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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	) Subcases: 36-8139 and 36-8140
	)
Case No. 39576	) 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.

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.

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.

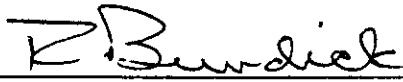
Order

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*

Decree is rescinded.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

Dated 8-2-02

A handwritten signature in dark ink, appearing to read "R. Burdick", is written over a horizontal line.

ROGER BURDICK
Presiding Judge
Snake River Basin Adjudication

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

RECEIVED

MAY 22 2002

Department of Water Resources

2002 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

In Re SRBA

) Subcase 36-8140
)
)

Case No. 39576

)
) ORDER OF PARTIAL DECREE
) TO CORRECT CLERICAL ERROR; I.R.C.P.
) 60(a)
)
)

On January 15, 1998, a *Partial Decree* was issued for the above-captioned water right. On May 16, 2002, the Claimant of the water right filed a *Motion to Correct Clerical Error in Partial Decree*, pointing out that the *Partial Decree* contains a "13,000 gallon per day" limitation which did not appear in the *Director's Report*. The Court has reviewed the Claimant's *Motion*, and the *Partial Decree* and *Director's Report* for this water right, and the Court finds that the inclusion of said limitation is clearly a clerical error.

Therefore, pursuant to I.R.C.P. 60(a), IT IS ORDERED that the clerical error is corrected and that water right 36-8140 is hereby decreed as set forth in the attached *Amended Partial Decree Pursuant to I.R.C.P. 54(b) for Water Right 36-08140*.

This order is being entered *nunc pro tunc* as of January 15, 1998, and is not intended to modify any subsequent administrative changes for the water right, if any, which occurred following entry of the *Partial Decree*.

DATED: 5-20-02



ROGER S. BURDICK
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

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

SOURCE: GROUNDWATER

QUANTITY: 0.11 CFS
79.40 AFY

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 AFY
	Commercial	01-01 TO 12-31	0.11 CFS
			59.40 AFY

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.



Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

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)

Case No. 39576)
_____)

CERTIFICATE OF MAILING

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

PAGE 1
05/21/02

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

1998 JAN 15 PM 1:44

FILED
JAN 15 1998
CLERK OF DISTRICT COURT
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.

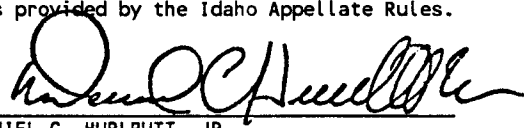
PLACE OF USE:	STOCKWATER	Within GOODING County
	T08S R16E S29 S30	NWN NENE
	COMMERCIAL	Within GOODING County
	T08S R16E S30	NENE

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