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Department of Water Resources

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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

)
)
)
)

ORDER OF AMENDED PARTIAL DECREE
FOR WATER RIGHTS 36-07004 & 36-02659

I.

PROCEDURAL BACKGROUND

A *Special Master's Report and Recommendation* was filed on March 3, 1998, in the above captioned subcases. On April 28, 1998, a *Motion to Alter or Amend* was filed on the issue of facility volume. Claimant Clear Lakes Trout Company, Inc. ("Clear Lakes"), filed a *Motion to Alter or Amend* on May 8, 1998, regarding the issues of General Provision 5 and points of diversion.

On December 29, 1999, the SRBA District Court issued a decision on *Order on Challenge (Consolidated Issues) of "Facility Volume" Issue and "Additional Evidence" Issue*. Partial decrees were issued in the above-captioned subcases but were subsequently rescinded because of the remaining *Motion to Alter or Amend* filed by Clear Lakes. Clear Lakes was the only remaining party to the subcase.

On April 15, 2002, the Special Master issued an *Amended Order Granting in Part Clear Lakes Motion to Alter or Amend and Second Amended Special Masters Report*.

On April 16, 2002, Clear Lakes filed a *Motion to Expedite Issuance of Partial Decrees* seeking to have the partial decrees issued on an expedited basis to have the partial decrees issued prior to the organizational meeting for a water district affecting the subject rights. In furtherance of the *Motion* Clear Lakes waived its right to file a Notice of Challenge.

On April 22, 2002, a hearing was held on the *Motion* to determine whether the remark contained in the point of diversion element regarding the source for the water rights was consistent with the holding in subcases 36-02708 and 36-07218 involving water rights owned by Clear Springs Food, Inc. ("Clear Springs"). In subcases 36-02708 and 36-07218 the SRBA

District Court held, and the Idaho Supreme Court affirmed, that the above-captioned claims and Clear Springs' water rights 36-02708 and 36-07218 shared a common source for purposes of administration. At the hearing, the Court inquired of a representative of the Idaho Department of Water Resources, as the Court's independent expert, whether based on the existing conditions of the diversion works, the remark regarding point of diversion and source is consistent with the holding regarding Clear Springs' water rights.

II. FINDINGS

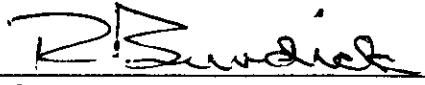
THEREFORE, based on the foregoing, the Court makes the following findings:

1. That Clear Lakes is the only party to subcases 36-02004 and 36-02659.
2. That because a *Special Master's Report and Recommendation* was previously issued further parties are precluded from entering the subcases by filing a *Motion to Alter or Amend* to the April 15, 2002, *Amended Recommendation*. *SRBA AOI Rules of Procedure* § 13 b. ("no second Motion to Alter or Amend may be filed on the decision granting or denying a Motion to Alter or Amend").
3. That Clear Lakes has waived its right to file a Challenge in the above-captioned subcases.
4. That the partial decrees herein issued are not inconsistent with this Court's prior holding in subcases 36-02708 and 36-07218.
5. That pursuant to I.R.C.P. 53(e)(2) and *AOI*, § 13 f, 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.

III. ORDER

Therefore, IT IS ORDERED that water rights 36-07004 and 36-02659 are hereby decreed as set forth in the attached *Amended Partial Decrees* Pursuant to I.R.C.P. 54(b).

DATED 4-22-02



ROGER S. BURDICK
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

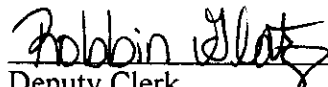
I certify that a true and correct copy of the **ORDER OF AMENDED PARTIAL DECREE FOR WATER RIGHTS 36-07004 AND 36-02659** was mailed on 4/22/02 with sufficient first-class postage to the following:

Clear Lakes Trout

Represented by:
William F Ringert
PO Box 105
Hammett, ID 83627

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of Attorney General
PO Box 44449
Boise, ID 83711-4449


Deputy Clerk

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 36-07004

2002 APR 22 PM 4:12
DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED _____

NAME AND ADDRESS: CLEAR LAKES TROUT
1301 VISTA AVENUE
BOISE, ID 83705

SOURCE: SPRINGS TRIBUTARY: CLEAR LAKES

QUANTITY: 75.00 CFS

PRIORITY DATE: 07/21/1967

POINT OF DIVERSION: T09S R14E S02 LOT 05 (SWSENE) Within Gooding County
LOT 05 (SESENE)

THIS WATER RIGHT IS DIVERTED THROUGH A SPRING-FED DIVERSION POOL
KNOWN AS THE "EASTERN POOL," AND THROUGH PIPES WHICH DIVERT WATER
FROM SPRINGS THAT ARE TRIBUTARY TO THE EASTERN POOL, ALL OF WHICH
ARE LOCATED IN A PORTION OF GOVERNMENT LOT 5 KNOWN AS THE
SWSSENE AND SESWSENE, T09S, R14E, SECTION 2. A PORTION OF WATER
RIGHT NO. 36-2659 IS ALSO DIVERTED THROUGH THE EASTERN POOL. ALL
WATER DIVERTED IS FROM THE SOURCE IDENTIFIED IN THE SOURCE
ELEMENT OF THIS WATER RIGHT, LISTED ABOVE.

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Fish Propagation	01-01 TO 12-31	75.00 CFS

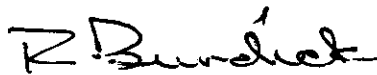
PLACE OF USE:	Fish Propagation	Within Gooding County
	T09S R14E S02 LOT 05 (SENE)	LOT 06 (NESE)
	LOT 08 (NESE)	

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

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.



Roger Burdick
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

AMENDED

In Re SRBA)
)
Case No. 39576)
_____)

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

Water Right 36-02659

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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED _____

NAME AND ADDRESS: CLEAR LAKES TROUT
1301 VISTA AVENUE
BOISE, ID 83705

SOURCE: SPRINGS

TRIBUTARY: CLEAR LAKES

QUANTITY: 100.00 CFS

PRIORITY DATE: 06/23/1966

POINT OF DIVERSION: T09S R14E S02 SESWNE Within Gooding County
LOT 05 (SESENE)
LOT 05 (SWSENE)

THIS WATER RIGHT IS DIVERTED THROUGH A COMBINATION OF TWO
ADJACENT SPRING-FED DIVERSION POOLS: (1) A DIVERSION POOL KNOWN
AS THE "WESTERN POOL" LOCATED IN THE S 1/2 SESWNE AND THE S 1/2
SWSENE, T09S, R14E, SECTION 2; AND (2) A DIVERSION POOL KNOWN AS
THE "EASTERN POOL" LOCATED IN A PORTION OF GOVERNMENT LOT 5 KNOWN
AS THE SWSSENE AND SESWSENE, T09S, R14E, SECTION 2. BOTH POOLS
DIVERT WATER FROM THE COMMON SOURCE IDENTIFIED IN THE SOURCE
ELEMENT OF THIS WATER RIGHT, LISTED ABOVE.

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Fish Propagation	01-01 TO 12-31	100.00 CFS

PLACE OF USE:	Fish Propagation	Within Gooding County
	T09S R14E S02 LOT 05 (SENE)	LOT 06 (NESE)
	LOT 08 (NESE)	

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

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judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.



Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication