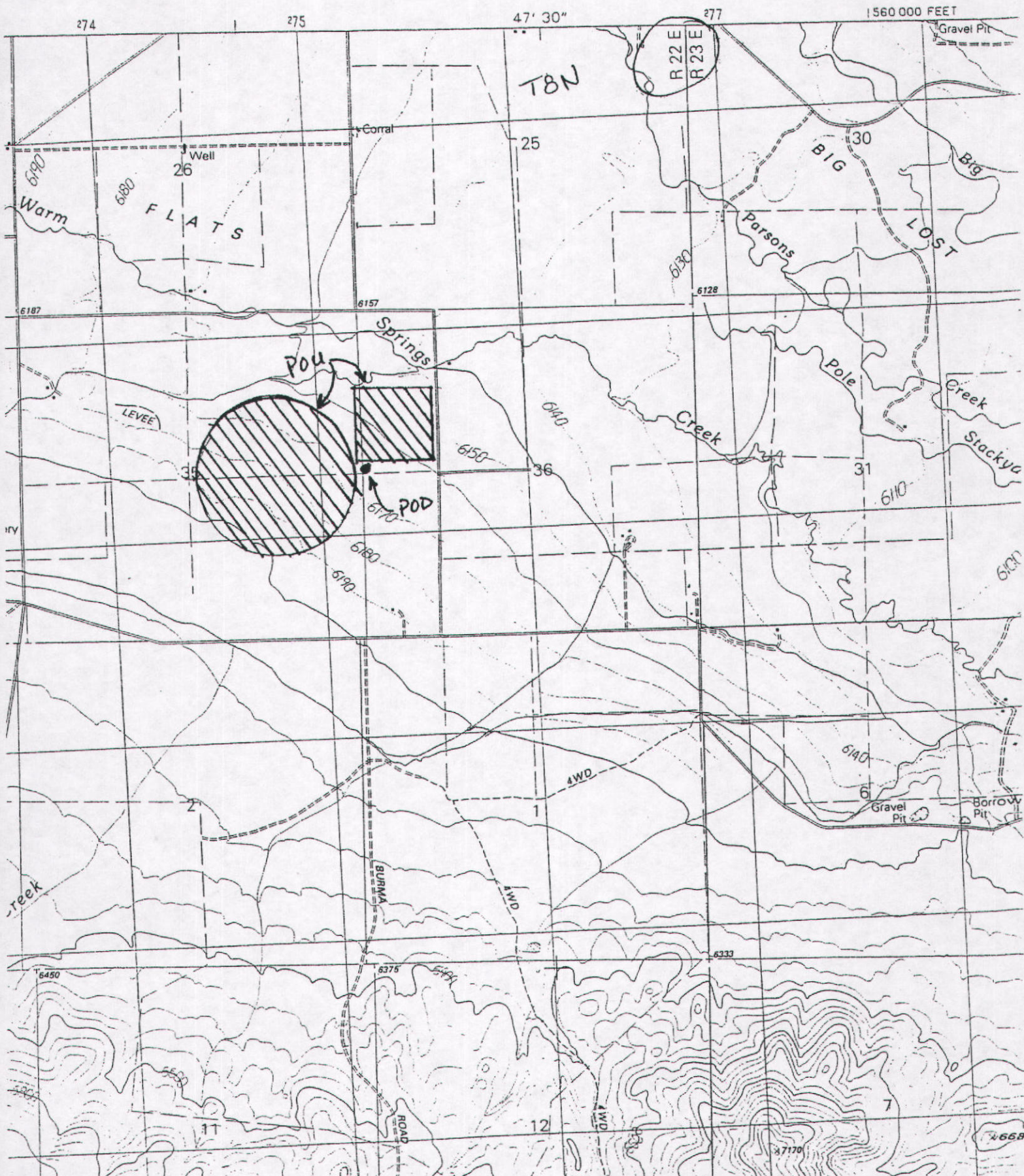




RECEIVED
JUN 30 2004
DEPARTMENT OF
WATER RESOURCESSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TEMPORARY CHANGE APPLICATION

