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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 4985
WATER RIGHT NO. 34-00870

This is to certify that: **MARK T GATES TRUSTEE**
700 EMERSON ST
PALO ALTO CA 94301

has requested a change to the above captioned water right(s). This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code, provided the conditions listed below are met.

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL VOLUME</u>
IRRIGATION	05/01 to 10/15	3.46 CFS	605.5 AF
STOCKWATER	10/16 to 04/30	0.02 CFS	7.9 AF
Totals		3.46 CFS	613.4 AF

SOURCE
WARM SPRINGS CREEK

TRIBUTARY OF
BIG LOST RIVER

Priority: 06/01/1893

LOCATION OF POINT(S) OF DIVERSION:

SWSE , Sec. 31, Township 08N, Range 23E
CUSTER County

PLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
07N	23E	5	Lot 4(NWNW) 13	SWNW 40		53
		6	Lot 1(NENE) 8	Lot 2(NWNE) 36	SWNE 40	
			SENE 38	SENE 40	NESW 5	167
Total number of acres irrigated:						220

PLACE OF USE: STOCKWATER, same as IRRIGATION use

CONDITIONS OF APPROVAL AND REMARKS

Right 34-00870 is subject to the conditions of the Final Order in the matter of Application for Transfer No. 4985.

Dated this 4th day of June, 1998.

*This is all
that needs
to be in this
for file per
J.R.*

A. Glen Saxton
Chief, Water Allocation Bureau

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JUL 1 1998

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 4985 IN THE NAME OF) FINAL ORDER
MARK T. GATES, TRUSTEE)
_____)

On December 5, 1997, the hearing officer for the Idaho Department of Water Resources (the "Department") issued a Recommended Order in connection with the above captioned matter. On December 19, 1997, protestant Aslett Ranches ("Aslett") filed a Petition for Reconsideration of the Recommended Order. On December 31, 1997, Mark T. Gates, Trustee ("Gates" or "Applicant"), filed a response to the petition of Aslett. On January 29, 1998, Aslett filed exceptions to the Recommended Order. On February 19, 1998, Gates filed a response to the exceptions. After review of the petition, exceptions, and responses, the Department has changed several Findings of Fact, Conclusions of Law, and conditions of approval.

Based upon his understanding of the law and the facts in this matter, the Director makes the following Findings of Fact, Conclusions of Law and Final Order.

FINDINGS OF FACT

1. Water right no. 34-00870 ("Gates water right") was decreed to Ferdinand Zollinger in the case of The Utah Construction Co. v. John F. Abbott, et al. as follows:

Priority: June 1, 1893
Source: Warm Springs Creek, tributary to Big Lost River
Rate of div: 3.46 cubic feet per second ("cfs")
Pt of div: SE1/4 Section 34, T8N, R22E, B.M.
Use: Irrigation
Place of use: Lot 4, Section 5, and lots 1 and 2, Section 6, T7N,
R23E, B.M., SW1/4SE1/4, E1/2SE1/4 Section 31,
W1/2SW1/4 Section 32, T8N, R23E, B.M.

(Note: The "1/4" designations will be omitted from subsequent legal descriptions in this order.)

2. The Special Master's Recommendation for Partial Decree for water right no. 34-00870 in the Snake River Basin Adjudication (SRBA) was as follows:

Priority: June 1, 1893
Source: Warm Springs Creek, tributary to the Big Lost River
Rate of div: 3.46 cfs total
3.46 cfs - irrigation during irrigation season
0.02 cfs - stockwater from 01-01 to 12-31
Pt of div: SWNESE Sec. 34, T8N, R22E, B.M.
Pt of inject: SENE Sec. 6, T7N, R23E, B.M.
Pt of rediv: SWSWNW Sec. 5, T7N, R23E, B.M.
Place of use: 173 acres within the following 220 acre tract:

Section 5

Lot 4 - 13 acres
SWNW - 40 acres

Section 6

Lot 1 - 8 acres
Lot 2 - 36 acres
SWNE - 40 acres
SENE - 38 acres
SENW - 40 acres
NESW - 5 acres

all in T7N, R23E, B.M.

