IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BIG WILLOW RANCH LLC, Petitioner, vs. THE IDAHO DEPARTMENT OF WATER RESOURCES, Respondent.	Case No. CV01-24-09674
IN THE MATTER OF A.L. CATTLE, INC.'S WATER RIGHT NOS. 65-1985, 65-3124X, AND 65-10537	

AGENCY RECORD ON APPEAL

Judicial Review from the Idaho Department of Water Resources
Mathew Weaver, Director, Presiding

RAÚL R. LABRADOR
ATTORNEY GENERAL

SCOTT L. CAMPBELL
Chief of Energy and Natural Resources Division

GARRICK L. BAXTER, ISB No. 6301
MEGHAN M. CARTER, ISB No. 8863
SARA M. AJETI, ISB No. 12374
Deputy Attorneys General
Idaho Department of Water Resources
PO Box 83720
Boise, Idaho 83720-0098
Telephone: (208) 287-4800
Facsimile: (208) 287-6700
garrick.baxter@idwr.idaho.gov
meghan.carter@idwr.idaho.gov
sara.ajeti@idwr.idaho.gov

Attorneys for Respondent

Michael P. Lawrence
Taylor J Barton
GIVENS PURSLEY LLP
601 West Bannock Street
PO Box 2720
Boise, Idaho 83701-2720
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Facsimile: (208) 388-1300
mpl@givenspursley.com
tjb@givenspursley.com

Attorneys for Petitioner Big Willow Ranch, LLC

TABLE OF CONTENTS

AGENCY RECORD CERTIFICATIONS AND NOTICES

INDEX

1998 AUG 28 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	)	PARTIAL DECREE PURSUANT TO
	)	I.R.C.P. 54(b) FOR
Case No. 39576	)	
	)	Water Right 65-01985

NAME AND ADDRESS: A L CATTLE INC
PO BOX 608
EMMETT, ID 83617

SOURCE: GROUNDWATER

QUANTITY: 0.04 CFS
1.20 AFY

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

PRIORITY DATE: 04/01/1919

POINT OF DIVERSION: T08N R02W S01 SWNE Within Gem County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Domestic 1 HOME	01-01 TO 12-31	0.04 CFS 1.20 AFY

PLACE OF USE: Domestic Within Gem County
T08N R02W S01 SWNE

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.

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

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	)	**SUBCASES: See Attached Exhibit A**
	)	**(B65ALCATT)**
	)	
	)	
	)	

On April 14, 2004, a ***Special Master's Report and Recommendation*** was filed for the above-captioned water rights. 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 the above-captioned water rights are hereby **decreed** as set forth in the attached ***Partial Decrees Pursuant to I.R.C.P. 54(b)***.

DATED June 2, 2004.

JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

EXHIBIT A

Subcase Nos:

65-01967
65-01970
65-01971
65-01981
65-01983
65-02043
65-03124X
65-09533
65-09534
65-09535
65-10537

(Subcase list: B65ALCATT)
6/02/04

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER OF PARTIAL DECREE was mailed on June 02, 2004, with sufficient first-class postage to the following:

UNITED STATES OF AMERICA
Represented by:
DAVID W GEHLERT
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATRUAL RESOURCE
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

A L CATTLE INC
PO BOX 608
EMMETT, ID 83617
Phone: 208-365-2320

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

 Julie Murphy Deputy Clerk

2004 JUN 02 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	)	PARTIAL DECREE PURSUANT TO
	)	I.R.C.P. 54(b) FOR
Case No. 39576	)	
	)	Water Right 65-03124X

NAME AND ADDRESS: A L CATTLE INC
PO BOX 608
EMMETT, ID 83617

SOURCE: BIG WILLOW CREEK TRIBUTARY: PAYETTE RIVER

QUANTITY: 0.96 CFS

PRIORITY DATE: 05/01/1871

POINT OF DIVERSION: T08N R02W S01 NESE Within Gem County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Irrigation	03-15 TO 11-15	0.96 CFS

PLACE OF USE: Irrigation

T08N R02W S01	SWNE 22.0	SENE 12.0
	SWNW 9.0	SENW 19.0
	NESE 2.0	

64.0 Acres Total

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

Basin 65 General Provisions No. 3, the Separate Streams General Provision, does not apply to appropriations of water after October 18, 1977.

This water right shall be administered as being from a separate source pursuant to Basin 65 General Provision No. 3. If the holder of this right seeks to change the right pursuant to Idaho Code Section 42-222 or successor statute, nothing in this general provision shall preclude any other person or entity from demonstrating that such change in use would cause injury to its water right or from receiving any relief provided by law in the event of injury.

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.

John M. Melanson
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

In Re SRBA Case No. 39576	**SPECIAL MASTER'S REPORT** **FINDINGS OF FACT AND CONCLUSIONS OF LAW** **FOR WATER RIGHTS: See Exhibit A (Subcase List B65ALCATT)**

I. FINDINGS OF FACT

A notice of claim was filed for the above listed water rights pursuant to I.C.§ 42-1409. The Director of the State of Idaho Department of Water Resources examined the water system for this reporting area. The *Director's Report* contained a recommendation or abstract for the elements of these water rights.

On June 9, 2000, the United States of America, Bureau of Reclamation filed a *Motion to File Late Objections* in multiple subcases. The Motion was granted on July 28, 2000. The objections were filed to "General Provisions Basin 65 Irrigation & Other Part II (3) Separate Streams Administration." A Show Cause Hearing was set for January 27, 2004. On January 27, 2004, this Court filed correspondence dated January 26, 2004, received from the claimant's attorney stating that claimant did not oppose the addition of the General Provision separate streams language to the "other provisions necessary" element of these water rights.

II. CONCLUSIONS OF LAW

Therefore based on the file and record herein, IT IS RECOMMENDED that the water rights listed on attached Exhibit A be decreed with the elements as set forth in the attached ***Recommendations for Partial Decrees Pursuant to I.R.C.P. 54(b).***

DATED April 14, 2004.

THOMAS R. CUSHMAN
Special Master
Snake River Basin Adjudication

EXHIBIT A

Subcase Nos:

65-01967
65-01970
65-01971
65-01981
65-01983
65-02043
65-03124X
65-09533
65-09534
65-09535
65-10537

(Subcase list: B65ALCATT)
4/14/04

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED
2004 APR 14 PM 3 26

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	NOTICE OF ISSUANCE OF SPECIAL MASTER'S RECOMMENDATION Water Right(s): 65-01967 (SEE ATTACHED EXHIBIT A)

On April 14, 2004, Special Master JOHN M MELANSON issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s) pursuant to SRBA Administrative Order 1 (AO1), Section 13a.

Pursuant to SRBA Administrative Order 1, Section 13a, any party to the adjudication including parties to the subcase, may file a Motion to Alter or Amend on or before the 28th day of the next month.

Failure of any party in the adjudication to pursue or participate in a Motion to Alter or Amend the SPECIAL MASTER'S RECOMMENDATION shall constitute a waiver of the right to challenge it before the Presiding Judge.

DATED April 14, 2004.

Julie Murphy
JULIE MURPHY
Deputy Clerk

Exhibit A

Subcase Nos:

65-01967
65-01970
65-01971
65-01981
65-01983
65-02043
65-03124X
65-09533
65-09534
65-09535
65-10537

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED
2004 APR 14 PM 3 26

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): 65-01967 (SEE ATTACHED EXHIBIT A)

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT, SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on April 14, 2004, with sufficient first-class postage prepaid to the following:

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

UNITED STATES OF AMERICA
Represented by:
DAVID W GEHLERT
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATRUAL RESOURCE
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

A L CATTLE INC
PO BOX 608
EMMETT, ID 83617
Phone: 208-365-2320

Julie Murphy
JULIE MURPHY
Deputy Clerk

Exhibit A

Subcase Nos:

65-01967
65-01970
65-01971
65-01981
65-01983
65-02043
65-03124X
65-09533
65-09534
65-09535
65-10537

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED
2004 APR 14 PM 3 27

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 65-03124X

NAME AND ADDRESS: A L CATTLE INC
PO BOX 608
EMMETT, ID 83617

SOURCE: BIG WILLOW CREEK TRIBUTARY: PAYETTE RIVER

QUANTITY: 0.96 CFS

PRIORITY DATE: 05/01/1871

POINT OF DIVERSION: T08N R02W S01 NESE Within Gem County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Irrigation	03-15 TO 11-15	0.96 CFS

PLACE OF USE: Irrigation

		Within Gem County
T08N R02W S01	SWNE 22.0	SENE 12.0
	SWNW 9.0	SENW 19.0
	NESE 2.0	

64.0 Acres Total

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

Basin 65 General Provisions No. 3, the Separate Streams General Provision, does not apply to appropriations of water after October 18, 1977.

This water right shall be administered as being from a separate source pursuant to Basin 65 General Provision No. 3. If the holder of this right seeks to change the right pursuant to Idaho Code Section 42-222 or successor statute, nothing in this general provision shall preclude any other person or entity from demonstrating that such change in use would cause injury to its water right or from receiving any relief provided by law in the event of injury.

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.

RECOMMENDATION
APR 14 2004
SPECIAL MASTER

John M. Melanson
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

In Re SRBA	)	ORDER SETTING HEARING
	)	
Case No. 39576	)	
	)	SUBCASE NOS: 65-01967 65-01970 65-01971 65-01981 65-01983 65-02043 65-03124X 65-09533 65-09534 65-09535 65-10537

Please be advised that Special Master Tomas R. Cushman has set for hearing the Order to Show Cause Regarding General Provision Language.

TUESDAY, JANUARY 27, 2004 at 09:30 AM

SRBA WESTERN ANNEX
451 WEST STATE STREET
BOISE, ID

IT IS SO ORDERED.