RECEIVED
JUN 14 2004

(To change point of diversion, place of use or purpose of use)

Department of Water Resources
Eastern Region

Name of Applicant

Herb Whitworth

Phone

208-588-2820

Post Office Address

5425 Hi-Way 93 Macky, Id 83251

A. PURPOSE OF TRANSFER

- 1.
- ☐
- Change point of diversion
-
- ☐
- Change purpose of use

☒ Add diversion point(s)
☐ Other☐ Change place of use

2. Describe the proposed change(s) and the reason(s) thereof

Transferring 2.2 CFS out of River to Grand Water Pump listed below. With the connection of Lost River the priority of the pump is to take to us. Currently have a crop of Hay that could be lost without transfer.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
<u>34-10164</u>	<u>1875</u>	<u>2.2 CFS</u>	<u>Irrigation</u>	<u>5/1</u> to <u>10/15</u>
				to
				to
				to

2. Total amount of water being transferred
- 2.2
- cubic feet per second and/or _____ acre-feet per annum.

3. Source of water
- Grand Water
- tributary to _____

4. Point(s) of Diversion:

Ident No.	Lot	1/4	1/4	1/4	Sec	Twp	Rge	County	Local name for diversion
<u>Same as below - see Enclosed Map</u>									

5. Lands irrigated or place of use:

Twp	Rge	Sec	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
<u>8N</u>	<u>22E</u>	<u>35</u>			<u>31</u>	<u>31</u>									<u>31</u>	<u>31</u>			<u>124</u>
		<u>36</u>							<u>2.2</u>										<u>32.2</u>

Total Acres 156.2

6 General Information:

TC-34-49

- a. Who owns the water right to be changed? Self - Herb Whitworth
- b. Describe the arrangement allowing use of the right It is in my best interest to Transfer right as long as river stays connected
- c. Describe the affect on the land now irrigated if the change is approved pursuant to this application: Without the rest of my rights that are currently not on, this water does little or no good
- d. Has the water right sought to be transferred been used this year? yes If yes, explain. It was used on it's point of use and will be until Transfer is complete
- e. Absent the changes, how would the right be used for the remainder of the year? For Irrigation on it's original point of use.
- f. Describe other water rights used for the same purpose. I have numerous water rights with later priorities with the same P.O.U.
- g. Remarks: As long as lost river is connected, this water will be put to better use with the Transfer. When River Breaks the Pumps Priority will come back on allowing the use of it's Priority and transferred water will go back to where it can be used efficiently.
- I hereby assume all risk in accordance with Section 42-222A, Idaho Code, and assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in voiding its approval.

Herb Whitworth
(Signature of applicant)