Conditions/Remarks: Water is delivered through the Upper Fish Hatchery Canal.

This right is limited to the irrigation of 173 acres within the place of use described above in a single irrigation season.

Use of this right with right no. 34-04137 is limited to the irrigation of a combined total of 220 acres in a single irrigation season.

Use of this right with right no. 34-04137 is limited to a total combined diversion rate of 5.43 cfs.

3. On December 20, 1996, Gates filed Application for Transfer No. 4985 ("Application") with the Department proposing to change the point of diversion of water right no. 34-00870 from the Upper Fish Hatchery Canal heading in the NESE Sec. 34, T8N, R22E, B.M. to a point on Warm Springs Creek in the SWSE Section 31, T8N, R23E, B.M. adjacent to the Applicant's property.

4. The Department published notice of the Application which was subsequently protested by Churndasher Ranch c/o Victor and Scott Johnson, Lynn Reno, the United States Bureau of Land Management ("BLM"), and Steve Aslett ("Protestants"). The BLM subsequently withdrew its protest.

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5. On October 28 and 29, 1997, the Department conducted a hearing in the matter in Twin Falls, Idaho. The Applicant was present and was represented by Norman Semanko. Protestant Steve Aslett was present and was represented by Scott Campbell. Protestant Scott Johnson was present on behalf of Churndasher Ranch. Protestant Lynn Reno did not appear at the hearing.

6. Issues identified by the Protestants include the following:

- a. The proposed change will injure other water rights.
- b. The proposed change is not in the local public interest.

7. Exhibits offered and accepted as a part of the record include the following:

- a. Applicant's Exhibit 1 - NOT OFFERED.
- b. Applicant's Exhibit 2 - NOT OFFERED.
- c. Applicant's Exhibit 3 - NOT OFFERED.
- d. Applicant's Exhibit 4 - Photograph.
- e. Applicant's Exhibit 5 - Photograph.
- f. Applicant's Exhibit 6 - Photograph.
- g. Applicant's Exhibit 7 - *Application for Transfer*.
- h. Applicant's Exhibit 8 - Summary of Water Rights Diverted from Warm Springs Creek into the Upper Fish Hatchery Canal and Department SRBA Water Right Records for the Water Rights.
- i. Applicant's Exhibit 9 - Letter dated October 22, 1997 to Norm Semanko from Don Wright.
- j. Applicant's Exhibit 10 - NOT OFFERED.
- k. Applicant's Exhibit 11 - NOT OFFERED.
- l. Applicant's Exhibit 12 - Compilation of Measurements Made by Charles Brockway on the Upper Fish Hatchery Canal during Five (5) Site Visits During 1997.
- m. Applicant's Exhibit 13 - Spreadsheet titled "Estimated Seepage Loss Distribution - Hatchery Ditch".

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1998 10 13

- n. Applicant's Exhibit 14 - Estimated Evaporation and Estimate of Hatchery Ditch Seepage Loss, Hubble Report Methods.
- o. Applicant's Exhibit 15 - A map titled "Places of Use and Delivery Points for Water Rights Diverted into the Upper Hatchery Canal".
- p. Protestants' Exhibit A - Idaho Department of Water Resources Adjudication Claim Profile Reports for Right Nos. 34-00469 and 34-00471.
- q. Protestants' Exhibit B - Resume for Sherl L. Chapman.
- r. Protestants' Exhibit C - Report titled "Analysis of Upper Fish Hatchery Canal Transmission Losses" by Sherl L. Chapman.

8. The Applicant presently diverts water right no. 34-00870 into the Upper Fish Hatchery Canal ("Canal") which is commingled with the water rights of others who also convey water rights through the Canal. The total canal length is about 3.3 miles. The distance from the point of diversion into the Canal ("canal inlet") to the Applicant's property line is approximately 2.75 miles. The total amount of water authorized for diversion into the Canal is approximately 15 to 17 cfs subject to some pending claims in the SRBA, (See Applicant's Exhibit No. 8). The Applicant is the last user on the Canal.