Dated: NOVEMBER 24, 2003

/S/ THOMAS R CUSHMAN
Special Master
Snake River Basin Adjudication

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

CERTIFICATE OF MAILING

I Certify that a true and correct copy of the ORDER SETTING HEARING was mailed on NOVEMBER 24, 2003 , with sufficient first-class postage to the following:

UNITED STATES OF AMERICA
Represented by:
DAVID W GEHLERT
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATRUAL RESOURCE
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

A L CATTLE INC
PO BOX 608
EMMETT, ID 83617
Phone: 208-365-2320

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

/S/ DEBBIE LASH
Deputy Clerk

Idaho Department of Water Resources

Claim Number: 65-03124X

Legal: T08N, R02W, S1

Reviewed By: SB

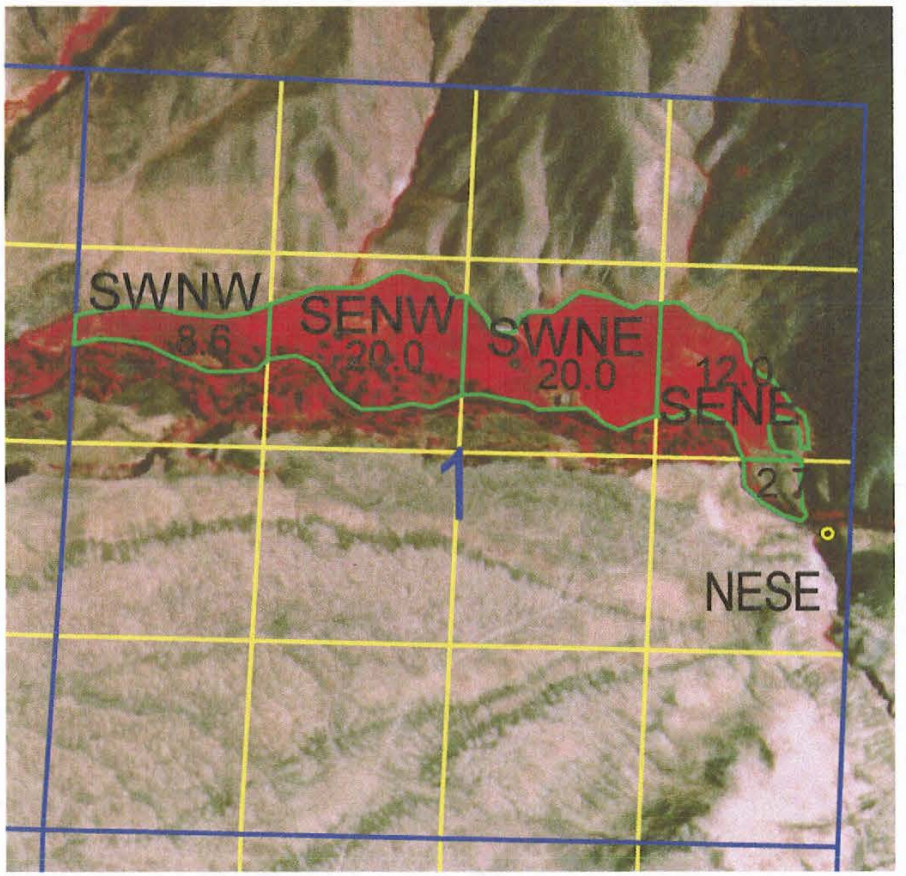
Point of Diversion

Place of Use

Section Lines

Quarter Quarter Lines

N



1987 Napp Photo

0 0.25 0.5 0.75 1 Miles

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: **A65-03124X**
Date Received: 1/17/1990
Receipt No: X999999
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: A. L. CATTLE, INC.
   Address: P.O.BOX 608
   EMMETT, ID 83617

2. Date of Priority: MAY 01, 1871

3. Source: BIG WILLOW CREEK Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4	Lot	County
08N	02W	1	NE SE		GEM

5. Description of diverting works:

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	03/15	11/15	0.960		

7. Total Quantity Appropriated is:
   0.960 C.F.S. (and/or) A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
08N	02W	1	SW NE		IRR	22.0
			SE NE		IRR	12.0
			SW NW		IRR	9.0
			SE NW		IRR	19.0

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4		Lot	Use	Acres
08N	02W	1	NE	SE		IRR	2.0
					Section Acres		64.0
					Total Acres		64.0

11. Place of use in counties: GEM

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:

14. Remarks:
THIS RIGHT WHEN COMBINED WITH RIGHT 65-10537 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.

15. Basis of Claim: DECREED
Case Number:
Court :
Decree date: 1/21/1986

STATE OF IDAHO
Decree Plaintiff

vs

A & C CORP., ET AL.
Decree Defendant

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do ____ do not ____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): _____ Date: _____

_____ Date: _____

State of Idaho)
) SS.
County of _____)

Subscribed and sworn (or affirmed) before me this _____ day

of _____ 19 _____ _____
Notary Public

Seal

Residing at _____

My Commission Expires _____

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

IDENT. NUMBER: 65-03124X
DATE RECEIVED: 1-17-90
RECEIPT NO: X999999
RECEIVED BY: RLD

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. NAME: A.L. CATTLE INC.
ADDRESS: ~~C/O AGNES BRAILSFORD~~
~~P.O. BOX 180~~ P.O. Box 608
~~HAGERMAN~~, ID Emmett 83338-0000

2. DATE OF PRIORITY: MAY 01, 1871

3. SOURCE: BIG WILLOW CREEK TRIB. TO:

4. POINT OF DIVERSION:

TOWNSHIP	RANGE	SECTION	1/4 OF 1/4 OF 1/4	LOT	COUNTY
08N	02W	1	NE SE		GEM

5. DESCRIPTION OF DIVERTING WORKS:

6. WATER IS USED FOR THE FOLLOWING PURPOSES:

PURPOSE	FROM	TO	C.F.S	(OR)	A.F.A.
IRRIGATION	03/15	11/15	0.960		

7. TOTAL QUANTITY APPROPRIATED IS:
0.960 C.F.S. (AND/OR) A.F.A.

8. TOTAL CONSUMPTIVE USE IS ACRE FEET PER ANNUM.

9. NON-IRRIGATION USES:

10. PLACE OF USE:

TOWNSHIP	RANGE	SECTION	1/4 OF 1/4	LOT	USE	ACRES
08N	02W	1	SW NE		IRR	22.0
			SE NE		IRR	12.0
			SW NW		IRR	9.0

10. PLACE OF USE: CONTINUED

TOWNSHIP	RANGE	SECTION	1/4 OF 1/4		LOT	USE	ACRES
08N	02W	1	SE	NW		IRR	19.0
			NE	SE		IRR	2.0
						SECTION ACRES	64.0
						TOTAL ACRES	64.0

11. PLACE OF USE IN COUNTIES: GEM, GEM

12. DO YOU OWN THE PROPERTY LISTED ABOVE AS PLACE OF USE? YES

13. OTHER WATER RIGHTS USED:

14. REMARKS:
THIS RIGHT WHEN COMBINED WITH RIGHT 65-10537 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.

15. BASIS OF CLAIM: DECREED
CASE NUMBER:
COURT :
DECREE DATE: 1/21/1986

STATE OF IDAHO
DECREE PLAINTIFF

VS

A & C CORP., ET AL.
DECREE DEFENDANT

16. SIGNATURE(S)

(A.) BY SIGNING BELOW, I/WE ACKNOWLEDGE THAT I/WE HAVE RECEIVED, READ AND UNDERSTAND THE FORM ENTITLED "HOW YOU WILL RECEIVE NOTICE IN THE SNAKE RIVER BASIN ADJUDICATION." (B.) I/WE DO ____ DO NOT _✓__ WISH TO RECEIVE AND PAY A SMALL ANNUAL FEE FOR MONTHLY COPIES OF THE DOCKET SHEET.

NUMBER OF ATTACHMENTS: _____

FOR INDIVIDUALS:

I/WE DO SOLEMNLY SWEAR OR AFFIRM THAT THE STATEMENTS CONTAINED IN THE FOREGOING DOCUMENT ARE TRUE AND CORRECT.

SIGNATURE OF CLAIMANT(S): _____ DATE: _____

_____ DATE: _____

FOR ORGANIZATIONS:

I DO SOLEMNLY SWEAR OR AFFIRM THAT I AM ___President___ OF
TITLE
___AL Cattle Inc___, THAT I HAVE SIGNED THE FOREGOING
ORGANIZATION
DOCUMENT IN THE SPACE BELOW AS ___President___ OF
TITLE
___AL Cattle Inc___ AND THAT THE STATEMENTS CONTAINED IN THE
ORGANIZATION
FOREGOING DOCUMENT ARE TRUE AND CORRECT.

Leon J Bradshaw
SIGNATURE OF AUTHORIZED AGENT

President AL Cattle Inc
TITLE AND ORGANIZATION

January 17 1990
DATE

STATE OF IDAHO)
) SS.
COUNTY OF Ada)

SUBSCRIBED AND SWORN (OR AFFIRMED) BEFORE ME THIS 17th DAY OF January 19 90

Helen Harrington
NOTARY PUBLIC

SEAL

RESIDING AT Helen Harrington, Notary Public
Residing at Boise, Idaho
MY COMMISSION EXPIRES My Commission Expires December 1, 1994

65-03124X PAGE 3 DATE: 10/28/89 5117

MICROFILMED
SEP 2 2 1992

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED
2004 APR 14 PM 3 27

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 65-03124X

NAME AND ADDRESS: A L CATTLE INC
PO BOX 608
EMMETT, ID 83617

SOURCE: BIG WILLOW CREEK TRIBUTARY: PAYETTE RIVER

QUANTITY: 0.96 CFS

PRIORITY DATE: 05/01/1871

POINT OF DIVERSION: T08N R02W S01 NESE Within Gem County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Irrigation	03-15 TO 11-15	0.96 CFS

PLACE OF USE: Irrigation

		Within Gem County
T08N R02W S01	SWNE 22.0	SENE 12.0
	SWNW 9.0	SENW 19.0
	NESE 2.0	

64.0 Acres Total

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

Basin 65 General Provisions No. 3, the Separate Streams General Provision, does not apply to appropriations of water after October 18, 1977.

This water right shall be administered as being from a separate source pursuant to Basin 65 General Provision No. 3. If the holder of this right seeks to change the right pursuant to Idaho Code Section 42-222 or successor statute, nothing in this general provision shall preclude any other person or entity from demonstrating that such change in use would cause injury to its water right or from receiving any relief provided by law in the event of injury.

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.

RECOMMENDATION
APR 1 4 2004
SPECIAL MASTER

John M. Melanson
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

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

A. Subcase 65-3124X
(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: United States of America acting through the Department of Interior, Bureau of Reclamation, Regional Director PN Code-3100
Address: 1150 N. Curtis Rd. Suite 100
Boise, Idaho 83706-1234
Daytime Phone: (208) 678-0461 (Dala Walton)

Name & Address of Attorney, if any:
David W. Gehlert (303 312-7352)
Trial Attorney, General Litigation Section
Environment and Natural Resource Division
U.S. Department of Justice
999 18th Street, Suite N 945
Denver, CO 80202

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: A L Cattle Inc.
Address: PO Box 608
Emmett, ID 83617

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

■ **General Provision Basin 65 Irrigation & Other Part III (3) Separate Streams**

1. ☐ **Name and Address**
   Should be:

2. ☐ **Source**
   Should be:

3. ☐ **Quantity**
   Should be:

4. ☐ **Priority Date**
   Should be:

5. ☐ **Point(s) of Diversion**
   Should be:

6. ☐ **Instream Flow Description**
   Should be:

7. ☐ **Purpose(s) of Use**
   Should be:

8. ☐ **Period of Year**
   Should be:

9. ☐ **Place of Use**
   Should be:

11. **I object because:**

☐ This water right should not exist.
☐ This water right was not recommended, but should be recommended with the elements described.

E. REASONS SUPPORTING EACH OBJECTION(S):
The Bureau of Reclamation objects to the separate stream provision of the Director's Report for Basin 65, Part III. These streams should be administered as part of the Payette River System in order to adequately protect water rights in the Payette River subbasin.

F. **VERIFICATION** (Must be Completed)

State of Idaho)
) ss.
County of Ada)

Jerrold D. Gregg, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing objection)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on: January 9, 2002

HELENE TOMASZEWSKI NOTARY PUBLIC STATE OF IDAHO

Helene Tomaszewski
Notary Public for: Idaho
Residing at: Meridian
My Commission Expires: 01-16-2002

INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the Court. **FAX filings will not be accepted**. You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on January 17, 2002, I mailed the original and copies of this objection, including all attachments, to the following persons, by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID. 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: A L Cattle Inc.

