal cease operation or service. The recommended mitigation portion (1.4 cfs) of the right for conveyance loss in the Hiawatha Canal was removed from this right upon the transfer of its point of diversion out of the Hiawatha system. That 1.4 cfs should remain in Claimant's name and be restored to this right in the event it is no longer required as a conveyance loss in the Hiawatha, should the Hiawatha Canal in the future be lined or abandoned.

F. **VERIFICATION** (must be completed)

State of IDAHO)
)ss.
County of Twin Falls)

J EVAN ROBERTSON, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.



(Signature of person filing objection)

[Signature]
(Attorney signing in representative capacity)

Subscribed and sworn to before me on:

November 14, 2007
Robin L. Moore
Notary Public for Idaho
Residing at: Jerome
My Commission Expires: 12-29-12

INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on November 14, 2007, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: Eccles Flying Hat Ranch LLC

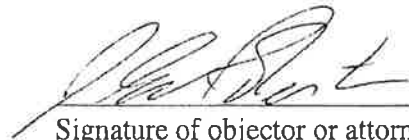
Address: P.O. Box 3028 Salt Lake City, UT 84110

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

United States Department of Justice
Environment & Nat'l Resources Div
550 W Fort Street, MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of Attorney General
PO Box 44449
Boise, ID 83711-4449



Signature of objector or attorney
mailing on Objector's behalf

EXHIBIT 3

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

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 37-00577BP

District Court - SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

AUG 30 2011

NAME AND ADDRESS: ECCLES FLYING HAT RANCH LLC
PO BOX 3028
SALT LAKE CITY, UT 84110

SOURCE: BIG WOOD RIVER TRIBUTARY: MALAD RIVER

QUANTITY: 7.00 CFS

Rights 37-481D, 37-482J, 37-483D, 37-577BP, 37-917, 37-11975, 37-11976, 37-11977, 37-11978, 37-2713, and 37-7356 when applied by sprinkler system shall not exceed a maximum diversion rate of 11.92 cfs and 2086.0 af at the field headgate, and when applied by surface application shall not exceed a maximum diversion rate of 23.84 cfs and 4172.0 af at the field headgate. Any portion of these rights in excess of the maximum applied rates of diversion and volumes at the field headgate shall be limited to use for conveyance losses and shall not be diverted from the river unless required for the delivery of the applied rate of water to the field headgate.

A portion of Right 37-577BP, 1.40 cfs, shall continue to be diverted into the Hiawatha Canal to mitigate the removal of Rights 37-481D, 37-482J, 37-483D, 37-577BP, 37-917, 37-11975, 37-11976, 37-11977 and 37-11978 diverted into Cove Canal and Kohler Ditch under Transfer 68526 until such time as the canal ceases operation or is otherwise no longer necessary for such mitigation. The right holder retains ownership of the 1.40 cfs portion of this right diverted into the Hiawatha Canal. The total instantaneous diversion of water from all points of diversion under Rights 37-481D, 37-482J, 37-483D, 37-577BP, 37-917, 37-11975, 37-11976, 37-11977, 37-11978, 37-2713 and 37-7356 when combined shall not exceed 26.74 cfs and a total annual maximum diversion volume of 4172.0 af at the field headgate.

This right when combined with all other rights shall provide no more than 3.5 afa per acre when applied by sprinkler system and 7.0 afa per acre when applied by surface application at the field headgate for irrigation of the lands herein.

PRIORITY DATE: 03/24/1883

POINT OF DIVERSION: T02N R18E S16 SESWNE Within Blaine County
S22 SENESE
T03N R18E S20 SNNW

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
Irrigation		04-15 TO 10-31	5.60 CFS
Mitigation		04-15 TO 10-31	1.40 CFS

PLACE OF USE:	Irrigation	Within Blaine County
T02N R18E S15	SWSE 3.0	
S22	NENE 7.0	NWNE 33.0
	SENE 34.0	NESE 38.0
S23	SNNW 18.0	NESW 12.0
	NWSW 40.0	SWSW 40.0
	SESW 35.0	SWSE 9.0
	SESE 6.0	
S25	NNNW 28.0	SNNW 39.0

SRBA Partial Decree Pursuant to I.R.C.P. 54(b) (continued)

PLACE OF USE (continued)

	SENE 5.0	NESW 23.0
	NWSW 27.0	SWSW 5.0
	SESW 15.0	
S25	NENE 39.0	NWNE 35.0
	SWNE 40.0	SENE 35.0
	WENW 40.0	NWNW 32.0
	SENE 36.0	

675.0 Acres Total

Mitigation Within Blaine County
Same as Irrigation

Rights 37-483D and 37-577BP when combined are limited to the irrigation of 523.0 acres within the place of use described above in a single irrigation season.
Rights 37-481D, 37-462J, 37-493D, 37-577BP, 37-917, 37-11975, 37-11976, 37-11977, 37-11978, 37-2713, and 37-7356 when combined shall not exceed the irrigation of 596 acres.