9. The Applicant proposes to cease diverting water right no. 34-00870 into the Canal, and instead allow the water right to flow down an unnamed natural channel into Warm Springs Creek for a total distance of approximately 4.25 miles to a new point of diversion on Warm Springs Creek adjacent to the Applicant's property. The unnamed natural channel is approximately 1.75 miles long, beginning at the Mackay Fish Hatchery located in the NESE Section 34, T8N, R22E, B.M. and ending at the confluence of the unnamed channel with Warm Springs Creek in the NWNW Section 36, T8N, R22E, B.M. Testimony described the approximately 1.75-mile long unnamed natural channel as a losing reach of stream. The remainder of Warm Springs Creek to the Applicant's proposed point of diversion is a gaining reach.

10. The Protestants' primary concern was that if the Gates water right is removed from the Canal without regard to the remaining water rights in the Canal, the remaining water rights would be injured, since the loss in the Canal formerly assessed against the Gates water right would have to be made up by holders of the remaining water rights. Most parties agreed that there would not be injury if the proper portion of the Gates water right is left in the Canal to compensate for the loss attributable to past delivery of the right.

11. The amount of canal loss which should be assessed to the Gates water right is disputed. The watermaster testified that losses vary by month and year and that during times of water shortage and regulation, losses of up to 30 percent have been assessed to each water right on the Canal. The loss assessment has been applied to each right as a direct percentage of the size of the right and has not been adjusted with respect to distance from the canal inlet.

MICHAEL L. LEE

12. To determine canal losses, Dr. Charles Brockway ("Brockway") took inflow-outflow measurements on the Canal on April 23, June 13, July 25, August 8, and September 9, 1997. The measurements in April were taken when the Canal was just beginning to flow and the inflow was 2.68 cfs. Measurements during June and July were taken when the inflow was 15 cfs and the Aslett pumps could not be measured. Measurements during August and September were taken when inflows to the Canal were 14.73 cfs and 8.02 cfs respectively.

13. Sherl Chapman ("Chapman") assisted with measurements taken on August 8 and September 9, 1997 on behalf of protestant Aslett. Chapman stated that he believes the measurements and estimates taken were made using care to create standard measurement conditions, and that the "measurements and estimates are as accurate as can be accomplished under the existing field conditions".

14. The percentage of water loss from the canal inlet to the existing Gates diversion (at the "Gates weir") is 31.9 percent using April canal measurements, 18.4 percent when using August canal measurements, and 13.9 percent when using September canal measurements, averaging 21.4 percent. These percentages are based on actual measured losses in the Canal using the April, August, and September 1997 measurement data.

15. Brockway calculated estimated canal losses using the Worstall Method, Moritz equation, and the Etcheverry equation. The total conveyance losses calculated over the reach of canal beginning at the canal inlet to the Gates weir, were 1.52 cfs, 1.27 cfs, and 1.14 cfs, respectively.

16. The 3.46 cfs rate of diversion for water right No. 34-00870 represents 20.4 percent of the 16.93 cfs authorized for diversion into the Canal. (See Applicant's Exhibit 8 for compilation of rights which equal 16.93 cfs).

17. The Protestants have enjoyed the use of loss attributable to water right no. 34-00870 throughout the length of the Canal to the Gates weir.

ANALYSIS

There are various methods by which the loss of water flowing in the Upper Fish Hatchery Canal can be estimated. Some parties argue that determining losses by using actual measurements is the best method. However, there can be disagreement over which measurements (some or all), are proper to use to estimate the loss to be assessed. Others argue that using a straight percentage loss is more appropriate.

As described below, this final order is based on using the average percentage losses measured during April, August, and September of 1997. The April measurement represents conditions early in the season before the soil profile was full and when canal inflow was small (2.68 cfs). The April condition is not representative of conditions during the entire irrigation season, since a large percentage of the rate diverted is lost to saturation of the underlying soil

profile. The August and September measurements represent conditions when the soil profile was saturated and when the inflows to the Canal were larger (14.73 cfs and 8.02 cfs, respectively). These conditions are also not representative of conditions during the entire irrigation season, since a relatively small percentage of the water diverted is lost to the underlying soil profile.

Using April, August, and September measurements provides early and late season measurements taken during various canal inflows (2.68 cfs, 8.02 cfs, and 14.73 cfs). The average of the losses associated with these low, intermediate and high canal flows provides a reasonable determination of losses using the information presently available. The portion of the average of the losses attributable to water right no. 34-00870 is 0.74 cfs, which is a reasonable amount of water given the range of estimated losses from 0.39 cfs, which was used in the Recommended Order, to 1.04 cfs, which was the maximum loss assessed water right no. 34-00870 when all rights in the Canal were assessed 30 percent loss by the water master.

Recognizing that it may be possible to more accurately determine the historical canal losses associated with water right no. 34-00870, the Department will retain jurisdiction of this transferred water right for a period of five years to provide any party to this matter additional opportunity to gather data and propose alternative determinations of the historical canal losses associated with water right no. 34-00870.

CONCLUSIONS OF LAW

1. Section 42-222, Idaho Code, provides in pertinent part as follows.

The director of the Department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-203A(5), Idaho Code;

2. The Applicant carries the burden of coming forward with evidence that the proposed change will not injure other water right holders, that it will not constitute an enlargement of the use and will be consistent with principles of conservation of the water of the state of Idaho.

3. Both the Applicant and the Protestants have the responsibility of coming forward with evidence regarding matters of public interest of which they are each most cognizant.

4. The Applicant has the ultimate burden of persuasion for all of the criteria of Section 42-222, Idaho Code.

5. The Department should require that a portion of water right no. 34-00870 remain in the Upper Fish Hatchery Canal to compensate for the loss previously assessed to delivery of the water right. Without such compensation, the remaining water users would incur more loss than

incurred historically. Using actual measurements of canal loss is more reliable and is given more weight than an empirical calculation or other estimation of canal loss.

6. Losses assessed historically to water rights delivered via the Canal have been based on a percentage of the rate of flow of a water right being delivered. It is reasonable that the amount of water right no. 34-00870 to be left in the Canal to insure no injury to remaining water right holders should also be based on a percentage of the water right.

7. In considering the proposed transfer, it is appropriate to consider, but not necessarily sanction, historical water delivery practices. However, the measurements taken by Brockway provide a better basis for determining losses than using estimated historical losses which the watermaster described as varying by month and year.

8. The amount of water right No. 34-00870 that is to permanently remain in the Upper Fish Hatchery Canal is determined over the canal reach beginning at the canal inlet and ending at the Gates weir. The amount is based on the average of measurements taken in April, August, and September and is calculated to be $[(31.9 \% + 18.4 \% + 13.9 \%) / 3] \times 3.46 \text{ cfs}$ which equals 0.74 cfs, or 37 miner's inches. This amount of water shall be permanently dedicated to the Canal even when there is sufficient water in the Canal to fill the water rights of the remaining water users diverting through the Canal. (The measurements taken during June and July were not used because the Aslett pumps were operating but the associated diversion rate could not be measured. Thus losses could have only been determined for the first 1.7 miles of the Canal, 1.6 miles above the Gates weir).

9. During times of water shortage in Water District 34, water right no. 34-00870 shall be administered at the new point of diversion relative to its original date of priority.

10. The Applicant should not be authorized to divert water at the new point of diversion in excess of the amount of water right no. 34-00870 which actually passes through the 1.75-mile long reach of the natural channel beginning at the Mackay Fish Hatchery.

11. The proposed change in point of diversion will not injure other water rights if the change is conditioned to require that a sufficient amount of water be left in the Canal to provide for conveyance losses associated with the historical delivery of water right no. 34-00870.

12. The proposed change will not constitute an enlargement in use of the original right as conditioned in this order.

13. The Idaho Supreme Court reviewed the duties of the director of the Department with respect to the local public interest in Shokal v. Dunn, 109 Idaho 330, 707 P.2d 441, (1985). The court held that, "The determination of what elements of the public interest are impacted, and what the public interest requires, is committed to Water Resources' sound discretion." Shokal at 109 Idaho 339.