FOR DEPARTMENT USE ONLY

Received by KCW Date 6.14.04 Fee 50⁰⁰

Receipted KCW # EO 29913 Recommend: ☒ approve ☐ deny

Watermaster recommendation _____

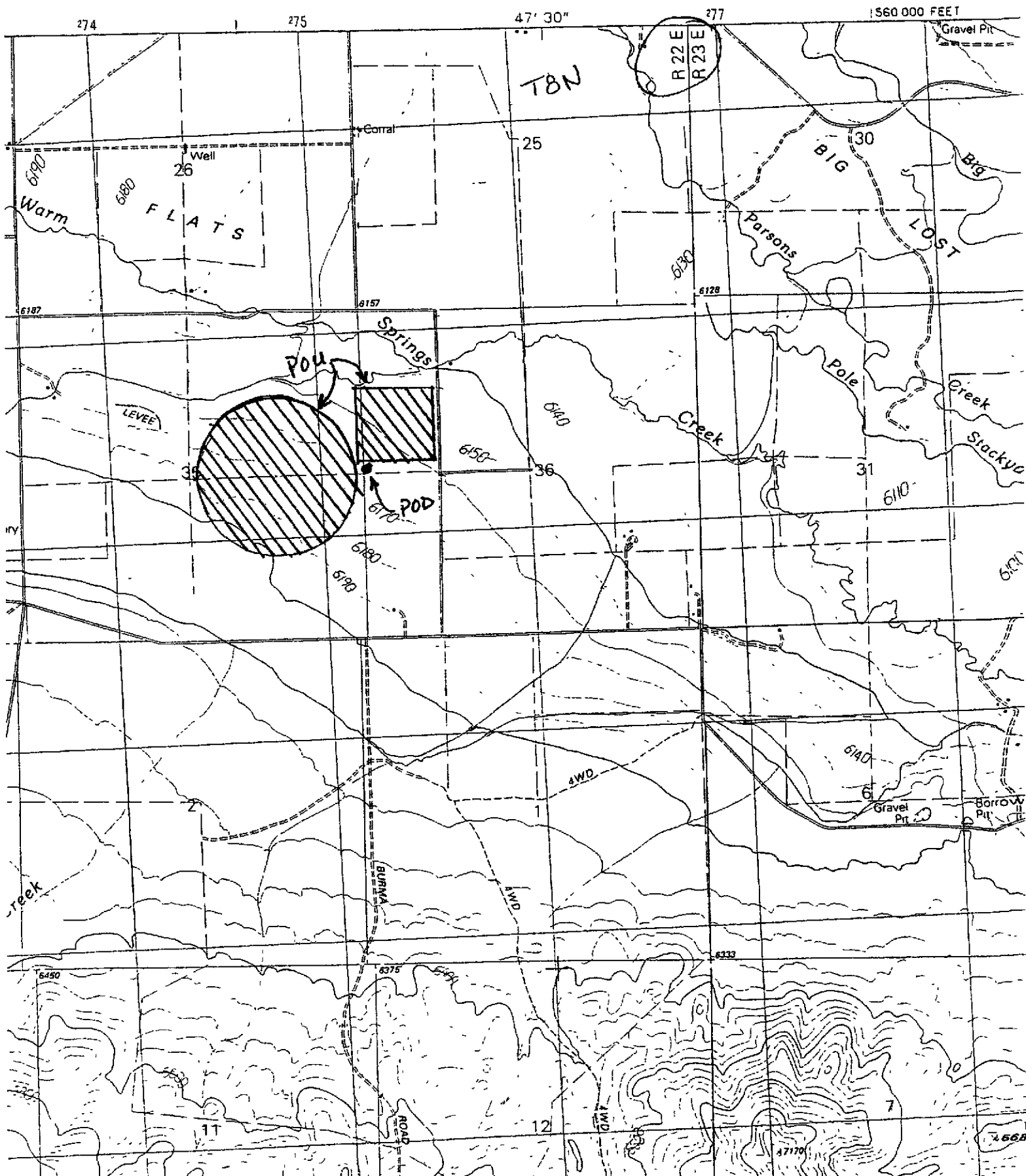
ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Temporary Change Application No. TC-34-49

And said application is hereby DENIED, subject to the following limitations and conditions:

Witness my hand this 23rd day of June 2004:

[Signature]
For the Director



BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TEMPORARY CHANGE OF WATER RIGHT)
IN THE NAME OF Herb Whitworth)
34-10164)
_____)

Order
DENYING
TEMPORARY CHANGE
TC - 34 - 49

WHEREAS, a drought emergency has been declared for Custer County to allow administrative actions to lessen the severe impacts of the drought conditions in the counties; and

WHEREAS, section 42-222A, Idaho Code, provides that upon declaration of a drought emergency, the director of the Department of Water Resources is authorized to allow temporary changes in the point of diversion, the place of use, and the purpose of use for valid existing water rights or temporary exchanges of water authorized under water rights when the director determines that such changes can be accomplished in accordance with the provisions of section 42-222A, *Idaho Code*; and

WHEREAS, on June 14, 2004, Herb Whitworth submitted the attached Temporary Application for Change of Water TC-34-49 to the Department; and

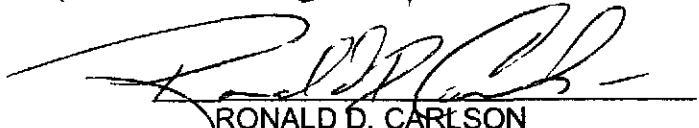
WHEREAS, the Department has reviewed the application and has determined the application **CANNOT** be approved for the following reasons;

