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DEC 13 1996

Department of Water Resources

DEC 12 AM 11:22

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

) ORDER OF PARTIAL DECREE

) For Water Right 34-10167

On October 8, 1996, a *Special Master's Report and Recommendation* was filed for the above water right. No Challenges were filed to the *Special Master's Report and Recommendation* and the time for filing Challenges has now expired.

Pursuant to I.R.C.P. 53(e)(2) and *SRBA Administrative Order 1*, Section 14a, this court has reviewed the Findings of Fact and Conclusions of Law contained in the *Special Master's Report* and wholly adopts them as its own.

Therefore, IT IS ORDERED that water right 34-10167 be decreed as set forth in the attached *Partial Decree Pursuant to I.R.C.P. 54(b)*.

DATED December 12, 1996.


DANIEL C. HURLBUTT, JR.
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

DEC 12 AM 11-

In Re SRBA)
Case No. 39576)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 34-10167

DISTRICT COURT
TWIN FALLS CO. ID.
FILED _____

NAME & ADDRESS: HERB WHITWORTH
STAR ROUTE
MACKAY ID 83251

SOURCE: THOUSAND SPRINGS CREEK TRIBUTARY: BIG LOST RIVER

QUANTITY: 6.34 CFS

THE APPROPRIATOR IS ENTITLED TO THE QUANTITY OF WATER
DESCRIBED FOR STOCK WATER PURPOSES AT A POINT OF MEASUREMENT
WHERE THE DELIVERY DITCH ENTERS THE PLACE OF USE DESCRIBED, SO
LONG AS THE QUANTITY DIVERTED AT THE POINT OF DIVERSION DOES NOT
CONSTITUTE UNREASONABLE WASTE.

THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE
SHALL NOT EXCEED 13,000 GALLONS PER DAY.

USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 31.44 CFS.

COMBINED RIGHT NOS.: 34-00755, 34-00757, 34-00758, 34-00766,
34-10164, 34-10167, 34-00363, 34-00364, 34-00760, 34-00764,
34-10166, 34-10165

PRIORITY DATE: 04/15/1890

POINT OF DIVERSION: T08N R22E S03 LOT 2 (SENNW) Within CUSTER County
T09N R22E S34 SWSNW

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	IRRIGATION	Irrigation Season	6.34 CFS
	STOCKWATER	01-01 12-31	0.02 CFS

PLACE OF USE:	IRRIGATION	Within CUSTER County			
	T08N R22E S02	Lot 4 (NWNW) 31.0	SWNW 40.0	NESW 20.0	NWSW 9.0
		SESW 3.0			
	S03	Lot 1 (NENE) 39.0	Lot 2 (NWNW) 12.0	SWNE 6.0	SENE 29.0
	T09N R22E S34	SWSE 16.0	SESE 17.0		
	222.0 ACRES TOTAL				

USE OF THIS RIGHT WITH RIGHTS LISTED ABOVE IN QUANTITY IS
LIMITED TO TO THE IRRIGATION OF A COMBINED TOTAL OF 786 ACRES IN
A SINGLE IRRIGATION SEASON.

Place of use for STOCKWATER is same as IRRIGATION

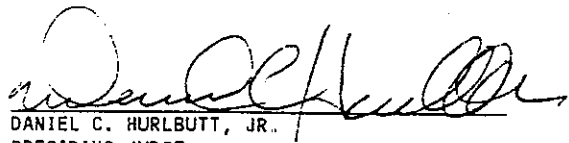
CONSUMPTIVE USE:

USE OF THIS RIGHT WITH RIGHTS LISTED ABOVE IN QUANTITY IS
LIMITED TO A COMBINED CONSUMPTIVE USE VOLUME OF 1965.0 AF.

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

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR
STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL
USE.

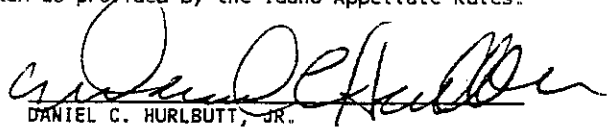
DATED: Dec 12, 1996


DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

RULE 54(b) CERTIFICATE

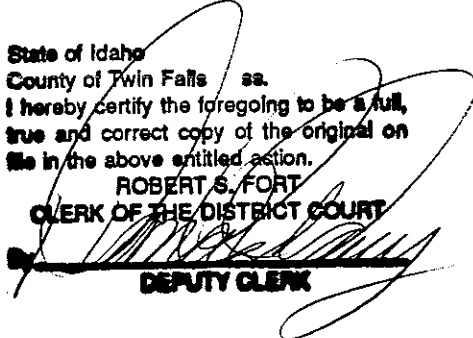
With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment 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.

DATED: Dec 12, 1996


DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

State of Idaho
County of Twin Falls ss.
I hereby certify the foregoing to be a full,
true and correct copy of the original on
file in the above entitled action.

