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TWIN FALLS, IDAHO
11-SRBA

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 36-00071B**

On August 9, 2000, 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 13f, 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.

On August 2, 1999, in response to the Idaho Supreme Court decision in *A&B Irrigation District v. Idaho Conservation League*, 131 Idaho 411, 423, 958 P.2d 568, 580 (1998), IDWR filed a *Supplemental Director's Report, Reporting Area 3, IDWR Basin 36, Regarding Revision of Period of Use (For Irrigation Water Uses) and Conjunctive Management General Provisions* which included a recommendation for the irrigation season of use for this water right. No objections to this Supplemental Report were filed and the time period for filing objections has now expired.

Therefore, IT IS ORDERED that water right 36-00071B is hereby **decreed** as set forth in the attached *Partial Decree Pursuant to I.R.C.P. 54(b)*.

DATED Dec 13, 2000.



BARRY WOOD
Administrative District Judge and
Presiding Judge of the
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

200 DEC 13 AM 10:46
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
Case No. 39576) I.R.C.P. 54(b) FOR
) Water Right 36-000718

NAME AND ADDRESS: JUDY OSBORNE
LAYNE OSBORNE
966A JUSTICE GRADE
HAGERMAN, ID 83332

SOURCE: BILLINGSLEY CREEK TRIBUTARY: SNAKE RIVER

QUANTITY: 1.23 CFS

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

THE APPROPRIATOR IS ENTITLED TO THE QUANTITY OF WATER
DESCRIBED FOR STOCKWATER PURPOSES AT A POINT OF MEASUREMENT
WHERE THE DELIVERY DITCH ENTERS THE PLACE OF USE DESCRIBED.

USE OF THIS RIGHT WITH RIGHTS 36-00072, 36-00073, AND
36-00074 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF
1.29 CFS.

PRIORITY DATE: 06/26/1881

POINT OF DIVERSION: T07S R13E S11 NESENE Within Gooding County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	02-15 TO 11-30	1.21 CFS
	Stockwater	01-01 TO 12-31	0.02 CFS

PLACE OF USE: Irrigation Within Gooding County
 T07S R13E S11 NENE 23.5
 23.5 Acres Total

Stockwater Within Gooding County
 T07S R13E S11 NENE

USE OF THIS RIGHT WITH RIGHTS 36-00072, 36-00073 AND 36-00074
IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 23.5 ACRES
IN A SINGLE IRRIGATION SEASON.

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.

DUE TO LEAKAGE FROM THE DITCH BACK INTO THE CREEK IN THE
200 FEET OF DITCH IMMEDIATELY BELOW THE DIVERSION STRUCTURE,
MEASUREMENT OF THIS RIGHT SHALL BE BASED ON THE AMOUNT FLOWING
IN THE DITCH 200 FEET BELOW THE POINT OF DIVERSION.

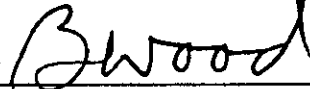
THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

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APR 2 2003

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.



Barry Wood
Administrative District Judge
Presiding Judge of the
Snake River Basin Adjudication

2000 DEC 13 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

Case No. 39576

CERTIFICATE OF MAILING

Water Right(s): 36-00071B

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 36-00071B was mailed
on December 13, 2000, with sufficient first-class postage prepaid
to the following:

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

NORTH SNAKE GROUND WATER DIST

Represented by:
DANA L. HOFSTETTER
PO BOX 1427
BOISE, ID 83701-1427
Phone: 208-388-8900

JUDY OSBORNE
LAYNE OSBORNE
Represented by:
PATRICK D. BROWN
109 S ADAMS ST
JEROME, ID 83338
Phone: 208-644-1967

DIANA DELANEY

Chief Deputy Clerk

CERTIFICATE OF MAILING

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PAGE 1
12/13/00



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

November 28, 2003

FILE COPY

Layne Osborne
966 Justice Grade
Hagerman, ID 83332

Re: Water Rights Nos. 36-00071B, 36-00072, 36-00073, and 36-00074

Dear Mr. Osborne:

I have reviewed your letter dated November 22, 2003, and I both appreciate and understand your frustration. There are many people, including myself, that are very concerned about the declining spring flows in the Thousand Springs area.

There is no single factor that is the cause for the declines in spring flows. While certain ground water diversions clearly affect discharges from springs in the Thousand Springs area, improvements in efficiencies of surface water irrigation have resulted in substantial reductions of recharge to the Eastern Snake Plain Aquifer ("ESPA") and these reductions in recharge are more significant than ground water diversions. With the further loss of recharge resulting from reduced surface water supplies during the last four consecutive years of drought, the discharge from many springs has declined to levels that have not been observed over the last decade or longer. Of course, this does not mean that you are not entitled to seek administration of water rights junior in priority to your 1881 rights.

I have enclosed print outs from our database for the four water rights held by you and Judy Osborne. All of the rights authorize the irrigation of certain lands through November 30 of each year. Since the irrigation season is essentially over, a delivery call for distribution of water for irrigation uses under your rights is not practical. However, as you describe in your November 22 letter, each of your four water rights also authorize year-round uses for stockwater and two of your water rights, water rights nos. 36-00073 and 36-00074, authorize year-round use for domestic purposes.

Water right no. 36-00071B authorizes year-round diversion of 0.02 cfs from Billingsley Creek for stockwater. In your letter, you did not describe the supply of water available for this right. Consequently, I presume that the flow of water in Billingsley Creek is adequate to fill this right.

Water right no. 36-00072 authorizes year-round diversion of 0.02 cfs from what's called "Spring No. 1" for stockwater. Again, you did not describe the supply of water available for this

Layne Osborne
November 28, 2003
Page 2 of 2

right in your letter. Therefore, I also presume that the flow of water from this spring is adequate to fill this right.

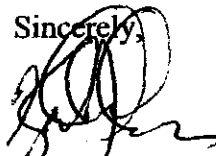
Water right no. 36-00073 authorizes the year-round diversion of 0.04 cfs for stockwater and 0.04 cfs for domestic purposes, as required to satisfy both uses but not to exceed 13,000 gallons per day, from what's called "Spring No. 2." If this spring is discharging 10 gpm or 0.02 cfs, as you described in your letter, it may still be sufficient to provide the maximum authorized volume of 13,000 gallons per day even though the spring discharge may be less than the maximum diversion rate authorized. Consequently, more information is needed concerning use of water under this right.

Water right no. 36-00074 authorizes the year-round diversion of 0.04 cfs for stockwater and 0.04 cfs for domestic purposes, as required to satisfy both uses but again not to exceed 13,000 gallons per day, from two sources called "Spring" and "Spring No. 3." As for water right no. 36-00073, the spring discharge of 0.04 cfs that you described in your letter may still be sufficient to provide the maximum authorized volume of 13,000 gallons per day even though the spring discharge may be less than the maximum diversion rate authorized. Again, more information is needed concerning use of water under this right.

Lastly, you have asked for information about how to make a "CALL ON WATER." I have enclosed a copy of rules promulgated by the Department of Water Resources in 1994 and affirmed by the legislature captioned "Rules for Conjunctive Management of Surface and Ground Water Resources." These rules are applicable in all instances where a delivery call is made by the holder of a senior priority surface or ground water right against the holder(s) of junior priority ground water rights. Rule 30 applies to delivery calls against the holder(s) of junior priority ground water rights that are not in an organized water district, and Rule 40 applies to delivery calls against the holder(s) of junior priority ground water rights that are in an organized water district. There is an organized water district, Water District No. 130, on the ESPA immediately above the Thousand Springs area.

If you wish to pursue this matter further, I would suggest that you contact Cindy Yenter, the watermaster for Water District No. 130. Ms. Yenter can be reached at the Department's regional office in Twin Falls, 1341 Filmore Street, Suite 200, telephone no. (208) 736-3033.

