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DEPARTMENT OF
WATER RESOURCES

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

FEB 15 2008

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

By

Clerk

Deputy Clerk

In Re SRBA

Case No. 39576

) ORDER OF PARTIAL DECREE, *NUNC*
) *PRO TUNC*, FOR IRRIGATION
) DELIVERY ENTITY USING DIGITAL
) BOUNDARY DESCRIPTION; I.C. §§ 42-
) 202B(2), 42-219(2), 42-1411(2)(h)
)
) For Water Right: 29-11773
) (Dempsey and Topaz Irrigation Co.)
)
)

I.

FINDINGS AND CONCLUSIONS

1. The above-captioned water right is one of the thirty-four water rights that are subject to the *Portneuf River Settlement Agreement* filed on April 22, 2005, and the *Addendum Agreement* filed December 17, 2007. On February 10, 2006, a *Special Master's Report and Recommendation* was filed for the above-captioned water right in accordance with the *Portneuf River Settlement Agreement*. Thereafter *Partial Decrees* were issued for most but not all of the thirty-four water right claims. A *Partial Decree* had not yet been issued for the above-captioned water right claim. On March 23, 2006, a *Motion to Alter or Amend Order of Partial Decrees* was filed with respect to the *Portneuf River Settlement Agreement* and included all thirty-four claims. As a result outstanding *Partial Decrees* subject to the *Agreement* were not issued. On December 17, 2007, this Court entered an *Order Dismissing Motion to Alter or Amend Partial Decrees and Amending Partial Decrees to Include Addendum Agreement to Prior Portneuf River Settlement Agreement* but overlooked issuing the remaining *Partial Decrees*. Therefore it is the intent of the Court to issue the *Partial Decree nunc pro tunc* to December 17, 2007, to correct the oversight.

2. The above-captioned water right is for an irrigation purpose of use and satisfy one of the following statutory criteria: (1) used in conjunction with an irrigation project where the canals constructed cover an area of twenty-five thousand (25,000) acres or more; (2) the place of use for the water rights is located within an irrigation district organized pursuant to the laws of the state of Idaho; or (3) the water rights are for an irrigation project developed by an association, company, corporation or the United States to divert and deliver or distribute surface water under any annual charge or rental for beneficial use by more than five (5) water users in an area less than twenty-five thousand (25,000) acres.

3. Effective July 1, 2002, the Idaho Legislature approved the use of a Geographic Information System (GIS) for describing the place of use (digital boundary) for water rights meeting the above-stated criteria. See I.C. §§ 42-219(2)(2003) and 42-1411(2)(h)(2003). The GIS mapping technology allows the geographic area encompassing the place of use for a water right to be particularly identified and visually displayed in a map overlay format through the aid of computer technology. In incorporating a digital boundary into a partial decree, the electronic or digital data is what is actually decreed as opposed to the visually displayed map ultimately generated from the data. The data is stored on a CD-ROM. The Court finds that the GIS mapping technology maintained by IDWR complies with the standards for spatial accuracy set forth in I.C. § 42-202B (2)(2003). See *Notice of Filing Affidavit of Michael Ciscell Re: Digital Boundary, filed October 17, 2003*.

II. ORDER

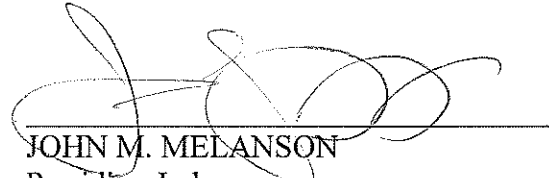
1. Therefore, IT IS ORDERED that the above-captioned water right is hereby **decreed** as set forth in the attached ***Partial Decree Pursuant to I.R.C.P. 54(b)***. This **Order** is being entered *nunc pro tunc* to December 17, 2007.

2. IT IS FURTHER HEREBY ORDERED that the data comprising the digital boundary shall be stored on a CD-ROM medium, which shall be issued in duplicate original. The SRBA District Court will retain one original together with the original ***Partial Decree***, and IDWR will retain the other original. The map depicting the place of use attached to the ***Partial Decree*** is intended for illustrative purposes only.

3. IT IS FURTHER HEREBY ORDERED that upon request, the claimant can obtain a copy of the CD-ROM from IDWR at no cost, although GIS software will still be required to access the data. Subsequent administrative changes to the place of use shall also be stored in a digital format and kept on file and maintained by IDWR. IDWR shall maintain all computer software and/or hardware necessary for reducing the data to a usable format that is accessible to the general public, including access through the IDWR Internet website (www.idwr.state.id.us) or its successor Uniform Resource Locator (URL).