Address: PO Box 608
Emmett, ID 83617

3. Copies to:

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

IDWR Document Depository
P.O. Box 83720
Boise, Idaho 83720-0098

United States Department of Justice
Environment and Natural Resource Division
General Litigation Section
550 West Fort Street, MSC 033
Boise, Idaho 83724

Dale S. Walton
Signature of Objector or attorney mailing on Objector's behalf

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

May 4, 2001

Dear Basin 65 water user:

This letter is to inform you that you may be eligible to file a stockwater claim with the Idaho Department of Water Resources (IDWR) in connection with the Snake River Basin Adjudication (SRBA). IDWR is sending this letter to water users in Basin 65 who might have relied upon the non-irrigation season stockwater provision in the Payette Adjudication. This provision states:

> "When stockwater is not a specifically mentioned use for a right that includes irrigation, a reasonable flow is implied and included for the watering of livestock during the non-irrigation season."

In another basin, the Idaho Supreme Court struck down general provisions that contained similar language. The non-irrigation season stockwater language quoted above was not included in the General Provisions for Basin 65 because of the Idaho Supreme Court's ruling.

IDWR recognizes that in reliance on the non-irrigation season stockwater language in the Payette Adjudication, water users might not have filed stockwater claims in the SRBA to cover the non-irrigation season period. Individuals who historically watered livestock during the non-irrigation season without a separate stockwater claim might desire to file a new stockwater claim with IDWR.

To be eligible for a new non-irrigation season stockwater claim:

1. You must have actually and historically watered livestock during the non-irrigation season without a separate stockwater right.
2. You must have filed a surface water irrigation claim in both the Payette Adjudication and the SRBA.
3. You must not have filed a stockwater claim with the surface water irrigation claim.

If you meet these three requirements, you may file a Notice of Claim form for stockwater with IDWR. **To have a timely filing you must file this claim with IDWR by May 25, 2001**. IDWR will waive filing fees for these stockwater claims if filed before this deadline. Failure to file your claim in a timely manner may prevent you from claiming it in the future. Notice of Claim forms are available on IDWR's website at www.idwr.state.id.us/info/water/srba/forms.htm or from any IDWR office. Claimants can call IDWR, Western Region at (208) 334-2190 to make an appointment if they need assistance filling out a Notice of Claim form.

Sincerely,

David R. Tuthill, Jr., P.E.
Adjudication Bureau Chief

03/07/2001

RECEIVED

APR 1 1 2001

WATER RESOURCES
WESTERN REGION

NOTICE OF ERROR
REPLY

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS: April 13, 2001

Water right number: 65-3124X

A L CATTLE INC
PO BOX 608
EMMETT ID 83617

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):

2. Describe the changes you wish to make in the proposed recommendation:

3. Give a brief explanation as to why you disagree with these portions:

✓ **I AGREE with this proposed recommendation: no changes need to be made.**

DATE: 4-11-01 **SIGNATURE:** A.L. Cattle Inc

Please print your name: by Agnes L. Brailsford

IDWR Regional Office, 2735 Airport Way, Boise, ID 83705, (208) 334-2190

11/15/2000

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 65-3124X

NAME AND ADDRESS: A L CATTLE INC
POBOX 608
EMMETT, ID 83617

SOURCE: BIG WILLOW CREEK TRIBUTARY: PAYETTE RIVER

QUANTITY: 0.96 CFS

PRIORITY DATE: 05/01/1871

POINT OF DIVERSION: T08N R02W S1 NESE Within GEM County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	3-15 11-15	0.96 CFS

PLACE OF USE:

IRRIGATION Within GEM County

T08N R02W S1	SWNE	22	T08N R02W S1	SENE	12
T08N R02W S1	SWNW	9	T08N R02W S1	SENW	19
T08N R02W S1	NESE	2			

64 ACRES TOTAL

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

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM	USE PERIOD TO	DIVERSION RATE	DIVERSION VOLUME
C	A L CATTLE INC	05/01/1871	IRRIGATION	03-15	11-15	0.960 CFS	
					TOTAL DIVERSION:	0.960 CFS	

Water Source: BIG WILLOW CREEK Tributary to: Payette R Stage: DECREED

Point(s) of Diversion: T08N R02W S01 NESE GEM County

Place of use Legal Description for: IRRIGATION

			NE				NW				SW				SE				
			NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE	
T	R	S	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	SUM
08N	02W	1			22	12			09	19					02				64.0
																		TOTAL ACRES	64.0

POU County: GEM

Remarks: GEN THIS RIGHT WHEN COMBINED WITH RIGHT 65-10537 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.

not needed does not exceed 1/acre

Dates: Exam Made Date: Verified Date: Objection Filed Date:

Misc: Water District Number: 65 Field Inspection Flag:
Presumption Flag:

C10

.96 32/80 1.2

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM	USE PERIOD TO	DIVERSION RATE	DIVERSION VOLUME
C	A.L. CATTLE INC. C/O AGNES BRAILSFORD P.O. BOX 180 HAGERMAN ID 833380000	05/01/1871	IRRIGATION	03/15	11/15	0.960 CFS	
				TOTAL DIVERSION:		0.960 CFS	

Water Source: BIG WILLOW CREEK Tributary to: Stage: DECREED

Point(s) of Diversion: T08N R02W S01 NESE GEM County

Place of use Legal Description for: IRRIGATION

			NE				NW				SW				SE				
			NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE	
T	R	S	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	SUM
08N	02W	1			22	12			09	19					02				64.0
																		TOTAL ACRES	64.0

Pou County: GEM

Remarks: GEN THIS RIGHT WHEN COMBINED WITH RIGHT 65-10537 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.

Dates: App. Received: Priority Date: 05/01/1871
Proof Due Date: Proof Made Date:
Exam Made Date: Exam Sent to S.O.:
Licensed Date:

Misc: Water District Number: 65 Field Exam Fee:

Idaho Department of Water Resources

Claim Number: 65-03124X

Legal: T08N, R02W, S1

Reviewed By:

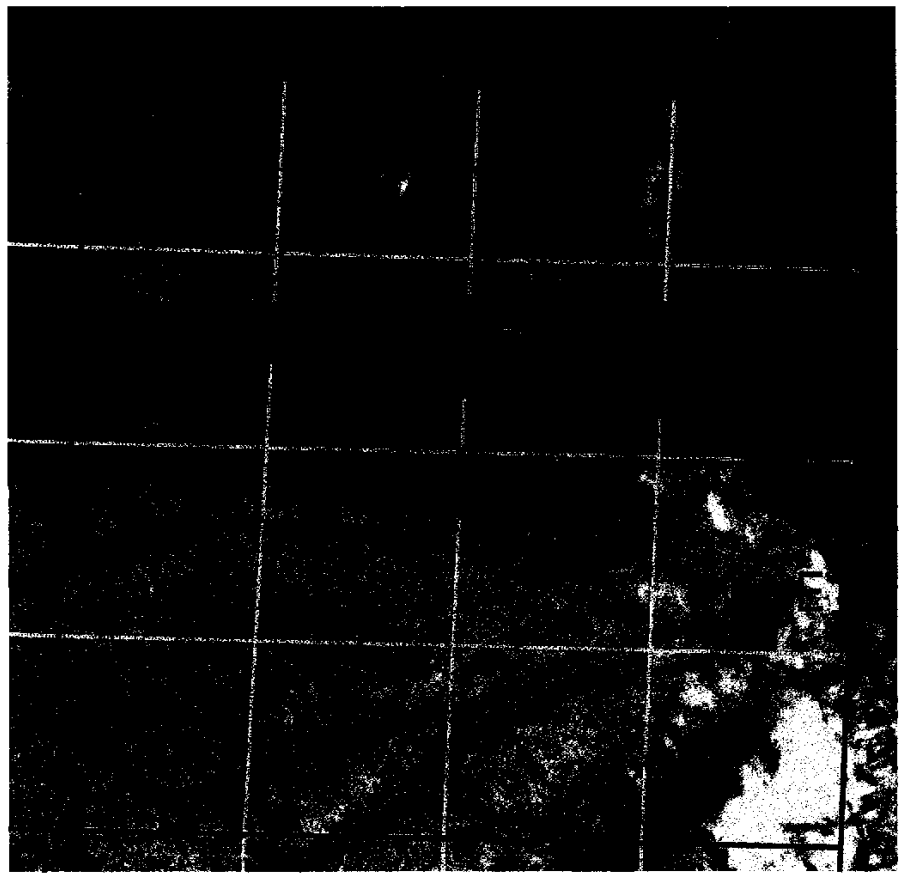
Point of Diversion

Place of Use

Section Lines

Quarter Quarter Lines

N



1987 Napp Photo

0 0.25 0.5 0.75 1 Miles

Norman M. Semanko
Attorney at Law
410 S. Orchard, Suite 144
Boise, ID 83705
Telephone: (208) 344-6690
Facsimile: (208) 344-2744
ISB# 4761

Attorney for A.L. Cattle, Inc.

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 Nos.: See Exhibit "A"
	)	
Case No. 39576	)	MEMORANDUM IN SUPPORT OF MOTION
	)	TO FILE LATE OBJECTIONS AND SET
	)	ASIDE PARTIAL DECREES
	)	

DESCRIPTIVE SUMMARY

This is the memorandum of A.L. Cattle, Inc. ("A.L. Cattle") in support of its motion to file late objections and set aside partial decrees for the United States' water right recommendations listed on Exhibit "A", attached hereto.

BACKGROUND

The United States of America filed numerous de minimis stockwater claims in Basin 65, including those listed on Exhibit "A", attached hereto. These claims are for stockwater that is used by A.L. Cattle. The claims have points of diversion and/or places of use in federal grazing allotments in which A.L. Cattle grazes its livestock.

The United States filed its de minimis claims for the stockwater used in A.L. Cattle's

grazing allotments prior to filing of the Director's Report for Small Domestic and Stockwater Claims in Basin 65. A.L. Cattle did not file comprehensive claims for the stockwater on federal land prior to filing of the Small Domestic and Stockwater report by the Director. Instead, A.L. Cattle understood that its claims could be filed prior to the issuance of the Director's Report for Irrigation and Other Water Rights, which will be filed by the Director at a future date. In addition, claims that had previously been filed by A.L. Cattle were not included in the Small Domestic and Stockwater Report. The President of A.L. Cattle, Agnes L. Brailsford, mistakenly believed that the federal claims to stockwater in A.L. Cattle's grazing allotments would not be at issue in the SRBA until all of the water rights claimed in Basin 65 were reported to the Court at a future date. See, Affidavit of Agnes L. Brailsford in Support of Motion to File Late Objections and Set Aside Partial Decrees (June 30, 2000) ("Brailsford Affidavit").

This "bifurcation" of the filing and reporting schedules for "competing" or "overlapping" stockwater claims filed by the United States and private stockwater claimants has occurred in other basins (e.g., Basins 45 and 47), as well, causing confusion among the private claimants and the subsequent filing of motions to file late objections and/or set aside partial decrees. Unfortunately, no substantive ruling has been issued in any of these pending proceedings.

Because of the confusion caused by the bifurcated filing and reporting schedules, A.L. Cattle mistakenly believed that the federal stockwater claims listed on Exhibit "A" would be recommended at a later date, and therefore neglected to review the Director's Report for Small Domestic and Stockwater Claims in Basin 65 or file objections to the recommendations for the federal stockwater claims. See, Brailsford Affidavit. Again, this has happened to other private claimants in the SRBA, particularly in Basins 45 and 47.