Sincerely,



Karl U. Dreher
Director

Enclosures (5)
copy w/o enclosures to: Cindy Yenter – IDWR, Twin Falls

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"Genuine Idaho"

RECEIVED

NOV 25 2003

Department of Water Resources

Karl Dreher
Director, Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

FILE COPY

November 19, 2003

SeaPac of Idaho owns and operates the Magic Springs Fish Hatchery and holds the following water right numbers associated with this property: 36-7072 (Priority Date of 9/5/69), 36-7866 (Priority Date of 7/11/79) and 36-8356 (Priority Date of 5/9/88). Spring flow rates from the Thousand Springs area have declined substantially from originally recorded flow rates and the Magic Springs facility is currently operating at 70% of its licensed flow. Spring flow reductions in the Thousand Springs Reach occurred during the same period of time that significant ground water pumping capacity was being developed across the Eastern Snake Plain Aquifer.

SeaPac of Idaho cooperated with IDWR wishes and was a signatory to the Interim Stipulated Agreement for the past two years while the Idaho Department of Water Resources was to study the issue. SeaPac of Idaho now believes the IDWR has had time to study this issue and it is time for the Department to take those actions required to protect the rights of the senior priority surface water rights holders in the Thousand Springs Reach.

SeaPac of Idaho has reviewed the Preliminary Mitigation Plan of North Snake Ground Water District and Magic Valley Ground Water District as submitted to your Department and dated October 9, 2003. We believe the Mitigation Plan as written only extends the period of time senior priority water right holders must endure without any option to protect their water rights by making a call as allowed for under Idaho law. The Mitigation Plan offers no realistic remedy to senior priority water right holders in the form of meaningful improvements to spring flows, nor does it offer any financial redress for the loss of business operations to senior priority holders while at the same time allowing unabated operation of businesses holding junior priority water rights.

It is now time for the Idaho Department of Water Resources to step forward and take those actions required to remedy the damage being done to senior priority water right holders by junior priority ground water users on the Eastern Snake Plain Aquifer.

Gary Marquardt

Operations Manager

idwr1103

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SeaPac of Idaho

PO Box 544, Boise, Idaho 83720-0544

November 22, 2003

RECEIVED

NOV 24 2003

Department of Water Resources

Karl J. Dreher

Idaho Department of Water Resources

P.O. Box 83720

Boise, Idaho 83720-0098

FILE COPY

I am writing this letter because of my concern for my water rights which all date back to 1881. They are:

36-000²¹~~17~~B - 36-00072 - 36-00073 - 36-00074

Spring 35-00074 used to irrigate 35 acres with a 25-horse pump. When I bought my place on the Justice Grade, there was the 25 horse plus a 5 horse pump which was added in 1989 to bring water up from the John Bell Ditch to help supply water to the 25 horse pump. I sold the 25-horse pump, and bought the 5-horse pump to irrigate 8 acres that was all the spring could water at that time(1989). Now the spring cannot supply enough water for the 5-horse pump, so the 5-horse pump has been removed. The spring is only producing 20 g.p.m. now or .04 cfs. It has a right of .4 cfs for irrigation.

Spring 36-00073 is my domestic and stock water spring. It has a right of .04 cfs domestic, .04 cfs stock water and .2 cfs for irrigation. It has gone down drastically also. It actually lies above the 36-00074 springs. Higher the spring is the more significant the drop in flow is. It is flowing 10 g.p.m. or .022 cfs as of November 2003. Come next spring, as you know, the low time of the year, it will flow less than that.

My neighbors have all had to dig wells to replace the spring water they use for domestic. They are John Ward, Mildred Culbertson, Bob Hunt, Rudy Kipp and the Billingsley Creek Lodge all on the Justice Grade.

I am not receiving enough water in my spring to satisfy my domestic and stock water rights. I feel you have not done anything to help the springs. They just keep producing less. I'm tired of spending money because of my springs not producing what their rights call for. I bought this place for premium money because of these springs and their value. Therefore I would like to know how to make a **CALL ON WATER** for spring 36-00073 for my domestic and stock water. All my neighbors would like to know

where they stand also. Please respond immediately so if your response is not satisfactory I can make a CALL ON WATER before the New Year.

I feel I have suffered enough from your neglect in keeping these springs flowing adequately. So now I think you and the pumpers on top should address my situation.

Layne Osborne
966 Justice Grade

Hagerman, ID 83332

1-208-837-6332



① letter rec'd 11/20
response next
few days