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. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

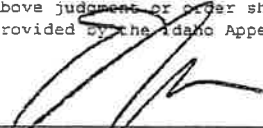

Eric J. Wildman
Presiding Judge of the
Snake River Basin Adjudication

EXHIBIT 4

ORIGINAL

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

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

United States Department of Justice
Environment & Natural Resources Div.
550 West Fort Street, MSC 033
Boise, ID 83724

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
AUG 26 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	)	
	)	
	)	FINAL UNIFIED DECREE
Case No. 39576	)	
	)	
_____	)	

I. PROCEDURE

On June 17, 1987, the State of Idaho, ex rel. A. Kenneth Dunn in his official capacity as Director of the Idaho Department of Water Resources, filed a petition in the above-entitled Court seeking commencement of a "general adjudication inter se of all rights arising under state or federal law to the use of surface and ground waters from the Snake River basin water system and for the administration of such rights." *Petition* at 2. On November 19, 1987, this Court issued its *Commencement Order* thereby initiating the above-entitled general stream adjudication of all rights to the use of the waters of the Snake River Basin within the State of

land of the United States Department of Interior, Bureau of Land Management for each basin wholly or partly within the water system.

8. The Director has completed an examination of the Snake River Basin water system and submitted Director's Reports to this Court in conformance with the requirements of chapter 14, title 42, Idaho Code and the orders of this Court.

9. As required by title 42, chapter 14, Idaho Code and this Court's orders, claims to water rights arising under state or federal law to the use of the surface and ground waters from the Snake River Basin water system have been adjudicated resulting in the issuance of partial decrees that have been certified as final pursuant to I.R.C.P. 54(b).²

10. Idaho Code § 42-1412(8) (2003) provides that: "Upon resolution of all objections to water rights acquired under state law, to water rights established under federal law, and to general provisions, and after entry of partial decree(s), the district court shall combine all partial decrees and the general provisions into a final decree." The Court finds that the conditions of Idaho Code § 42-1412(8) (2003) have been met with respect to the water rights identified in Attachments 2, 4, 5 and 6 and the general provisions in Attachment 3, enabling the Court to issue this Final Unified Decree.

III. CONCLUSIONS OF LAW

1. The SRBA is a general stream adjudication *inter se* of all water rights arising under state or federal law to the use of surface and ground waters from the Snake River Basin water system and for the administration of such rights.

2. The State of Idaho is a party to this proceeding.

² At the time of entry of this Final Unified Decree there are a total of 103 subcases pending final resolution. A separate *Order Regarding Subcases Pending Upon Entry of Final Unified Decree* is being entered contemporaneously herewith, which provides for the continued processing of the subcases listed therein.

11. Claimants in each of the SRBA basins received notice of the commencement of the SRBA in accordance with chapter 14, title 42, Idaho Code and orders of this Court. These notice procedures satisfy constitutional due process requirements. *LU Ranching Co. v. U.S.*, 138 Idaho 606 (2003).

IV. ORDER

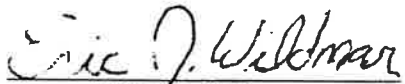
NOW THEREFORE this Court ORDERS, ADJUDGES AND DECREES as follows:

1. This Final Unified Decree is conclusive as to the nature and extent of all water rights within the Snake River Basin within the State of Idaho with a priority date prior to November 19, 1987, except the following described water rights shall not be lost by failure to file a notice of claim, as provided in Idaho Code § 42-1420 (2003):

- a. Any domestic and stock water right, as defined in Idaho Code § 42-111 (1990), Idaho Code § 42-1401A(5) (1990), and Idaho Code § 42-1401A(12) (1990), the adjudication of which was deferred in accordance with this Court's June 28, 2012, *Order Governing Procedures in the SRBA for Adjudication of Deferred De Minimis Domestic and Stock Water Claims*;
- b. A water right application for permit filed under chapters 2 or 15, title 42, Idaho Code;
- c. A water right permit issued under chapters 2 or 15, title 42, Idaho Code, unless the Director required the permit holder to file a notice of claim in accordance with subsection (7) of section 42-1409, Idaho Code;
- d. A water right license issued under chapters 2 or 15, title 42, Idaho Code, if proof of beneficial use was not filed with the Department of Water Resources

Attachments other than Attachments 7 and 8 in the office of the county recorder of each county in which the place of use or point of diversion of any individual decreed water right in the Final Unified Decree is located. The Director shall maintain a copy of the Final Unified Decree for public inspection.

DATED this 25th day of August, 2014.


ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication