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APR 23 2002

Department of Water Resources

2002 APR 22 PM 4:12

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 Partial decrees were issued in the above-captioned subcases but were subsequently rescinded because of the remaining *Motion to Alter or Amend* filed by Clear Lakes.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

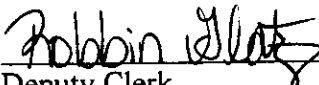
CERTIFICATE OF MAILING

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
SWSENE 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

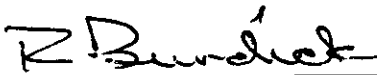
PLACE OF USE:	Fish Propagation	Within Gooding County
	T09S R14E S02 LOT 05 (SENE)	LOT 06 (NESE)
	LOT 08 (NESE)	

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

AMENDED

Water Right 36-02659

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

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MAY 10 2000

Department of Water Resources

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

Subcase Nos. 36-07004 & 36-02659
(Clear Lakes Trout Co., Inc.)

ORDER VACATING PARTIAL
DECREES AND RECOMMITTING
SUBCASES TO SPECIAL MASTER
DOLAN

PROCEDURAL BACKGROUND

1. On April 10, 2000, a *Partial Decree* was entered in each of the above-entitled subcases. The partial decrees were entered following this Court's ruling on a challenge filed in the above-captioned subcases on issues of "facility volume" and "additional evidence." See *Order on Challenge (Consolidated Issues) of "Facility Volume" Issue and "Additional Evidence" Issue*, subcase no. 36-02708 *et al.* (Dec. 29, 1999).
2. Following entry of the partial decrees, it came to the Court's attention that previously on August 19, 1998, Special Master Dolan issued an order staying pending motions to alter or amend filed in the above-captioned subcases on the issues of "conjunctive management" and "points of diversion." See *Order Vacating Status Conference and Temporarily Staying Subcases*, subcase nos. 36-02659, 36-07004, 36-07080, 36-07731 (Aug. 19, 1998). The issues were stayed pending the issuance of the Special Master's Report in subcases 36-02708 and 36-07218 consisting of claims filed by Clear Springs Foods, Inc., pending before Special Master Haemmerle and which involved overlapping issues. Although, the issue of conjunctive management is proceeding as a

basin-wide issue, the issues regarding "points of diversion" in the above-captioned subcases have not yet been heard by Special Master Dolan.

3. On April 24, 2000, claimant, Clear Lakes Trout Co., Inc., filed a *Motion to Stay Partial Decrees*, also bringing to the Court's attention that the pending motion had not been heard or otherwise resolved. On May 8, 2000, Clear Lakes Trout Co., Inc., also filed a supporting brief explaining the procedure of the two subcases.

4. Accordingly, the partial decrees entered in the above-captioned subcases were issued in error.

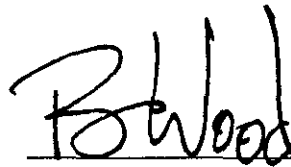
ORDER

Therefore; IT IS HEREBY ORDERED for the reasons set forth above, that the *Partial Decree* entered in subcase 36-07004 on April 10, 2000, and the *Partial Decree* entered in subcase 36-02659 on April 10, 2000, are hereby **vacated**.

IT IS FURTHER HEREBY ORDERED that the two subcases are recommitted to Special Master Dolan for further proceedings consistent with this Order.

IT IS SO ORDERED.

DATED: May 9, 2000.

A handwritten signature in black ink, appearing to read "B Wood", is written over a horizontal line.

BARRY WOOD
Administrative District Judge and
Presiding Judge of the
Snake River Basin Adjudication

CERTIFICATE OF SERVICE

I hereby certify that copies of the **ORDER VACATING PARTIAL DECREES AND RECOMMITTING SUBCASES TO SPECIAL MASTER DOLAN** were mailed on May 9, 2000, to the following:

Idaho Department of Water Resources
Document Depository
PO Box 83720
Boise, ID 83720-0098

United States, Department of Justice
Environment & Natural Resources Div
550 W Fort Street, MSC 033
Boise, ID 83724

Daniel Steenson
Charlie Honsinger
Ringert Clark Chtd
PO Box 2773
Boise, ID 83701-2773

Norman Semanko
Rosholt Robertson & Tucker
PO Box 1906
Twin Falls, ID 83303

Josephine Beeman
Dana Hofstetter
Beeman & Hofstetter
PO Box 1427
Boise, ID 83701-1427


Deputy Clerk of the Court

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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	)	ORDER OF PARTIAL DECREE
	)	
Case No. 39576	)	For Water Right 36-07004
_____	)	

The Notice of Challenge filed in the above subcase having been heard and ruled upon, IT IS
THEREFORE ORDERED that water right 36-07004 is hereby **decreed** as set forth in the attached
Partial Decree Pursuant to I.R.C.P. 54(b).

IT IS SO ORDERED.

DATED APR 10 2000



BARRY WOOD
Administrative District Judge and
Presiding Judge of the
Snake River Basin Adjudication

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APR 11 2000

Department of Water Resources

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 36-07004

2000 APR 10 AM 10:19
CLERK OF DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

NAME & ADDRESS: CLEAR LAKES TROUT CO INC
1301 VISTA AVE
BOISE ID 83705

SOURCE: SPRINGS TRIBUTARY: CLEAR LAKES

QUANTITY: 75.00 CFS

THIS RIGHT AND RIGHT NO. 36-02659 IS LIMITED TO THE TOTAL
COMBINED RATE OF DIVERSION OF 175 CFS.

PRIORITY DATE: 07/21/1967

POINT OF DIVERSION: T09S R14E S02 SESWNE Within GOODING County
LOT 5 (SWSENE)
LOT 5 (SESENE)

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	FISH PROPAGATION	01-01 12-31	75.00 CFS

PLACE OF USE: FISH PROPAGATION Within GOODING County
T09S R14E S02 Lot 5 (SENE) Lot 6 (NESE) Lot 8 (NESE)

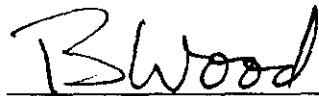
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

A MEASURING DEVICE OF A TYPE APPROVED BY IDWR SHALL BE
MAINTAINED AS A PART OF THE DIVERTING WORKS.

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. SECTION 42-1412(6), IDAHO CODE.

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.


BARRY WOOD
Administrative District Judge
Presiding Judge of the
Snake River Basin Adjudication