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Documents
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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP

RECEIVED

AUG - 9 2002 *K*

Department of Water Resources

Please print or type. Attach pages with additional information. Instructions are included at the end of this form.
 Incomplete forms will be returned.

1. Please list the water right number(s) and/or adjudication claim number(s) (if any) for each water right to be changed. List just the adjudication claim number if there is no corresponding water right record on file with the department. Indicate, by checking in the space provided (under the "split" heading), if the change in ownership is limited to a portion of a water right in which case division of the existing water right or adjudication claim record will be required.

Water Right No(s).	Adjudication Claim No(s).	Split	Water Right No(s).	Adjudication Claim No(s).	Split
<u>36-7284</u>	_____	<u>✓</u>	_____	_____	_____
<u>36-7799</u>	_____	<u>—</u>	_____	_____	_____
<u>36-7208</u>	_____	<u>—</u>	_____	_____	_____
<u>36-6190</u>	_____	<u>—</u>	_____	_____	_____
_____	_____	_____	_____	_____	_____

2. The following **REQUIRED** information must be submitted with this form:

- A. The appropriate **FILING FEE**. See instructions for fee amounts.
- B. A copy of the most recent **DEED, TITLE POLICY, CONTRACT OF SALE** or other legal document indicating your ownership of the property and water right(s) or claim(s) in question, **WITH ATTACHED LEGAL DESCRIPTION**.
- C. Either of the following (if necessary to clarify division of water rights or other complex property descriptions):
PLAT OF PROPERTY or **SURVEY MAP** clearly showing the location of the point(s) of diversion and place of use of your water right(s) and/or adjudication claim(s) (these are usually attached to your deed or on file with the county).

OR

If your water right(s) and/or adjudication claim(s) is for ten or more acres of irrigation, you must submit a USDA Farm Service Agency **AERIAL PHOTO** with the irrigated acres outlined and point(s) of diversion clearly marked. The **AERIAL PHOTO** should be submitted in place of the **PLAT OF PROPERTY** or **SURVEY MAP**.

3. Name and Address of Former Owner/Claimant(s) McCond Family Partnership
3415 S 2400 E, Jerome, ID 83338
4. New Owner/Claimant(s) Hill & or Ann Brundage
 Name Connector (Check one): ☐ and, ☐ or, ☐ and/or
- New Mailing Address 2250 E 3200 S
- City, State and ZIP Code Wendell, ID 83355
- New Telephone Number (208) 404-7501
5. Date you acquired the property _____

See file 36-16083 for support documentation

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6. If the change in ownership affects the entire water right for each water right or adjudication claim number listed in item 1, THEN SKIP THIS ITEM AND GO TO ITEM 7. If the change in ownership divides the water right(s) among multiple owners, you must describe, in detail, your portion of each water right after the change. Fill in the appropriate spaces in the box(es) below to describe your water right(s) after the change (one water right per box, you may copy this page as necessary). If your quantity of water is greater than a proportionate split, you must attach documentation to show justification for a larger amount. If you are not sure how to identify your portion of the original water right or adjudication claim records, please contact the nearest IDWR office for assistance.

DESCRIPTION OF YOUR PORTION OF WATER RIGHT (If the right(s) will not be split, skip this area and proceed to item 7)		
Water Right and/or Adjudication Claim Number <u>36-7284</u>		
Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation	<u>2.89 cfs</u>	<u>795.2 ac</u>
Stock		<u>178.8 ac (see attached)</u>
Domestic		
Other		
Total	<u>2.89 cfs (3.01 cfs when combined with 36-7799)</u>	

DESCRIPTION OF YOUR PORTION OF WATER RIGHT (If the right(s) will not be split, skip this area and proceed to item 7)		
Water Right and/or Adjudication Claim Number _____		
Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation	_____	_____
Stock	_____	_____
Domestic	_____	_____
Other	_____	_____
Total	_____	

7. Signature of New Owner(s) or Claimant(s)
(include title if applicable)

Phil A. Anderson

For Snake River Basin Adjudication Claims: Please attach a Notice of Appearance completed by your attorney, if you wish IDWR to correspond with him/her for all matters related to your claims.