14. The addition of water right no. 34-00870 to the 1.75-mile long reach of the unnamed natural channel from the Mackay Fish Hatchery to its confluence with Warm Springs Creek will enhance fish habitat.

15. The proposed change is in the local public interest.

16. The proposed change is consistent with the conservation of water resources within the State of Idaho.

17. The Department should approve the Application with certain conditions and limitations.

ORDER

IT IS THEREFORE, hereby ORDERED that Application for Transfer No. 4985 is **APPROVED** subject to the following conditions and limitations:

1. The water right holder shall permanently leave 0.74 cfs of water right no. 34-00870 in the Upper Fish Hatchery Canal to provide for historic losses associated with delivery of the water right through the Canal to the Gates weir thereby preventing injury to the remaining water rights delivered through the Canal

2. The point of diversion for the 0.74 cfs of water right no. 34-00870 to be delivered to the Canal shall remain at the original point of diversion of the right in the NESE Section 34, T8N, R22E, B.M.

3. The maximum authorized rate of diversion for water right No. 34-00870 at the new point of diversion located in the SWSE Section 31, T8N, R23E, B.M. shall not exceed 2.72 cfs.

4. The watermaster shall regulate diversion of water at the new point of diversion in the SWSE Section 31, T8N, R23E, B.M. so that the diversion does not exceed the amount of the water right discharged to Warm Springs Creek from the unnamed natural channel at its confluence with Warm Springs Creek in the NWNW Section 36, T8N, R22E, B.M.

5. Prior to diversion of water under the transferred water right, the right holder shall install and maintain a measuring device at the new point of diversion to provide the watermaster suitable control of the diversion.

6. The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.

7. This right is limited to the irrigation of 173 acres within the 220 acre place of use in a given irrigation season.

MICHAEL J. ...

8. Use of this right together with right No. 34-04137 is limited to the irrigation of a combined total of 220 acres in a given irrigation season.

9. The maximum authorized rate of diversion under this right at the new point of diversion when combined with water right no. 34-04137 shall not exceed 4.4 cfs nor a volume of more than 3.5 acre-feet per acre annually at the field headgate.

10. The Department retains jurisdiction of the decision reached in this Final Order for a period of five (5) years. During this period, any party to this matter may submit additional water loss measurements from the Canal and other pertinent information to the Department, copies of which shall also be provided to the other parties, for the Department's consideration in changing the amount of loss assessed by this order to water right no. 34-00870 for continued delivery to the Canal.

11. Failure to comply with the conditions of this transfer is cause for the director to rescind approval of the transfer.

Signed this 4th day of June, 1998.



KARL J. DREHER
Director

MICRO

12/1/98

CERTIFICATE OF SERVICE

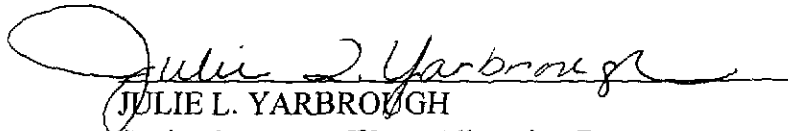
I DO HEREBY CERTIFY that on the 10th day of June, 1998, the above and foregoing document was served upon the following, via certified mail, by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

NORMAN SEMANKO
ROSHOLT ROBERTSON TUCKER
PO BOX 1906
TWIN FALLS ID 83303-1906

VICTOR AND SCOTT JOHNSON
CHURNDASHER RANCH
STAR ROUTE
MACKAY ID 83251

SCOTT CAMPBELL
ELAM AND BURKE
PO BOX 1539
BOISE ID 83701

DR LYNN RENO
2120 E CALIFORNIA AVE
BAKERSFIELD CA 93307


JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau

JUN 27 PM 1:44

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO

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 34-870
	)	
	)	ORDER AMENDING IRRIGATION PERIOD OF USE
	)	ELEMENT IN PARTIAL DECREE and
Case No. 39576	)	INCORPORATING INTO PARTIAL DECREES AN
	)	EXPRESS STATEMENT REGARDING GENERAL
	)	PROVISIONS, <i>NUNC PRO TUNC</i>

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, on June 24, 1999, 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 *Supplemental Director's Report*.