ROBERT S. FORT
CLERK OF THE DISTRICT COURT


DEPUTY CLERK

DEC 12 AM 11: 22
DISTRICT COURT-5
TWIN FALLS, IDAHO
FILE

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

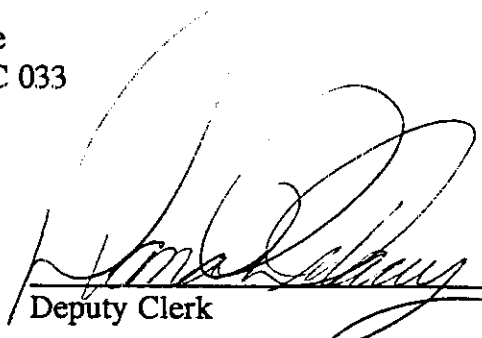
In Re SRBA	)	CERTIFICATE OF MAILING
	)	
Case No. 39576	)	For Water Right 34-10167
_____	)	

I certify that a true and correct copy of the *Order of Partial Decree for Water Right 34-10167* and *Partial Decree Pursuant to I.R.C.P. 54(b) for Water Right 34-10167* were mailed on December 12, 1996 with sufficient first-class postage prepaid to the following:

Director of IDWR
P.O. Box 83720
Boise, ID 83720-0098

P U Ranch
4500 Imperial Avenue
San Diego, CA 92113

U.S. Department of Justice
550 West Fort Street, MSC 033
Boise, ID 83724



Deputy Clerk

A. LYNNE KROGH
MATT J. HOWARD
Deputy Attorneys General
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098
Telephone: (208) 327-7900
FAX: (208) 327-7866

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DEC 14 1995

Department of Water Resources

Attorneys for IDWR

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	)	Subcase No. 34-10167
	)	
	)	JOINT PRETRIAL
Case No. 39576	)	STIPULATION
	)	
	)	

DESCRIPTIVE SUMMARY

Pursuant to the Special Master's order of November 30, 1995, the claimant, Herb Whitworth, the objector, United States, and IDWR submit this Joint Pretrial Stipulation for the above-referenced subcase.

STIPULATIONS TO ADMISSIONS OF FACT

The parties and IDWR stipulate to the following admissions of fact:

1. There is sufficient evidence of beneficial use to establish a priority date of April 15, 1890, for this water right.¹

¹ The parties and IDWR do not intend this stipulation of fact to resolve the issue regarding the correct priority date. The court must still determine whether the Utah Constr. Co. v. Abbott Decree bars a priority date earlier than March 16, 1923, for this water right. If the court finds that the Abbott Decree

1 - JOINT PRETRIAL STIPULATION



2. The claimant, Herb Whitworth, is a party in privity to the Utah Constr. Co. v. Abbott Decree.

STIPULATIONS TO THE ADMISSIBILITY OF EVIDENCE

The parties and IDWR stipulate to the admissibility of the following evidence to be offered by IDWR:

1. Certified copy of IDWR Claims Investigation Manual;
2. Certified copy of IDWR Adjudication Memorandum no. 14;
and
3. Certified copy of the Utah Constr. Co. v. Abbott Decree.

The parties, however, intend their stipulation to the admissibility of the above-listed evidence to apply to this subcase only. They reserve the right to object to the admissibility of this evidence in other subcases.

The parties and IDWR stipulate to the admissibility of the following evidence to be submitted by the claimant, Herb Whitworth: Copy of a Stipulation signed by the Utah Construction Company and Thousand Springs Land and Irrigation Company.

does not apply, then based on the above stipulation of fact, the parties and IDWR agree that the priority date should be April 15, 1890, based on evidence of beneficial use submitted to IDWR by the claimant.

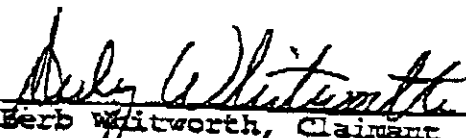
EVIDENCE NOT STIPULATED TO

The following evidence to be offered by IDWR has not yet been stipulated to by the parties:

1. Map of the Big Lost River Valley; and
2. Map of place of use for water right no. 34-10167.


Lynne Krogh, Marc J. Howard
Deputy Attorney General
Idaho Department of Water Resources

12/4/95
Date


Herb Whitworth, Claimant

12/4/95
Date


William M. Ferry, Esq.
United States Department of Justice

12/4/95
Date

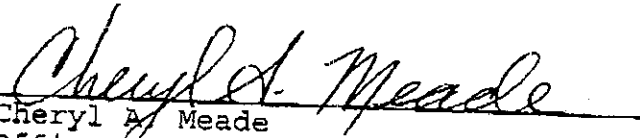
CERTIFICATE OF SERVICE

I certify that on Dec. 14th, 1995, I served true and copies of the following described document on the persons listed below by facsimile:

DOCUMENT SERVED: Joint Pretrial Stipulation

PERSONS SERVED: Herb Whitworth
c/o Westone Bank
Mackay, ID 588-3076

Lynne Krough/ Matt J. Howard
Deputies Attorney General
Idaho Dept. of Water Resources
327-7866


Cheryl A. Meade
Office of the Field Solitictor