DATED

February 15, 2008.



JOHN M. MELANSON
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

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 29-11773

NAME AND ADDRESS: DEMPSEY IRRIGATION COMPANY
C/O EARL SMITH
PO BOX 235
LAVA HOT SPRINGS, ID 83246

TOPAZ IRRIGATION CO
C/O GENE FAGNANT
PO BOX 293
LAVA HOT SPRINGS, ID 83246

SOURCE: PORTNEUF RIVER TRIBUTARY: SNAKE RIVER

QUANTITY: 32.00 CFS

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED
DIVERSION RATE OF 39.5 CFS. COMBINED RIGHT NOS.: 29-36, 29-37
AND 29-11773.

PRIORITY DATE: 08/07/1932

POINT OF DIVERSION: T08S R38E S28 SWNESW Within Bannock County

PURPOSE AND

PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	09-16 TO 10-31	32.00 CFS

PLACE OF USE:

1429.8 ACRES TOTAL

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO
THE IRRIGATION OF A COMBINED TOTAL OF 1429.8 ACRES IN A SINGLE
IRRIGATION SEASON. COMBINED RIGHT NOS.: 29-36, 29-37, 29-180,
29-11773.

THE USE OF WATER UNDER THIS RIGHT DOES NOT INCLUDE A USE ON
FEDERAL PUBLIC LAND.

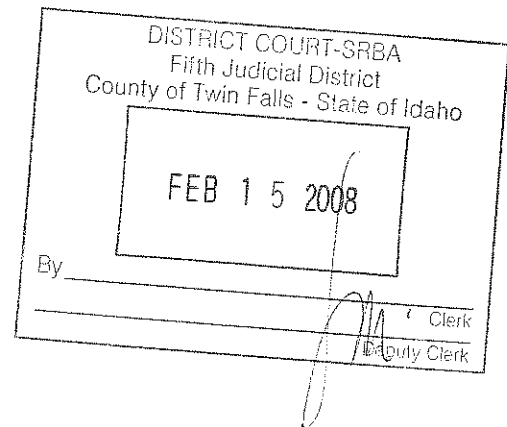
THE BOUNDARY ENCOMPASSING THE PLACE OF USE FOR THIS WATER RIGHT
IS DESCRIBED WITH A DIGITAL BOUNDARY AS DEFINED BY I.C. SECTION
42-202B(2) AND AUTHORIZED PURSUANT TO I.C. SECTION 42-1411 (2) (h)
THE DATA COMPRISING THE DIGITAL BOUNDARY ARE INCORPORATED HEREIN
BY REFERENCE AND ARE STORED ON A CD-ROM DISK 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.

Place of use is within the area served by the Dempsey
Irrigating Company.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

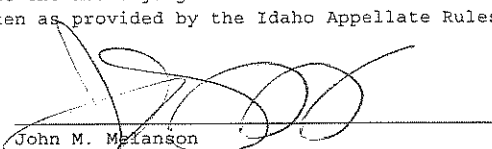
THE OPERATION AND ADMINISTRATION OF THIS WATER RIGHT IS
SUBJECT TO THE TERMS AND CONDITIONS OF THE PORTNEUF RIVER
SETTLEMENT AGREEMENT, BASIN 29: PORTNEUF RIVER FILED WITH THE
SRBA DISTRICT COURT APRIL 22, 2005 AND THE ADDENDUM TO THE
AGREEMENT FILED DECEMBER 17, 2007.

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.