Upon becoming aware that the federal claims may have already been recommended and/or considered by the court because of the bifurcated schedule for stockwater claims, A.L.

Cattle requested a list from the Department of those federal claims that have been filed in its grazing allotments and their status in the SRBA. In response, the Department provided information to A.L. Cattle, identifying those claims located in its grazing allotments and their status. This list included U.S. claims which have already been reported and/or decreed, as well as A.L. Cattle claims which have not been reported. A.L. Cattle retained counsel to assist in filing late objections to the recommendations for these federal claims and, where necessary, to set aside partial decrees already entered for many of these water right recommendations. See, Brailsford Affidavit.

A review of the materials provided by the Department indicate that 116 federal claims have been recommended in A.L. Cattle's grazing allotments in Basin 65. A.L. Cattle seeks to file objections to and, where necessary, set aside the partial decrees for, each of these recommendations, as listed on Exhibit "A", attached hereto.

ARGUMENT

The motion to file late objections and set aside partial decrees should be granted pursuant to Administrative Order 1, Sections 10.j. and 14.d. (Amended 10/16/97) ("AO1") and I.R.C.P., Rules 55(c) and 60(b). Good cause exists to grant the motion. Furthermore, granting of the motion would allow the issues raised by the objections to be tried on their merits.

1. A.L. Cattle Has Demonstrated Good Cause to File Its Late Objections and Set Aside the Existing Partial Decrees in the Grazing Allotments.

To allow late objections, or to set aside partial decrees, AO1 and I.R.C.P. Rules 55(c) and 60(b) require demonstration of "good cause" in the form of: (1) mistake, inadvertence, excusable neglect, newly discovered evidence, fraud or misconduct, a void judgment, a judgment that is no longer equitable, or any other reason justifying relief; and (2) a meritorious position. In considering the question, the court "must apply a standard of liberality rather than strictness and

give the party moving to vacate the default the benefit of a genuine doubt". Johnson v. Pioneer Title Co., 104 Idaho 727, 733 (Ct. App. 1983).

The reason that A.L. Cattle has filed late objections and seeks to set aside the partial decrees that have already been entered is straightforward and simple. A.L. Cattle mistakenly believed that the United States' stockwater claims in the grazing allotments would be considered at a later date when A.L. Cattle's own claims – which were not required to be filed prior to the issuance of the Director's Report containing the U.S. claims – are reported in a future Director's Report for Basin 65. Because of this mistake, A.L. Cattle neglected to review the Director's Reports issued for Small Domestic and Stockwater Claims in Basin 65 or to file objections. As a result, many of the U.S. claims have been partially decreed. This was the result of a mistake of fact and/or excusable neglect and constitutes "good cause" as required by the rules for filing late objections and setting aside partial decrees.

The failure to file objections can also be attributed to inadvertence (not knowing that the U.S. claims had been reported) or surprise (that the U.S. claims were reported earlier than the private claims for the same water), providing further evidence of "good cause". While the "bifurcated" reporting schedule for Basin 65 is well known to the Department and the SRBA Court, it was not known to A.L. Cattle and has obviously caused confusion which resulted in the failure to file objections.

A.L. Cattle has retained counsel to assist in filing late objections, but was pro se at the time the objections were due. Where pro se litigants erroneously interpret acts (like the bifurcated reporting schedule for Basins 65 stockwater claims), despite notice that may have been provided to them (like general notice of the issuance of the Director's Reports for Small Domestic and Stockwater Claims in Basin 65), they are entitled to relief. See e.g., Schraufnagel v. Quinowski, 113 Idaho 753 (Ct. App. 1987) (pro se defendant entitled to relief when he erroneously

interpreted court order fixing trial and pretrial conference dates despite notice he had received about summary judgment hearing).

A pro se litigant's misunderstanding of procedure can constitute excusable neglect or mistake justifying relief. Schraufnagel, 113 Idaho at 755-56. The test is not what A.L. Cattle would have done if it had hired an attorney to oversee stockwater issues in the SRBA, but rather what a reasonably prudent person would have done under the circumstances. Johnson, supra; Schraufnagel, supra.

Given the complicated procedural matters regarding bifurcation of the stockwater claims in this case, and the resulting confusion and mistaken understandings by A.L. Cattle, it was reasonable for A.L. Cattle to fail to file objections until now.

A.L. Cattle was obviously mistaken about the reporting of the federal stockwater claims and the time at which the federal claims would be considered at issue by the SRBA Court, vis-a-vis "competing" or "overlapping" private claims for the same stockwater. A.L. Cattle mistakenly understood that the stockwater ownership issue would be determined at a later date, after the private claims were reported. When it was discovered and understood that the U.S. claims had indeed been reported already, A.L. Cattle promptly prepared and filed its motion. See, Brailsford Affidavit.

Newly discovered evidence, in learning about the actual reporting schedule for the federal and private claims, is also a ground for relief. Finally, given the insufficient and misleading notice provided to date regarding the effects of bifurcating the reporting process for stockwater claims, any objection deadline, partial decree or other proceeding involving the United States' claims should be deemed void, providing a further ground for granting the motions. Certainly, under these circumstances, it is not equitable to bar A.L. Cattle from filing objections. Any partial decrees which have already been entered should be set aside to allow filing of late objections.

2. A.L. Cattle has a Meritorious Position.

A.L. Cattle has demonstrated a meritorious position. It is a position that the United States may not agree with, but this does not mean that it is without merit.

A.L. Cattle asserts that the United States has not put the water to beneficial use. The livestock which graze on the federal allotment are owned by A.L. Cattle, not the United States, and beneficial use of the stockwater has been made by A.L. Cattle and its predecessors, not the United States. As a result, the United States has no water right in A.L. Cattle's grazing allotments.

The theory espoused by A.L. Cattle is that the actual beneficial use of stockwater in the grazing allotments is attributable to A.L. Cattle and its predecessors, not the United States, and cannot be decreed to the United States. The court should allow the issue to be decided on the merits. "Judgments by default are not favored and the general rule in doubtful cases is to grant relief from the default in order to reach a judgment on the merits." Johnson, 104 Idaho at 732; see also, Baldwin v. Baldwin, 114 Idaho 525 (Ct. App. 1988) (relief from a default judgment is favored in doubtful cases).

CONCLUSION

For the reasons set forth above, A.L. Cattle's motion to file late objections and set aside partial decrees should be granted.

DATED this 14th day of July, 2000.

NORMAN M. SEMANKO

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of July, 2000, I served a true and correct copy of the foregoing MEMORANDUM IN SUPPORT OF MOTION TO FILE LATE OBJECTIONS AND SET ASIDE PARTIAL DECREES upon the following individuals by placing the document in the United States mail, postage prepaid, addressed as follows:

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

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

Norman M. Semanko

ALCATTLE.BRF

EXHIBIT "A"

A.L. Cattle, Inc.
Basin 65

65-01969	65-19909	65-20169	65-22175
65-07267	65-19911	65-20173	65-22185
65-07269	65-19913	65-20177	
65-12395	65-19915	65-20181	
65-12673	65-19917	65-20185	
65-12779	65-19924	65-20189	
65-12794	65-19926	65-20192	
65-12853	65-19929	65-20365	
65-12854	65-19930	65-20366	
65-13121	65-19931	65-20367	
65-13128	65-19932	65-20368	
65-13257	65-19933	65-20370	
65-13258	65-19934	65-20371	
65-13271	65-19935	65-20372	
65-13276	65-19936	65-20374	
65-19803	65-19937	65-20376	
65-19805	65-19938	65-20377	
65-19807	65-19939	65-20378	
65-19812	65-19940	65-20379	
65-19814	65-19942	65-20380	
65-19816	65-19943	65-20381	
65-19822	65-19956	65-20382	
65-19824	65-19958	65-20383	
65-19826	65-19960	65-20384	
65-19894	65-19962	65-20385	
65-19895	65-19964	65-20436	
65-19896	65-19966	65-20458	
65-19897	65-19996	65-20478	
65-19898	65-19997	65-20486	
65-19899	65-20003	65-20510	
65-19901	65-20073	65-20537	
65-19902	65-20074	65-20584	
65-19903	65-20097	65-20609	
65-19904	65-20099	65-20610	
65-19905	65-20106	65-20611	
65-19906	65-20129	65-20612	
65-19907	65-20158	65-20616	
65-19908	65-20168	65-20631	

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	)	**SUBCASES: See Attached Exhibit A**
	)	**(B65ALCATT)**
	)	
	)	
	)	

On April 14, 2004, a ***Special Master's Report and Recommendation*** was filed for the above-captioned water rights. 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 the above-captioned water rights are hereby **decreed** as set forth in the attached ***Partial Decrees Pursuant to I.R.C.P. 54(b)***.

DATED June 2, 2004.

JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

EXHIBIT A

Subcase Nos:

65-01967
65-01970
65-01971
65-01981
65-01983
65-02043
65-03124X
65-09533
65-09534
65-09535
65-10537

(Subcase list: B65ALCATT)
6/02/04

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER OF PARTIAL DECREE was mailed on June 02, 2004, with sufficient first-class postage to the following:

UNITED STATES OF AMERICA
Represented by:
DAVID W GEHLERT
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATRUAL RESOURCE
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

A L CATTLE INC
PO BOX 608
EMMETT, ID 83617
Phone: 208-365-2320

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

 Julie Murphy Deputy Clerk

2004 JUN 02 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	)	PARTIAL DECREE PURSUANT TO
	)	I.R.C.P. 54(b) FOR
Case No. 39576	)	
_____	)	Water Right 65-10537

NAME AND ADDRESS: A L CATTLE INC
PO BOX 608
EMMETT, ID 83617

SOURCE: BIG WILLOW CREEK TRIBUTARY: PAYETTE RIVER

QUANTITY: 0.32 CFS

PRIORITY DATE: 05/02/1890

POINT OF DIVERSION: T08N R02W S01 NESE Within Gem County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Irrigation	03-15 TO 11-15	0.32 CFS

PLACE OF USE: Irrigation

			Within Gem County
T08N R02W S01	SWNE	22.0	SENE 12.0
	SWNW	9.0	SENW 19.0
	NESE	2.0	

64.0 Acres Total

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

Basin 65 General Provisions No. 3, the Separate Streams General Provision, does not apply to appropriations of water after October 18, 1977.

This water right shall be administered as being from a separate source pursuant to Basin 65 General Provision No. 3. If the holder of this right seeks to change the right pursuant to Idaho Code Section 42-222 or successor statute, nothing in this general provision shall preclude any other person or entity from demonstrating that such change in use would cause injury to its water right or from receiving any relief provided by law in the event of injury.

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.

John M. Melanson
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

In Re SRBA Case No. 39576	**SPECIAL MASTER'S REPORT** **FINDINGS OF FACT AND CONCLUSIONS OF LAW** **FOR WATER RIGHTS: See Exhibit A (Subcase List B65ALCATT)**

I. FINDINGS OF FACT

A notice of claim was filed for the above listed water rights pursuant to I.C.§ 42-1409. The Director of the State of Idaho Department of Water Resources examined the water system for this reporting area. The *Director's Report* contained a recommendation or abstract for the elements of these water rights.

On June 9, 2000, the United States of America, Bureau of Reclamation filed a *Motion to File Late Objections* in multiple subcases. The Motion was granted on July 28, 2000. The objections were filed to "General Provisions Basin 65 Irrigation & Other Part II (3) Separate Streams Administration." A Show Cause Hearing was set for January 27, 2004. On January 27, 2004, this Court filed correspondence dated January 26, 2004, received from the claimant's attorney stating that claimant did not oppose the addition of the General Provision separate streams language to the "other provisions necessary" element of these water rights.

II. CONCLUSIONS OF LAW

Therefore based on the file and record herein, IT IS RECOMMENDED that the water rights listed on attached Exhibit A be decreed with the elements as set forth in the attached ***Recommendations for Partial Decrees Pursuant to I.R.C.P. 54(b).***

DATED April 14, 2004.

THOMAS R. CUSHMAN
Special Master
Snake River Basin Adjudication

EXHIBIT A

Subcase Nos:

65-01967
65-01970
65-01971
65-01981
65-01983
65-02043
65-03124X
65-09533
65-09534
65-09535
65-10537

(Subcase list: B65ALCATT)
4/14/04

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	**SPECIAL MASTER'S REPORT** **FINDINGS OF FACT AND CONCLUSIONS OF LAW** **FOR WATER RIGHTS: See Exhibit A (Subcase List B65ALCATT)**

I. FINDINGS OF FACT

A notice of claim was filed for the above listed water rights pursuant to I.C.§ 42-1409. The Director of the State of Idaho Department of Water Resources examined the water system for this reporting area. The *Director's Report* contained a recommendation or abstract for the elements of these water rights.

On June 9, 2000, the United States of America, Bureau of Reclamation filed a *Motion to File Late Objections* in multiple subcases. The Motion was granted on July 28, 2000. The objections were filed to "General Provisions Basin 65 Irrigation & Other Part II (3) Separate Streams Administration." A Show Cause Hearing was set for January 27, 2004. On January 27, 2004, this Court filed correspondence dated January 26, 2004, received from the claimant's attorney stating that claimant did not oppose the addition of the General Provision separate streams language to the "other provisions necessary" element of these water rights.

II. CONCLUSIONS OF LAW

Therefore based on the file and record herein, IT IS RECOMMENDED that the water rights listed on attached Exhibit A be decreed with the elements as set forth in the attached ***Recommendations for Partial Decrees Pursuant to I.R.C.P. 54(b).***

DATED April 14, 2004.

THOMAS R. CUSHMAN
Special Master
Snake River Basin Adjudication

EXHIBIT A

Subcase Nos:

65-01967
65-01970
65-01971
65-01981
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65-09533
65-09534
65-09535
65-10537

(Subcase list: B65ALCATT)
4/14/04

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED
2004 APR 14 PM 3 26

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	NOTICE OF ISSUANCE OF SPECIAL MASTER'S RECOMMENDATION Water Right(s): 65-01967 (SEE ATTACHED EXHIBIT A)

On April 14, 2004, Special Master JOHN M MELANSON issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s) pursuant to SRBA Administrative Order 1 (AO1), Section 13a.

Pursuant to SRBA Administrative Order 1, Section 13a, any party to the adjudication including parties to the subcase, may file a Motion to Alter or Amend on or before the 28th day of the next month.

Failure of any party in the adjudication to pursue or participate in a Motion to Alter or Amend the SPECIAL MASTER'S RECOMMENDATION shall constitute a waiver of the right to challenge it before the Presiding Judge.

DATED April 14, 2004.

Julie Murphy
JULIE MURPHY
Deputy Clerk

Exhibit A

Subcase Nos:

65-01967
65-01970
65-01971
65-01981
65-01983
65-02043
65-03124X
65-09533
65-09534
65-09535
65-10537

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED
2004 APR 14 PM 3 26

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): 65-01967 (SEE ATTACHED EXHIBIT A)

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT, SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on April 14, 2004, with sufficient first-class postage prepaid to the following:

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

UNITED STATES OF AMERICA
Represented by:
DAVID W GEHLERT
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATRUAL RESOURCE
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

A L CATTLE INC
PO BOX 608
EMMETT, ID 83617
Phone: 208-365-2320

Julie Murphy
JULIE MURPHY
Deputy Clerk

Exhibit A

Subcase Nos:

65-01967
65-01970
65-01971
65-01981
65-01983
65-02043
65-03124X
65-09533
65-09534
65-09535
65-10537

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED
2004 APR 14 PM 3 27

In Re SRBA	)	PARTIAL DECREE PURSUANT TO
	)	I.R.C.P. 54(b) FOR
Case No. 39576	)	
	)	Water Right 65-10537

NAME AND ADDRESS: A L CATTLE INC
PO BOX 608
EMMETT, ID 83617

SOURCE: BIG WILLOW CREEK TRIBUTARY: PAYETTE RIVER

QUANTITY: 0.32 CFS

PRIORITY DATE: 05/02/1890

POINT OF DIVERSION: T08N R02W S01 NESE Within Gem County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Irrigation	03-15 TO 11-15	0.32 CFS

PLACE OF USE: Irrigation

		Within Gem County
T08N R02W S01	SWNE 22.0	SENE 12.0
	SWNW 9.0	SENW 19.0
	NESE 2.0	

64.0 Acres Total

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

Basin 65 General Provisions No. 3, the Separate Streams General Provision, does not apply to appropriations of water after October 18, 1977.

This water right shall be administered as being from a separate source pursuant to Basin 65 General Provision No. 3. If the holder of this right seeks to change the right pursuant to Idaho Code Section 42-222 or successor statute, nothing in this general provision shall preclude any other person or entity from demonstrating that such change in use would cause injury to its water right or from receiving any relief provided by law in the event of injury.

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.

RECOMMENDATION

APR 14 2004

SPECIAL MASTER

John M. Melanson
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

In Re SRBA	)	ORDER SETTING HEARING
	)	
Case No. 39576	)	
	)	SUBCASE NOS: 65-01967 65-01970
		65-01971 65-01981 65-01983
		65-02043 65-03124X 65-09533
		65-09534 65-09535 65-10537

Please be advised that Special Master Tomas R. Cushman has set for hearing the Order to Show Cause Regarding General Provision Language.

TUESDAY, JANUARY 27, 2004 at 09:30 AM

SRBA WESTERN ANNEX
451 WEST STATE STREET
BOISE, ID

IT IS SO ORDERED.

Dated: NOVEMBER 24, 2003

/S/ THOMAS R CUSHMAN
Special Master
Snake River Basin Adjudication

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

CERTIFICATE OF MAILING

I Certify that a true and correct copy of the ORDER SETTING HEARING was mailed on NOVEMBER 24, 2003 , with sufficient first-class postage to the following:

UNITED STATES OF AMERICA
Represented by:
DAVID W GEHLERT
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATRUAL RESOURCE
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

A L CATTLE INC
PO BOX 608
EMMETT, ID 83617
Phone: 208-365-2320

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

/S/ DEBBIE LASH
Deputy Clerk

Idaho Department of Water Resources

Claim Number: 65-10537

Legal: T08N, R02W, S1

Reviewed By:

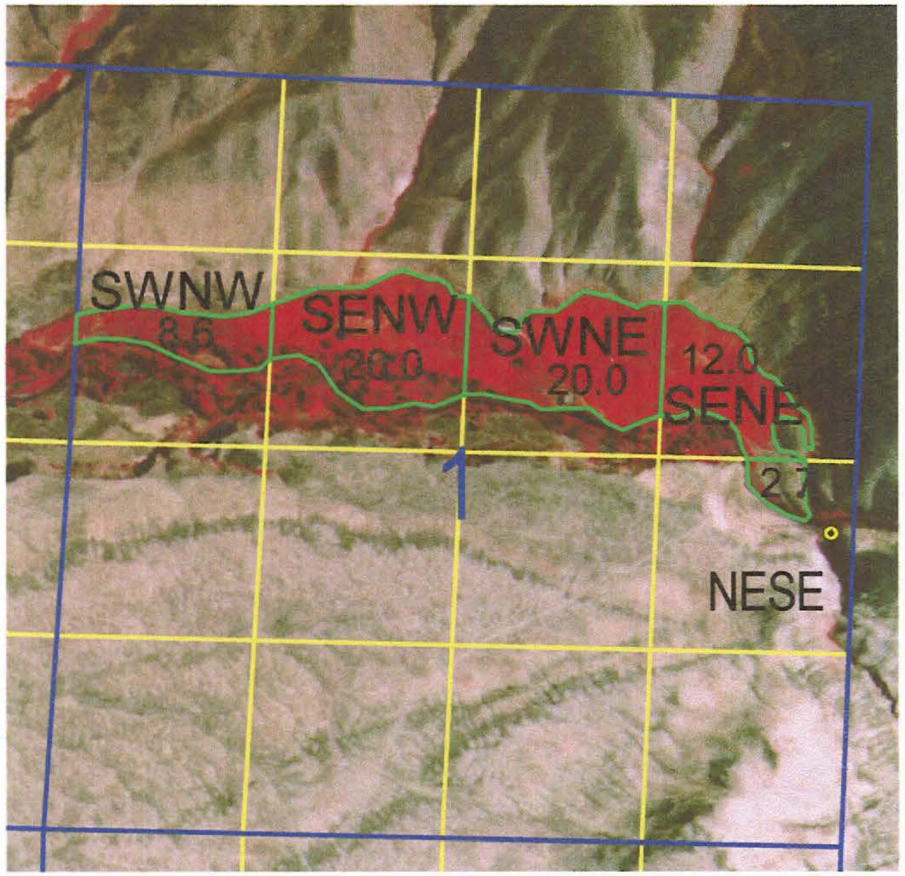
Point of Diversion

Place of Use

Section Lines

Quarter Quarter Lines

N



1987 Napp Photo

0 0.25 0.5 0.75 1 Miles

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION OF RIGHTS TO THE USE OF WATER FROM THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: **A65-10537**
Date Received: 1/17/1990
Receipt No: X999999
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT ACQUIRED UNDER STATE LAW

1. Name: A. L. CATTLE, INC.
   Address: P.O.BOX 608
   EMMETT, ID 83617

2. Date of Priority: MAY 02, 1890

3. Source: BIG WILLOW CREEK Trib. to: PAYETTE RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4	Lot	County
08N	02W	1	NE SE		GEM

5. Description of diverting works:
   DAM & DITCH.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S (or)	A.F.A.
IRRIGATION	03/15	11/15	0.320	

7. Total Quantity Appropriated is:
   0.320 C.F.S. (and/or) A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
08N	02W	1	SW NE		IRR	22.0
			SE NE		IRR	12.0
			SW NW		IRR	9.0
			SE NW		IRR	19.0

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4		Lot	Use	Acres
08N	02W	1	NE	SE		IRR	2.0
					Section Acres		64.0
					Total Acres		64.0

11. Place of use in counties: GEM

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:

14. Remarks:
THIS RIGHT WHEN COMBINED WITH RIGHT 65-3124X SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.

15. Basis of Claim: DECREED
Case Number:
Court :
Decree date: 1/21/1986

STATE OF IDAHO		A & C CORP., ET AL.
Decree Plaintiff	vs	Decree Defendant

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do ____ do not ____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): _____ Date: _____

_____ Date: _____

State of Idaho)
) SS.
County of _____)

Subscribed and sworn (or affirmed) before me this _____ day

of _____ 19 _____

_____
Notary Public

Seal

Residing at _____

My Commission Expires _____

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

IDENT. NUMBER: 65-10537
DATE RECEIVED: 1-17-90
RECEIPT NO: X999999
RECEIVED BY: RA

RECEIVED
JAN 17 1990
Department of Water Resources

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. NAME: A.L. CATTLE INC.
ADDRESS: ~~C/O~~ AGNES BRAILSFORD
~~P.O. BOX 180~~ P.O. Box 608
~~HAGERMAN,~~ ID Emmett 83332-0000

2. DATE OF PRIORITY: MAY 02, 1890

3. SOURCE: BIG WILLOW CREEK TRIB. TO: PAYETTE RIVER

4. POINT OF DIVERSION:

TOWNSHIP	RANGE	SECTION	1/4 OF 1/4 OF 1/4	LOT	COUNTY
08N	02W	1	NE SE		GEM

5. DESCRIPTION OF DIVERTING WORKS:
DAM & DITCH.

6. WATER IS USED FOR THE FOLLOWING PURPOSES:

PURPOSE	FROM	TO	C.F.S	(OR)	A.F.A.
IRRIGATION	03/15	11/15	0.320		

7. TOTAL QUANTITY APPROPRIATED IS:
0.320 C.F.S. (AND/OR) A.F.A.

8. TOTAL CONSUMPTIVE USE IS ACRE FEET PER ANNUM.

9. NON-IRRIGATION USES:

10. PLACE OF USE:

TOWNSHIP	RANGE	SECTION	1/4 OF 1/4	LOT	USE	ACRES
08N	02W	1	SW NE		IRR	22.0
			SE NE		IRR	12.0
			SW NW		IRR	9.0

10. PLACE OF USE: CONTINUED

TOWNSHIP	RANGE	SECTION	1/4 OF 1/4		LOT	USE	ACRES
08N	02W	1	SE	NW		IRR	19.0
			NE	SE		IRR	2.0
						SECTION ACRES	64.0
						TOTAL ACRES	64.0

11. PLACE OF USE IN COUNTIES: GEM, GEM

12. DO YOU OWN THE PROPERTY LISTED ABOVE AS PLACE OF USE? YES

13. OTHER WATER RIGHTS USED:

14. REMARKS:
THIS RIGHT WHEN COMBINED WITH RIGHT 65-3124X SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.

15. BASIS OF CLAIM: DECREED
CASE NUMBER:
COURT :
DECREE DATE: 1/21/1986

STATE OF IDAHO
DECREE PLAINTIFF

VS

A & C CORP., ET AL.
DECREE DEFENDANT

16. SIGNATURE(S)

(A.) BY SIGNING BELOW, I/WE ACKNOWLEDGE THAT I/WE HAVE RECEIVED, READ AND UNDERSTAND THE FORM ENTITLED "HOW YOU WILL RECEIVE NOTICE IN THE SNAKE RIVER BASIN ADJUDICATION." (B.) I/WE DO ____ DO NOT ✓ WISH TO RECEIVE AND PAY A SMALL ANNUAL FEE FOR MONTHLY COPIES OF THE DOCKET SHEET.

NUMBER OF ATTACHMENTS: _____

FOR INDIVIDUALS:

I/WE DO SOLEMNLY SWEAR OR AFFIRM THAT THE STATEMENTS CONTAINED IN THE FOREGOING DOCUMENT ARE TRUE AND CORRECT.

SIGNATURE OF CLAIMANT(S): _____ DATE: _____

_____ DATE: _____

FOR ORGANIZATIONS:

I DO SOLEMNLY SWEAR OR AFFIRM THAT I AM President OF
TITLE
AL Cattle, Inc, THAT I HAVE SIGNED THE FOREGOING
ORGANIZATION
DOCUMENT IN THE SPACE BELOW AS President OF
TITLE
AL Cattle Inc AND THAT THE STATEMENTS CONTAINED IN THE
ORGANIZATION
FOREGOING DOCUMENT ARE TRUE AND CORRECT.

Lowell J. Braisford
SIGNATURE OF AUTHORIZED AGENT

President AL Cattle Inc
TITLE AND ORGANIZATION

January 17, 1990
DATE

STATE OF IDAHO)
) SS.
COUNTY OF Ada)

SUBSCRIBED AND SWORN (OR AFFIRMED) BEFORE ME THIS 17th DAY OF January 19 90

Helen Harrington
NOTARY PUBLIC

SEAL

Helen Harrington, Notary Public
RESIDING AT Residing at Boise, Idaho
My Commission Expires December 1, 1994

MY COMMISSION EXPIRES _____

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED
2004 APR 14 PM 3 27

In Re SRBA	)	PARTIAL DECREE PURSUANT TO
	)	I.R.C.P. 54(b) FOR
Case No. 39576	)	
	)	Water Right 65-10537

NAME AND ADDRESS: A L CATTLE INC
PO BOX 608
EMMETT, ID 83617

SOURCE: BIG WILLOW CREEK TRIBUTARY: PAYETTE RIVER

QUANTITY: 0.32 CFS

PRIORITY DATE: 05/02/1890

POINT OF DIVERSION: T08N R02W S01 NESE Within Gem County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Irrigation	03-15 TO 11-15	0.32 CFS

PLACE OF USE: Irrigation

			Within Gem County
T08N R02W S01	SWNE	22.0	SENE 12.0
	SWNW	9.0	SENW 19.0
	NESE	2.0	

64.0 Acres Total

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

Basin 65 General Provisions No. 3, the Separate Streams General Provision, does not apply to appropriations of water after October 18, 1977.

This water right shall be administered as being from a separate source pursuant to Basin 65 General Provision No. 3. If the holder of this right seeks to change the right pursuant to Idaho Code Section 42-222 or successor statute, nothing in this general provision shall preclude any other person or entity from demonstrating that such change in use would cause injury to its water right or from receiving any relief provided by law in the event of injury.

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.

RECOMMENDATION
APR 14 2004
SPECIAL MASTER

John M. Melanson
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

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

A. Subcase 65-10537
(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: United States of America acting through the Department of Interior, Bureau of Reclamation, Regional Director PN Code-3100
Address: 1150 N. Curtis Rd. Suite 100
Boise, Idaho 83706-1234
Daytime Phone: (208) 678-0461 (Dala Walton)

Name & Address of Attorney, if any:
David W. Gehlert (303 312-7352)
Trial Attorney, General Litigation Section
Environment and Natural Resource Division
U.S. Department of Justice
999 18th Street, Suite N 945
Denver, CO 80202

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: A L Cattle Inc.
Address: PO Box 608
Emmett, ID 83617

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

■ **General Provision Basin 65 Irrigation & Other Part III (3) Separate Streams**

1. ☐ **Name and Address**
   Should be:

2. ☐ **Source**
   Should be:

3. ☐ **Quantity**
   Should be:

4. ☐ **Priority Date**
   Should be:

5. ☐ **Point(s) of Diversion**
   Should be:

6. ☐ **Instream Flow Description**
   Should be:

7. ☐ **Purpose(s) of Use**
   Should be:

8. ☐ **Period of Year**
   Should be:

9. ☐ **Place of Use**
   Should be:

11. **I object because:**

☐ This water right should not exist.
☐ This water right was not recommended, but should be recommended with the elements described.

E. REASONS SUPPORTING EACH OBJECTION(S):
The Bureau of Reclamation objects to the separate stream provision of the Director's Report for Basin 65, Part III. These streams should be administered as part of the Payette River System in order to adequately protect water rights in the Payette River subbasin.

F. **VERIFICATION** (Must be Completed)

State of Idaho)
) ss.
County of Ada)

Jerrold D. Gregg, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing objection)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on: January 9, 2002

HELENE TOMASZEWSKI NOTARY PUBLIC STATE OF IDAHO

Helene Tomaszewski
Notary Public for: Idaho
Residing at: Meridian
My Commission Expires: 01-16-2002

INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on January 17, 2002, I mailed the original and copies of this objection, including all attachments, to the following persons, by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID. 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: A L Cattle Inc.

Address: PO Box 608
Emmett, ID 83617

3. Copies to:

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

IDWR Document Depository
P.O. Box 83720
Boise, Idaho 83720-0098

United States Department of Justice
Environment and Natural Resource Division
General Litigation Section
550 West Fort Street, MSC 033
Boise, Idaho 83724

Dale S. Walton
Signature of Objector or attorney mailing on Objector's behalf

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

May 4, 2001

Dear Basin 65 water user:

This letter is to inform you that you may be eligible to file a stockwater claim with the Idaho Department of Water Resources (IDWR) in connection with the Snake River Basin Adjudication (SRBA). IDWR is sending this letter to water users in Basin 65 who might have relied upon the non-irrigation season stockwater provision in the Payette Adjudication. This provision states:

> "When stockwater is not a specifically mentioned use for a right that includes irrigation, a reasonable flow is implied and included for the watering of livestock during the non-irrigation season."

In another basin, the Idaho Supreme Court struck down general provisions that contained similar language. The non-irrigation season stockwater language quoted above was not included in the General Provisions for Basin 65 because of the Idaho Supreme Court's ruling.

IDWR recognizes that in reliance on the non-irrigation season stockwater language in the Payette Adjudication, water users might not have filed stockwater claims in the SRBA to cover the non-irrigation season period. Individuals who historically watered livestock during the non-irrigation season without a separate stockwater claim might desire to file a new stockwater claim with IDWR.

To be eligible for a new non-irrigation season stockwater claim:

1. You must have actually and historically watered livestock during the non-irrigation season without a separate stockwater right.
2. You must have filed a surface water irrigation claim in both the Payette Adjudication and the SRBA.
3. You must not have filed a stockwater claim with the surface water irrigation claim.

If you meet these three requirements, you may file a Notice of Claim form for stockwater with IDWR. **To have a timely filing you must file this claim with IDWR by May 25, 2001.** IDWR will waive filing fees for these stockwater claims if filed before this deadline. Failure to file your claim in a timely manner may prevent you from claiming it in the future. Notice of Claim forms are available on IDWR's website at www.idwr.state.id.us/info/water/srba/forms.htm or from any IDWR office. Claimants can call IDWR, Western Region at (208) 334-2190 to make an appointment if they need assistance filling out a Notice of Claim form.

Sincerely,

David R. Tuthill, Jr., P.E.
Adjudication Bureau Chief

03/07/2001
RECEIVED

APR 1 1 2001

WATER RESOURCES
WESTERN REGION

NOTICE OF ERROR
REPLY

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS: April 13, 2001

Water right number: 65-10537

A L CATTLE INC
PO BOX 608
EMMETT ID 83617

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):

2. Describe the changes you wish to make in the proposed recommendation:

3. Give a brief explanation as to why you disagree with these portions:

✓ **I AGREE with this proposed recommendation: no changes need to be made.**

DATE: 4.11.01 **SIGNATURE:** A.L. Cattle, Inc

Please print your name: Agnes L. Brailsford

IDWR Regional Office, 2735 Airport Way, Boise, ID 83705, (208) 334-2190

12/22/2000

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 65-10537

NAME AND ADDRESS: A L CATTLE INC
POBOX 608
EMMETT, ID 83617

SOURCE: BIG WILLOW CREEK TRIBUTARY: PAYETTE RIVER

QUANTITY: 0.32 CFS

PRIORITY DATE: 05/02/1890

POINT OF DIVERSION: T08N R02W S1 NESE Within GEM County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	3-15 11-15	0.32 CFS

PLACE OF USE:

IRRIGATION Within GEM County

T08N R02W S1	SWNE	22	T08N R02W S1	SENE	12
T08N R02W S1	SWNW	9	T08N R02W S1	SENW	19
T08N R02W S1	NESE	2			

64 ACRES TOTAL

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

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

CLAIM NUMBER: A65-10537

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM	USE PERIOD TO	DIVERSION RATE	DIVERSION VOLUME
C	A L CATTLE INC	05/02/1890	IRRIGATION	03-15	11-15	0.320 CFS	
				TOTAL DIVERSION:		0.320 CFS	

Water Source: BIG WILLOW CREEK Tributary to: PAYETTE RIVER Stage: DECREED

Point(s) of Diversion: T08N R02W S01 NESE GEM County

Place of use Legal Description for: IRRIGATION

			NE				NW				SW				SE				
			NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE	
T	R	S	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	SUM
08N	02W	1			22	12			09	19					02				64.0
															TOTAL ACRES				64.0

POU County: GEM

Remarks: ~~GEN~~ QUIT THIS RIGHT ~~WHEN~~ COMBINED WITH RIGHT 65-3124X SHALL PROVIDE NO ~~MORE THAN .02 CFS/ACRE.~~ not needed does not exceed .02/acre

Dates: Exam Made Date: Verified Date: 04/10/1986 Objection Filed Date:

Misc: Water District Number: 65 Field Inspection Flag:
Presumption Flag:

C18

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM	USE PERIOD TO	DIVERSION RATE	DIVERSION VOLUME
C	A.L. CATTLE INC. C/O AGNES BRAILSFORD P.O. BOX 180 HAGERMAN ID 833320000	05/02/1890	IRRIGATION	03/15	11/15	0.320 CFS	
				TOTAL DIVERSION:		0.320 CFS	

Water Source: BIG WILLOW CREEK Tributary to: PAYETTE RIVER Stage: DECREED

Point(s) of Diversion: T08N R02W S01 NESE GEM County

Place of use Legal Description for: IRRIGATION

			NE				NW				SW				SE				
			NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE	
T	R	S	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	SUM
08N	02W	1			22	12			09	19					02				64.0
																	TOTAL ACRES		64.0

Pou County: GEM

Remarks: GEN THIS RIGHT WHEN COMBINED WITH RIGHT 65-3124X SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.

Dates: App. Received: Priority Date: 05/02/1890
Proof Due Date: Proof Made Date:
Exam Made Date: Exam Sent to S.O.:
Licensed Date:

Misc: Water District Number: 65 Field Exam Fee:

Idaho Department of Water Resources

Claim Number: 65-10537

Legal: T08N, R02W, S1

Reviewed By:

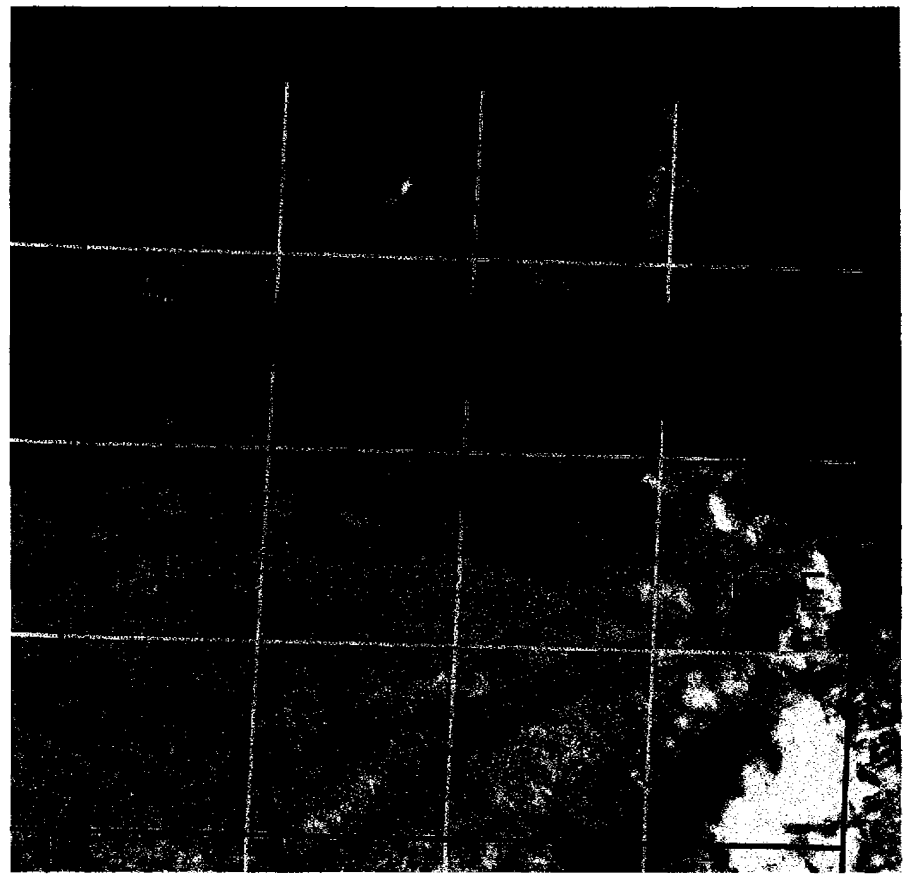
Point of Diversion

Place of Use

Section Lines

Quarter Quarter Lines

N



1987 Napp Photo

0 0.25 0.5 0.75 1 Miles

DAVID H. LEROY
Attorney General
State of Idaho
Statehouse, Room 210
Boise, Idaho 83720
Telephone: (208) 384-2400

W. HUGH O'RIORDAN
Deputy Attorney General
Chief, Natural Resources Division

JOSEPHINE P. BEEMAN
Deputy Attorney General
Natural Resources Division
Telephone: (208) 384-2215

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR

THE COUNTY OF GEM

IN THE MATTER OF THE GENERAL DETERMINATION OF THE RIGHT TO THE USE OF SURFACE AND GROUNDWATERS OF THE PAYETTE RIVER DRAINAGE BASIN.	CIVIL NO. 3667 ORDER CORRECTING CLERICAL OVERSIGHTS IN PROPOSED FINDING OF WATER RIGHTS

The motion of the Department of Water Resources for an order correcting certain clerical oversights in the proposed finding of water rights having come before the court for hearing, and the court being fully advised in the premises,

IT IS HEREBY ORDERED that the proposed finding of water rights be amended in conformance with Exhibit A which is attached hereto and incorporated herein by reference, provided that Orville Jackson and Floy L. Jackson do not file with the court by or before October 5, 1979, a notice of hearing of the objection filed by them to Water Resources' motion. The objection filed by the Jacksons shall be withdrawn if such notice is not filed by or before October 5, 1979. If the Jacksons file a notice of hearing by or before October 5, 1979, this present order amends the proposed finding of water rights in conformance with Exhibit A except for certain material appearing at page 11 of Exhibit A where clerical amendments are listed for rights

held by Orville Jackson and Floy L. Jackson.

DATED This 20th day of September, 1979.

/s/ Gilbert C. Norris
Gilbert C. Norris
District Judge

Attorney General
State of Idaho
Statehouse, Room 210
Boise, Idaho 83720
Telephone (208) 384-2400

INDICATES TOTAL

RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR RIGHT
			SOURCE: BIG WILLOW CREEK					
65-10537 VOL. II P. 65	A. L. CATTLE, INC. ROUTE 3 BOX 151, EMMETT, IDAHO 83617 REMARKS: THIS RIGHT WHEN COMBINED WITH RIGHT ~~65-3124B~~ 65-3124X SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.	5/ 2/1890	IRRIGATION	3/15 11/15	--- AFA .32 CFS	NESE S 1 T 8N R 2W	SWNE(22) SENE(12) SWNW(9) SENW(19) NESE(2) S 1 T 8N R 2W *64*	DECREE
			SOURCE: GROUNDWATER					
65-8911 VOL. III P. 293	ALBERTSON'S INC. P. O. BOX 20, BOISE, IDAHO 83702 REMARKS: LOT 8, BLOCK 2, ORIGINAL TOWNSITE OF EMMETT, COOLANT FOR CONDENSERS OF REFRIGERATION UNITS IN A GROCERY STORE.	10/ 2/1945	COMMERCIAL	1/ 1 12/31	~~28.90 AFA~~ 57.80 AFA .08 CFS	SWNE S 7 T 6N R 1W	SWNE S 7 T 6N R 1W	BENEFICIAL USE

CLAIMS SUBMITTED:

RECOMMENDED TO BE DISALLOWED

RIGHT NUMBER	NAME AND ADDRESS	REASON FOR DISALLOWAL
~~65-10148~~ VOL. I P. 186	~~BIGGS, LEONARD D. & BIGGS, LEMPI S. 7046 HUMMELL DRIVE, BOISE, IDAHO 83705~~	~~RECOMMENDED AS RIGHT 65-11259.~~

INDICATES TOTAL

SOURCE: GROUNDWATER

RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR RIGHT
65-10148	BIGGS, LEONARD D. & BIGGS, LEMPI S. 7046 HUMMELL DRIVE, BOISE, IDAHO 83705 REMARKS: LOT 2, HALF MOON COVE SUBDIVISION.	7/ 1/1960	DOMESTIC	1/ 1 12/31	1.20 AFA .04 CFS	LOT 2 S 5 T18N R 3E	LOT 2 S 5 T18N R 3E	BENEFICIAL USE

West

Jan

Norman M. Semanko
ROSHOLT, ROBERTSON & TUCKER
P.O. Box 1906
Twin Falls, ID 83303-1906
Telephone: (208) 734-0700
Facsimile: (208) 736-0041
ISB# 4761
(!jll/nms/a.l. cattle/motion to set aside)

Attorneys for A.L. Cattle, Inc.

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 Nos.: **See Exhibit "A"**
	)	
Case No. 39576	)	**MOTION TO FILE LATE OBJECTIONS AND SET ASIDE PARTIAL DECREES**
	)	
_____	)	

DESCRIPTIVE SUMMARY

This is the motion of A.L. Cattle, Inc. to file late objections and set aside partial decrees for the water right recommendations listed on Exhibit "A", attached hereto.

MOTION TO FILE LATE OBJECTIONS AND SET ASIDE PARTIAL DECREES

COMES NOW, A.L. Cattle, Inc., through counsel, pursuant to Administrative Order 1, Sections 10.j. and 14.d. (Amended 10/16/97) and I.R.C.P., Rules 55(c) and 60(b), and moves this court for leave to file late objections and to set aside the partial decrees for the water right recommendations listed on Exhibit "A", attached hereto. The grounds for this motion are further set forth in the Affidavit of Agnes L. Brailsford in Support of Motion to File Late Objections and Set Aside Partial Decrees, filed herewith. Pursuant to I.R.C.P., Rule 7(b)(3), the movant will file a brief in support of this motion within fourteen (14) days.