For Office Use Only

Received by js Date 8-8-02 Fee \$125.
 Received by js Date 8-8-02 Receipt No. 5025154
 Processed by _____ AJ Date _____ WR _____ Date _____

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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

**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

) Subcases: 36-8139 and 36-8140
)
) **ORDER ON COURT'S MOTION TO**
) **ALTER OR AMEND JUDGMENT;**
) **I.R.C.P. 59(e)**
)
) **ORDER RESCINDING AMENDED**
) **PARTIAL DECREE FOR WATER**
) **RIGHT 36-8139**

On June 18, 2002, a hearing was held regarding the above-captioned water rights.¹ The purpose of the hearing was to determine whether the water rights are properly subjected to the inclusion of a "13,000 gallon per day" limitation. At the hearing, Nick Spencer from IDWR provided comment to the Court regarding the limitation in these water rights pursuant to Judge Hurlbutt's ruling in Basin-Wide Issue 12. The Court also heard argument from the claimant, through its counsel, Jason Miciak, regarding whether the inclusion of this limitation was a result of a clerical error. Mr. Miciak also raised an argument that the claimants should be provided the relief sought due to a deficiency of notice arising from the fact that the limitation was not included in the Director's Reports for these water rights. Based upon the comments by Mr. Spencer, and the arguments presented by Mr. Miciak, the Court makes the following findings of fact and conclusions of law:

¹ Subsequent to the hearing, Mr. Miciak informally requested the Court to hold its decision in this matter pending settlement negotiations with IDWR. Mr. Miciak requested the opinion issue on August 2, 2002.

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Findings of Fact

1. Water right 36-8140 was licensed on October 16, 1990, with both a commercial and a stockwater purpose of use. Based upon the annual acre-foot volume limitation in the license, it is clear that the stockwater purpose of use in the license is **not** a *de minimis* stock watering use as defined in Idaho Code section 42-1401A(12), rather the quantity of the licensed stockwater right exceeds this statutory definition. This finding is consistent with the representations made by IDWR at the hearing.

2. Water right 36-8139 was licensed on October 16, 1990, with both a domestic and a stockwater purpose of use. Based upon the annual acre-foot volume limitation in the license, it is clear that the stockwater purpose of use in the license is a *de minimis* stock watering use as defined in Idaho Code section 42-1401A(12). This finding is also consistent with the representations made by IDWR.

3. The Director's Report for Basin 36 does not include a "13,000 gallon per day" limitation for any water right reported therein, including the subject water rights. The Department of Water Resources began including the limitation after Special Master Haemmerle issued a *Special Master's Second Amended Recommendation Re: Basin-Wide Issue 12* (August 12, 1996). Although there was a challenge to the Presiding Judge on Basin-Wide Issue 12, the Special Master's recommendation regarding the limitation at issue herein was not challenged.

4. A *Partial Decree* was issued for water right 36-8139 on December 13, 1996. A *Partial Decree* for water right 36-8140 was issued on January 15, 1998. Both *Partial Decrees* contained the "13,000 gallon per day" limitation. The claimant, the McCord Family Partnership, was timely served with copies of these *Partial Decrees*.

5. The claimant did not timely file for any post-judgment relief (e.g., a motion pursuant to I.R.C.P. 59(e)) with respect to any issue it had with the inclusion of the subject limitation, nor did the claimant timely file an appeal to the Idaho Supreme Court following the issuance of the *Partial Decrees*.

6. The *Order Designating Basin-Wide Issue 12* was issued by Judge Hurlbutt on April 5, 1996, and appeared on the Docket Sheet that was published in the first week of May 1996.

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Conclusions of Law

1. The stockwater portion of water right 36-8140 is not the type of stockwater right that should include a "13,000 gallon per day" limitation as contemplated in the *Memorandum Decision and Order Re: Basin-Wide Issue 12*. The inclusion of the limitation was the result of a clerical error caused by oversight or omission during the implementation of the order in Basin-Wide Issue 12. IDWR acknowledges the same.
2. The stockwater portion of water right 36-8139 is the type of stockwater right that should include a "13,000 gallon per day" limitation as contemplated in the *Memorandum Decision and Order Re: Basin-Wide Issue 12*. The inclusion of the limitation was not the result of a clerical error as alleged by the claimant.
3. The claimant was provided adequate notice, via service by mail, of the issuance of the respective *Partial Decrees* for these water rights.
4. The claimant was provided adequate notice, via the Docket Sheet, of the designation of Basin-Wide Issue 12. *See Memorandum Decision and Order on Motion to Set Aside Partial Decrees*, Subcases 55-02373 *et al.*, (LU Ranching Co.)(May 1, 2001).
5. The claimant had a duty to carefully review the *Partial Decrees* that were issued for these water rights and to timely seek relief, in accordance with the Idaho Rules of Civil Procedure, regarding any perceived errors in the judgment. No such relief was sought.

Order

The *Amended Partial Decree* issued for water right 36-8140 on May 21, 2002, correctly removed the "13,000 gallon per day" limitation from the stockwater portion of the water right, and hence no further action is required by the Court with respect thereto.

The *Amended Partial Decree* issued for water right 36-8139 on May 21, 2002 improperly removed the "13,000 gallon per day" limitation from the stockwater portion of the water right, and therefore, IT IS HEREBY ORDERED that the *Amended Partial*

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Decree is rescinded. The original ***Partial Decree*** for water right 36-8139, issued December 13, 1996, is reinstated.