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

PERIOD OF USE: 05-01 to 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:

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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 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 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 June 27, 2002.



ROGER BURDICK
Presiding Judge
Snake River Basin Adjudication

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Important Information About Your Water Right

June 27, 2002

Ward W Woods
Priscilla B Woods
c/o Mark T Gates
700 Emerson St
Palo Alto, CA 94301

RECEIVED

JUL - 1 2002

Elizabeth W Gates Trustee
Mark T Gates Trustee
700 Emerson St
Palo Alto, CA 94301

Department of Water Resources

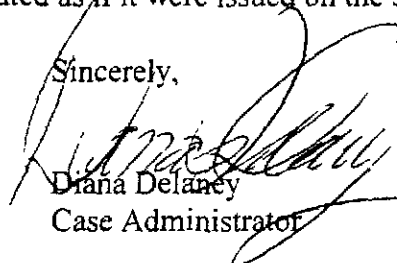
Dear Water Right Claimant(s):

Attached to this letter is a copy of an ***Order Amending Irrigation Period of Use Element in Partial Decree, Nunc Pro Tunc*** (hereinafter "***Order***") for water right number 34-870. 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 this 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 on the same date that the ***Partial Decree*** was originally issued.

Sincerely,


Diana Delaney

Case Administrator

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2002 1 27 2002

1998 FEB 24 PM 7: 53

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

) ORDER OF PARTIAL DECREE

Case No. 39576

) For Water Right 34-00870
)
)

On October 23, 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 34-00870 is hereby **decreed** as set forth in the attached *Partial Decree Pursuant to I.R.C.P. 54(b)*.

DATED February 24, 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 34-00870

1999 FEB 24 AM 7:53
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

NAME & ADDRESS: ELIZABETH W GATES TRUSTEE
MARK T GATES TRUSTEE
700 EMERSON ST
PALO ALTO CA 94301

WARD W WOODS
PRISCILLA B WOODS
C/O MARK T GATES
700 EMERSON ST
PALO ALTO CA 94301

SOURCE: WARM SPRINGS CREEK TRIBUTARY: BIG LOST RIVER
QUANTITY: 3.46 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 RIGHT NO. 34-04137 IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 5.43 CFS.

PRIORITY DATE: 06/01/1893

POINT OF DIVERSION: T08N R22E S34 SWNESE Within CUSTER County
T07N R23E S06 SENE (INJECTION)
S05 SWSWNW (REDIVERSION)

POINT OF INJECTION INTO AND POINT OF REDIVERSION FROM UNNAMED
SPRING.

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	IRRIGATION	Irrigation Season	3.46 CFS
	STOCKWATER	01-01 12-31	0.02 CFS

PLACE OF USE: IRRIGATION Within CUSTER County
T07N R23E S05 Lot 4 (NWNW)13 SWNW 40
S06 Lot 1 (NENE) 8 Lot 2 (NWNE)36 SWNE 40 SENE 38
SENW 40 NESW 5
220 ACRES TOTAL

USE OF THIS RIGHT WITH RIGHT NO. 34-04137 IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 220 ACRES IN A SINGLE
IRRIGATION SEASON.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 173 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
STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL
USE.

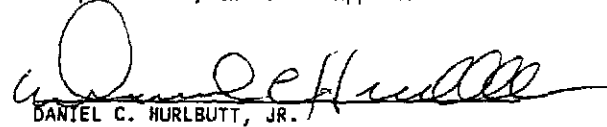
PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 34-00870

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FEB-13-1998

MICROFILMED

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): 34-00870

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 34-00870 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

MARK & ELIZABETH GATES, TRUSTEE
WARD AND PRISCILLA WOODS
Represented by:
NORMAN M. SEMANKO
PO BOX 1906
TWIN FALLS, ID 83303
Phone: 208-734-0700

DIANA DELANEY
Chief Deputy Clerk

CERTIFICATE OF MAILING MICROFILMED

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02/24/98

JAN 11 2000