

2002 AUG -2 AM 8: 50

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.

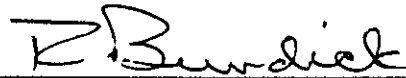
Order

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 cursive script, appearing to read "R. Burdick", 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

MAY 22 2002

2002 MAY 21 AM 9:19

DISTRICT COURT-SRBA
TWIN FALLS CO. IDAHO
FILED RA RM

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

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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

AMENDED

In Re SRBA)
Case No. 39576)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 36-08139

2002 MAY 21 AM 9:19
DISTRICT COURT-SRBA
TWIN FALLS CO. IDAHO
FILED RA RA

NAME AND ADDRESS: MC CORD FAMILY PARTNERSHIP
3415 SOUTH 2400 EAST
JEROME, ID 83338

SOURCE: GROUNDWATER

QUANTITY: 0.06 CFS
11.80 AFY

PRIORITY DATE: 01/21/1983

POINT OF DIVERSION: T08S R16E S29 NWNWN Within Jerome County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Stockwater	01-01 TO 12-31	0.06 CFS
			9.40 AFY
	Domestic DOMESTIC 2 HOMES	01-01 TO 12-31	0.06 CFS
			2.40 AFY

PLACE OF USE: Stockwater Within Jerome County
T08S R16E S29 NWNW
Domestic Within Jerome County
T08S R16E S29 NWNW

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

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT 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): 36-08139

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 36-08139 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 SOUTH 2400 EAST
JEROME, ID 83338
Phone: 208-324-4071

ROBBIN GLATZ
Chief Deputy Clerk

CERTIFICATE OF MAILING

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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)
Case No. 39576)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 36-08139

1996 DEC 13 AM 8:46
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

NAME & ADDRESS: MC CORD FAMILY PARTNERSHIP
3415 SOUTH 2400 EAST
JEROME ID 83338

SOURCE: GROUNDWATER

QUANTITY: 0.06 CFS
11.8 AFY

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

PRIORITY DATE: 01/21/1983

POINT OF DIVERSION: T08S R16E S29 NWNWNW Within JEROME County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	STOCKWATER	01-01 12-31	0.06 CFS 9.4 AFY
	DOMESTIC 2 HOMES	01-01 12-31	0.06 CFS 2.4 AFY

PLACE OF USE:	STOCKWATER	Within JEROME County
	T08S R16E S29	NWNW
	DOMESTIC	Within JEROME County
	T08S R16E S29	NWNW

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

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

DATED: DEC 13 1996


DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

RULE 54(b) CERTIFICATE

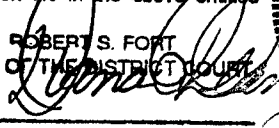
With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment 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: DEC 13 1996

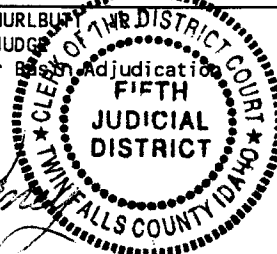
PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 36-08139

State of Idaho
County of Twin Falls

I hereby certify the foregoing to be a true and correct copy of the original on file in the above entitled action.

By 
ROBERT S. FORT
CLERK OF THE DISTRICT COURT
DEPUTY CLERK

DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE



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