Dated 8-2-02

R. Burdick

ROGER BURDICK
Presiding Judge
Snake River Basin Adjudication

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SEP 11 2002

CERTIFICATE OF MAILING

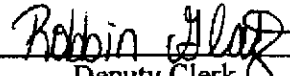
I certify that a true and correct copy of the ORDER ON COURT'S MOTION TO ALTER OR AMEND JUDGMENT; I.R.C.P. 59(e) was mailed on 8/2/02 with sufficient first-class postage to the following:

Director of IDWR
PO Box 83720
Boise, ID 83720-0098

Jason R. Miciak
PO Box 2632
Twin Falls, ID 83303-2632

U.S. Department of Justice
Environment & Natural Resources Div.
550 W Fort St., MSC 033
Boise, ID 83724

Chief, Natural Resources Div.
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, Idaho 83711-4449


Deputy Clerk

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202 MAY 21 AM 9:19

DISTRICT COURT-SRBA
TWIN FALLS CO. IDAHO
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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AMENDED

In Re SRBA)
Case No. 39576)
_____)

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

Water Right 36-08140

2002 MAY 21 AM 9:19

DISTRICT COURT-SRBA
TWIN FALLS, IDAHO
FILED RD RA

NAME AND ADDRESS: MC CORD FAMILY PARTNERSHIP
3415 S 2400 E
JEROME, ID 83338

SOURCE: GROUNDWATER

QUANTITY: 0.11 CFS
79.40 APY

PRIORITY DATE: 01/21/1983

POINT OF DIVERSION: T08S R16E S30 SENENE Within Gooding County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Stockwater	01-01 TO 12-31	0.11 CFS 20.00 APY
	Commercial	01-01 TO 12-31	0.11 CFS 59.40 APY

COMMERCIAL USE IS A DAIRY.

PLACE OF USE:	Stockwater	Within Gooding County
	T08S R16E S29	NWNW
	S30	NENE
	Commercial	Within Gooding County
	T08S R16E S30	NENE

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

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

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.

R. Burdick

Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

OCT 8 4 2002

2002 MAY 21 PM 02:00
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

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)
_____)

Water Right(s): 36-08140

CERTIFICATE OF MAILING

I certify that a true and correct copy of the PARTIAL DECREE
PURSUANT TO I.R.C.P. 54(b) for WATER RIGHT 36-08140 was mailed
on May 21, 2002, with sufficient first-class postage prepaid
to the following:

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

MC CORD FAMILY PARTNERSHIP
3415 S 2400 E
JEROME, ID 83338
Phone: 208-324-4071

ROBBIN GLATZ
Chief Deputy Clerk

CERTIFICATE OF MAILING
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PAGE 1
05/21/02

OCT 04 2002

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 36-08140

1990 JAN 15 PM 1:44

RECEIVED
JAN 15 1990
TWIN FALLS, IDAHO

NAME & ADDRESS: MC CORD FAMILY PARTNERSHIP
3415 S 2400 E
JEROME ID 83338

SOURCE: GROUNDWATER

QUANTITY: 0.11 CFS
79.4 AFY

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

PRIORITY DATE: 01/21/1983

POINT OF DIVERSION: T08S R16E S30 SENENE Within GOODING County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	STOCKWATER	01-01 12-31	0.11 CFS 20.0 AFY
	COMMERCIAL	01-01 12-31	0.11 CFS 59.4 AFY

COMMERCIAL USE IS A DAIRY.

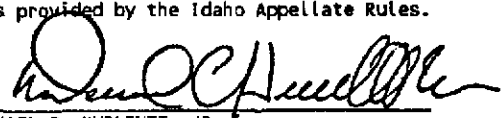
PLACE OF USE:	STOCKWATER	Within GOODING County
	T08S R16E S29	WNW
	S30	NENE
	COMMERCIAL	Within GOODING County
	T08S R16E S30	NENE

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.

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.


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

MICHAEL WED

OCT 9 4 2002



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

October 7, 2002

HILL BRANDSMA
ANN BRANDSMA
2250 E 3200 S
WENDELL ID 83355

RE: Change of Ownership for Water Rights 36-7208, 36-7799, 36-8140

Dear Water Right Holder(s):

The department acknowledges receipt of correspondence changing ownership of the above referenced water rights to you. The department has modified its records to reflect the changes in ownership and has enclosed computer-generated report for your records.

Please note that as of July 1, 1996, water right owners are required to report any change of water right ownership and any change of mailing address of the owner of a water right to the department. Notice of the change must be provided to the department within 120 days of the change. Change reporting forms are available from any office of the department.

Please feel free to contact this office if you have any questions regarding this matter.

Sincerely,

for 
Jeff Peppersack, Manager
Water Right Permits Section

JP:klt

Enclosures

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OCT 14 2002