John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

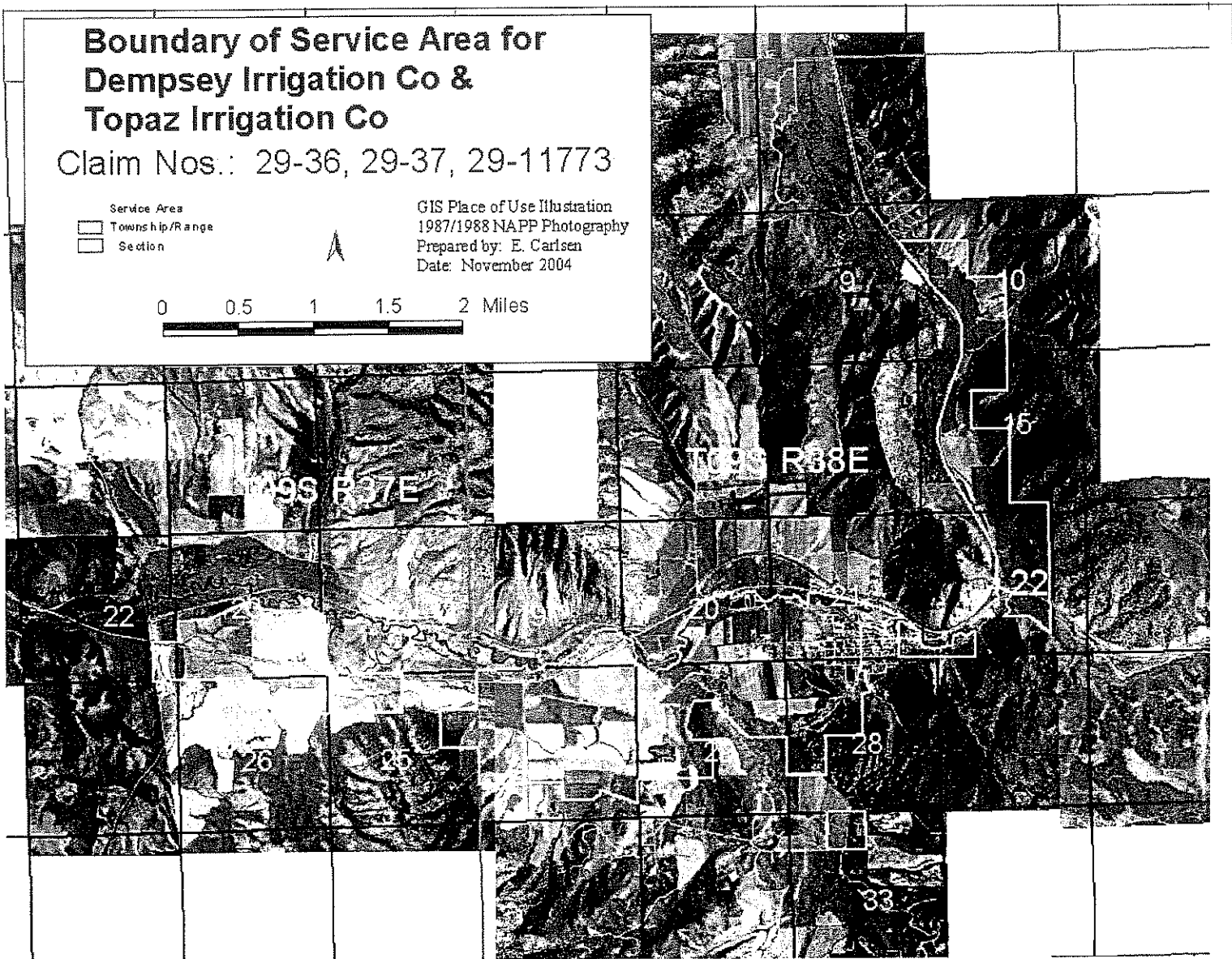
Boundary of Service Area for Dempsey Irrigation Co & Topaz Irrigation Co

Claim Nos.: 29-36, 29-37, 29-11773

Service Area
Township/Range
Section

GIS Place of Use Illustration
1987/1988 NAPP Photography
Prepared by: E. Carlsen
Date: November 2004

0 0.5 1 1.5 2 Miles



CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER OF PARTIAL DECREE, NUNC PRO TUNC, FOR IRRIGATION DELIVERY ENTITY USING DIGITAL BOUNDARY DESCRIPTION was mailed on February 15, 2008, with sufficient first-class postage to the following:

MARSH VALLEY DEVELOPMENT INC

Represented by:
RANDALL C BUDGE
201 E CENTER, STE A2
PO BOX 1391
POCATELLO, ID 83204-1391
Phone: 208-232-6101

USDI BLM

Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

DEMPSEY IRRIGATION COMPANY

C/O EARL SMITH
PO BOX 235
LAVA HOT SPRINGS, ID 83246
Phone: 208-776-5348

TOPAZ IRRIGATION CO

C/O GENE FAGNANT
PO BOX 293
LAVA HOT SPRINGS, ID 83246
Phone: 208-776-5280

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.