ORDER

IT IS HEREBY ORDERED that the application is **DENIED** for the following reasons:

1. The proposed Temporary Change Application constitutes an enlargement of the water right described on the application
2. The proposed Temporary Change Application cannot be administered to prevent injury to other water users.
3. _____

DATED this 23rd day of June, 2004


RONALD D. CARLSON
EASTERN REGION MANAGER

Important Information About Your Water Right

December 14, 2001

HERB WHITWORTH
STAR ROUTE
MACKAY, ID 83251

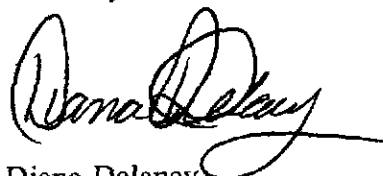
Dear Water Right Claimant(s):

The reverse side of this letter contains a copy of an ***Order Amending Irrigation Period of Use Element in Partial Decree, Nunc Pro Tunc*** (hereinafter "***Order***") for water right number 34-10164. According to Idaho Department of Water Resources (IDWR) records, you are the current owner of this water right. If you are not the current owner, please contact IDWR immediately at:

Idaho Department of Water Resources
1301 North Orchard
Boise, ID 83706
800-451-4129

The Purpose of the ***Order*** is to set forth beginning and ending dates for the irrigation period of use for this water right. As stated in the face of the ***Order***, this action was necessary following the decision of the Idaho Supreme Court in *A&B Irrigation Dist. v. Idaho Conservation League*, 131 Idaho 411, 423, 958 P.2d 568, 580 (1998). This ***Order*** also incorporates into the ***Partial Decree*** an express statement that the ***Partial Decree*** is subject to such general provisions necessary for the definition or for the efficient administration of the water right. This express statement is necessary to comply with the requirements of Idaho Code section 42-1412(6). This ***Order*** in combination with the ***Partial Decree*** that was issued for this water right on February 24, 1998, sets forth all of the elements of your water right. The Snake River Basin Adjudication (SRBA) Court suggests that you keep this document in a safe location together with a copy of the ***Partial Decree*** to show evidence of the water right. The original of this ***Order*** and the original of the ***Partial Decree*** for this water right are on file with SRBA Court. If you do not have a copy of the original ***Partial Decree***, one can be obtained by contacting the SRBA Court at (208) 736-3011. Please note that the ***Order*** is entered ***Nunc Pro Tunc***, meaning that the ***Order*** will be treated as if it were issued the same date that the ***Partial Decree*** was originally issued.

Sincerely,



Diana Delaney
Case Administrator

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)

Water Right 34-10164

Case No. 39576)

ORDER AMENDING IRRIGATION PERIOD OF USE ELEMENT
IN PARTIAL DECREE AND INCORPORATING INTO PARTIAL
DECREE AN EXPRESS STATEMENT REGARDING GENERAL
PROVISIONS, *NUNC PRO TUNC*

A *Partial Decree* was entered for the above-captioned irrigation water right on February 24, 1998. The period of use element was decreed as "irrigation season." In *A&B Irrigation Dist. v. Idaho Conservation League*, 131 Idaho 411, 423, 958 P.2d 568, 580 (1998), the Idaho Supreme Court remanded with the directive to include specific dates for the period of use element. Following remand, IDWR filed a *Supplemental Director's Report, Reporting Area 1, IDWR Basin 34, Regarding Revision of Period of use (For Irrigation Water Uses) and Conjunctive Management General Provisions*, which included an irrigation period of use recommendation for this water right. No objections were filed to this recommendation and the time period for filing objections has now expired.

THEREFORE, IT IS ORDERED that the period of use for the irrigation element of the above-captioned water right is hereby amended and decreed as:

PERIOD OF USE: 05-01 10-15

THE PERIOD OF USE FOR IRRIGATION DESCRIBED ABOVE MAY BE EXTENDED IN SEASONS OF UNUSUAL CHARACTERISTICS TO A BEGINNING DATE OF 04-20 AND AN ENDING DATE OF 10-31 AT THE DISCRETION OF THE DIRECTOR OF THE IDAHO DEPARTMENT OF WATER RESOURCES

IT IS FURTHER ORDERED that the *Partial Decree* for the above-captioned water right is hereby amended and decreed to contain the following:

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).

This order is being entered *nunc pro tunc* as of the date the *Partial Decree* was issued and is not intended to modify any subsequent administrative changes for the water right, if any, which occurred following entry of the *Partial Decree*.

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 December 14, 2001


ROGER BURDICK
Presiding Judge
Snake River Basin Adjudication

1998 FEB 10 10 01
FBI - TWIN FALLS

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

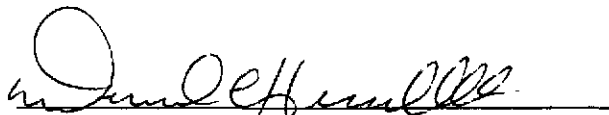
In Re SRBA	)	ORDER OF PARTIAL DECREE
	)	
Case No. 39576	)	For Water Right 34-10164
_____	)	

On October 6, 1997, 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.

Therefore, IT IS ORDERED that water right 34-10164 is hereby **decreed** as set forth in the attached *Partial Decree Pursuant to I.R.C.P. 54(b)*.

DATED February 2nd, 1998.


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

In Re SRBA)
Case No. 39576)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 34-10164

FILED IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS
JAN 13 1998
CLERK OF DISTRICT COURT

NAME & ADDRESS: HERB WHITWORTH
STAR ROUTE
MACKAY ID 83251

SOURCE: BIG LOST RIVER TRIBUTARY: SINKS

QUANTITY: 5.2 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.

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: 06/01/1875

POINT OF DIVERSION: T08N R21E S12 NENWNW Within CUSTER County
T09N R22E S32 SESWSE

WATER IS DELIVERED THROUGH THE LONGHURST DITCH UNTIL ALL THE 1902 OR LATER PRIORITY DATE WATER IS NO LONGER DELIVERED; AFTER THAT WATER IS DELIVERED THROUGH THE CHILLY CANAL.

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	IRRIGATION	Irrigation Season	5.2 CFS
	STOCKWATER	01-01 12-31	0.02 CFS

PLACE OF USE:	IRRIGATION	Within CUSTER County			
	T08N R22E S02	Lot 4 (NWNW)31	SNNW 40	NESW 20	NWSW 37
		SWSW 35	SESW 3		
	S03	Lot 1 (NENE)39	Lot 2 (NWNW)40	SWNE 30	SENE 29
		Lot 3 (NENW)24	Lot 4 (NWNW)37	SENE 30	SENE 32
		NWSE 35	SESE 35		
	S11	NWNW 38			
	T09N R22E S33	NESE 24	NWSE 2	SWSE 3	SESE 8
	S34	SNNW 23	SENE 13	NESW 32	NWSW 40
		SWSW 19	SESE 37	SWSE 32	SESE 18
	786 ACRES TOTAL				

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

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

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 260 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

Place of use for STOCKWATER is same as IRRIGATION

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

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR

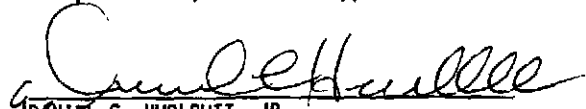
PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 34-10164

OTHER PROVISIONS: (CONT)

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

1998 FEB 24 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): 34-10164

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 34-10164 was mailed
on February 24, 1998, with sufficient first-class postage prepaid
to the following:

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

STATE OF IDAHO
Represented by:
CLIVE STRONG
OFFICE OF ATTORNEY GENERAL
STATE OF IDAHO
PO BOX 44449
BOISE, ID 83711-4449
Phone: 208-334-2400

USDI BLM
Represented by:
U.S. DEPT. OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724
Phone: 208-387-0835

HERB WHITWORTH
STAR ROUTE
MACKAY, ID 83251

DIANA DELANEY
Chief Deputy Clerk