Oral argument is requested on the motion.

DATED this 30 day of June, 2000.

ROSHOLT, ROBERTSON & TUCKER

NORMAN M. SEMANKO

CERTIFICATE OF SERVICE

I hereby certify that on this 30 day of June, 2000, I served a true and correct copy of the foregoing MOTION TO FILE LATE OBJECTIONS AND SET ASIDE PARTIAL DECREES upon the following individuals by placing the document in the United States mail, postage prepaid, addressed as follows:

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

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

Norman M. Semanko

EXHIBIT "A"

A.L. Cattle, Inc.
Basin 65

65-01969	65-19909	65-20169	65-22175
65-07267	65-19911	65-20173	65-22185
65-07269	65-19913	65-20177	
65-12395	65-19915	65-20181	
65-12673	65-19917	65-20185	
65-12779	65-19924	65-20189	
65-12794	65-19926	65-20192	
65-12853	65-19929	65-20365	
65-12854	65-19930	65-20366	
67-13121	65-19931	65-20367	
65-13128	65-19932	65-20368	
65-13257	65-19933	65-20370	
65-13258	65-19934	65-20371	
65-13271	65-19935	65-20372	
65-13276	65-19936	65-20374	
65-19803	65-19937	65-20376	
65-19805	65-19938	65-20377	
65-19807	65-19939	65-20378	
65-19812	65-19940	65-20379	
65-19814	65-19942	65-20380	
65-19816	65-19943	65-20381	
65-19822	65-19956	65-20382	
65-19824	65-19958	65-20383	
65-19826	65-19960	65-20384	
65-19894	65-19962	65-20385	
65-19895	65-19964	65-20436	
65-19896	65-19966	65-20458	
65-19897	65-19996	65-20478	
65-19898	65-19997	65-20486	
65-19899	65-20003	65-20510	
65-19901	65-20073	65-20537	
65-19902	65-20074	65-20584	
65-19903	65-20097	65-20609	
65-19904	65-20099	65-20610	
65-19905	65-20106	65-20611	
65-19906	65-20129	65-20612	
65-19907	65-20158	65-20616	
65-19908	65-20168	65-20631	

Michael P. Lawrence, ISB #7288
GIVENS PURSLEY LLP
601 W Bannock St
PO Box 2720
Boise, Idaho 83702
Telephone: 208-388-1294
Facsimile: 208-388-1300
mpl@givenspursley.com
Counsel for Big Willow Ranch, LLC

RECEIVED
Sep 05, 2023
DEPARTMENT OF
WATER RESOURCES

BEFORE THE DEPARTMENT OF WATER RESOURCES OF

THE STATE OF IDAHO

IN THE MATTER OF A. L. CATTLE, INC.'S WATER RIGHT NOS. 65-1985, 65-3124X, AND 65-10537	PETITION FOR FORFEITURE

Big Willow Ranch, LLC ("Big Willow") by and through its attorneys of record Givens Pursley LLP, pursuant to Idaho Code § 42-222(2) and IDAPA 37.01.01.02.14, 37.01.01.101, and 37.01.01.152, hereby petitions the Idaho Department of Water Resources ("IDWR" or "Department") to declare that Water Right Nos. 65-1985, 65-3124X, and 65-10537 (together, the "Water Rights") have been forfeited.

INTRODUCTION

A. L. Cattle, Inc. ("AL Cattle") owns the Water Rights, which authorize domestic use for one home (65-1985) irrigation of 64 acres with a total aggregate diversion rate of 1.28 cubic feet per second ("cfs") diverted from Big Willow Creek (65-3124X and 65-10537). In 1998, the Snake River Basin Adjudication ("SRBA") Court issued partial decrees for the domestic right, and in 2004 the Court issued partial decrees for the irrigation rights. Copies of the partial decrees are included in Exhibit B attached to the *Declaration of J.G. Schwarz* ("*Schwarz Declaration*") filed

contemporaneously herewith, and copies of IDWR maps for the Water Rights are included in Exhibit C to the *Schwarz Declaration.*[1]

Big Willow owns water rights diverted from Big Willow Creek downstream of the Water Rights' point of diversion. *Schwarz Declaration* ¶¶ 3, 6. Big Willow's manager (J. G. Schwarz) has personally observed AL Cattle's use of the domestic right and irrigation practices at the place of use since the partial decrees were issued. *Schwarz Declaration* ¶¶ 6-7. Mr. Schwarz has not observed any use of the domestic right since the mid-1980s, nor has he observed any irrigation water diverted at the Water Rights' point of diversion or applied to beneficial use at the place of use more recently than 2015. Mr. Schwarz's observations of the lack of irrigation are corroborated by aerial imagery analyzed by Big Willow's consultant, as set forth in the *Declaration of Terry Scanlan, P.E., P.G.* ("*Scanlan Declaration*") filed contemporaneously herewith.

ARGUMENT

Based on its failure to use the domestic right and irrigate the land authorized to be irrigated for five consecutive years, AL Cattle has forfeited the Water Rights. Idaho Code § 42-222(2) provides that "rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated." *See also State v. Hagerman Water Right Owners, Inc.*, 130 Idaho 736, 743, 947 P.2d 409, 416 (1997) ("Section 42-222(2) of the Idaho Code provides for the loss of a water right for non-application to a beneficial use.").

[1] Unlike the map for 65-10537 which shows the specific irrigated area irrigated by the right, the map for 65-3124X shows the four quarter-quarters comprising the rights decreed place of use. There is no question, however, that these rights irrigate the same specific irrigated area shown in the map for 65-10537. The SRBA claims for the rights state that they "shall provide no more than 0.02 cfs/acre" when combined.

"The party asserting that a water right has been forfeited has the burden of proving the forfeiture by clear and convincing evidence." Idaho Code § 42-222(2). Mr. Schwarz's observations described in the *Schwarz Declaration* and the analysis in the *Scanlan Declaration* unambiguously show that, for at least the past five years, AL Cattle has not irrigated the Water Rights' place of use. And Mr. Schwarz's observation of the domestic use show that the domestic use has not occurred for nearly 40 years.

Pursuant to Idaho Code § 42-222(3), the Department is authorized to extend the forfeiture period up to an additional five years, upon proper showing of "good cause and sufficient reason for nonapplication to beneficial use." The water right holder however, must submit the application for extension to the Department before the end of the original five-year period. Idaho Code § 42-222(4). There is no record that AL Cattle has sought an extension of time to put its water rights to beneficial use. The evidence presented in the *Schwarz Declaration* and the *Scanlan Declaration* shows that AL Cattle has not used the domestic right nor irrigated the irrigation rights' authorized place of use for at least the past five years. Accordingly, the time to request an extended forfeiture period has passed.

There is no apparent valid defense to AL Cattle's forfeiture of the Water Rights. Mr. Schwarz' use of his own junior priority water rights and permits diverted downstream of AL Cattle supports the conclusion that there is, and has been, a sufficient water supply to satisfy AL Cattle's Water Rights for irrigation.

The Department's procedural rules define a petition as, among other things, a pleading requesting "the clarification, declaration or construction of the law administered by the agency, the clarification, declaration or construction of a person's rights or obligations under law administered by the agency . . . , or to otherwise request the agency take action that will result in the issuance of

an order." IDAPA 37.01.01.002.14. Here, Big Willow is a petitioner seeking "to clarify or have the agency declare. . . a person's rights or obligations" and requesting that the Department issue an order determining that the Water Rights are forfeited. Big Willow, as a petitioner, specifically requests that the Department initiate a contested case proceeding on the issue of the Water Rights' forfeiture. IDAPA 37.01.01.152. Under the Department's Rules of Procedure, contested cases are conducted as formal or informal proceedings. IDAPA 37.01.01.100. The Department has the authority to proceed directly to formal proceeding. IDAPA 37.01.01.100.03. Given the importance of this issue and the expected reluctance of AL Cattle to accept the fact that the Water Rights have been forfeited, Big Willow requests the Department initiate the contested case and move immediately to the formal proceedings.

CONCLUSION

This petition and accompanying declarations provide clear and convincing evidence that AL Cattle has forfeited the Water Rights. Accordingly, Big Willow asks the Department to initiate a contested case and move to formal proceedings pursuant to IDAPA 37.01.01.101 to determine that the Water Rights have been forfeited for non-use.

DATED this 5th day of September, 2023.

GIVENS PURSLEY LLP

Michael P. Lawrence
Counsel for Big Willow Ranch, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of September, 2023, a true and correct copy of the foregoing was filed and/or served upon the following individual(s) by the means indicated:

DOCUMENT FILED:

Idaho Department of Water Resources The Idaho Water Center 322 E Front St, Ste. 648 Boise, ID 83702 E-file: file@idwr.idaho.gov	☐ ☐ ☐ ☐ ☒	U. S. Mail Hand Delivered Overnight Mail Facsimile E-file

SERVICE COPIES TO:

A L CATTLE CO INC C/O AGNES BRAILSFORD PO BOX 180 HAGERMAN, ID 83332 (IDWR record owner of 65-3124X)	☒ ☐ ☐ ☐ ☐	U. S. Mail Hand Delivered Overnight Mail Facsimile E-mail
A L CATTLE CO C/O GARY MALLORY (FOREMAN) PO BOX 608 EMMETT, ID 83617 2083655658 (IDWR record owner of 65-1985, 65-10537, and 65-22745)	☒ ☐ ☐ ☐ ☐	U. S. Mail Hand Delivered Overnight Mail Facsimile E-mail
TRAVIS L THOMPSON MARTEN LAW LLP 163 SECOND AVE W PO BOX 63 TWIN FALLS, ID 83303-0063 (IDWR record attorney for 65-22745)	☒ ☐ ☐ ☐ ☐	U. S. Mail Hand Delivered Overnight Mail Facsimile E-mail

By:_____
Michael P. Lawrence

Michael P. Lawrence, ISB #7288
GIVENS PURSLEY LLP
601 W Bannock St
PO Box 2720
Boise, Idaho 83702
Telephone: 208-388-1294
Facsimile: 208-388-1300
mpl@givenspursley.com
Counsel for Big Willow Ranch, LLC

BEFORE THE DEPARTMENT OF WATER RESOURCES OF

THE STATE OF IDAHO

IN THE MATTER OF A. L. CATTLE, INC.'S WATER RIGHT NOS. 65-1985, 65-3124X, AND 65-10537	DECLARATION OF J.G. SCHWARZ

I, Joseph Gordon ("J.G.") Schwarz, declare and state as follows:

1. I am over the age of eighteen and the facts stated below are based on my personal knowledge and experience. I make this declaration pursuant to Idaho Code Section 9-1406. I declare under penalty of perjury pursuant to the law of the State of Idaho that the following is true and correct.

2. I am the sole member of Big Willow Ranch, LLC ("BWR").

3. BWR owns approximately 28,000 acres of land in the Big Willow Creek drainage, Payette County, Idaho, of which approximately 3,600 acres is irrigated in part with water diverted from Big Willow Creek under the water rights and permits listed in **Exhibit A** attached hereto and incorporated by reference. Also listed are my stock water rights diverted from Big Willow Creek.

4. I have lived in the Payette area since 1970 or, in other words, since I was two years old. I have been working the BWR farmland irrigated with Big Willow Creek water since about 1974.

5. A.L. Cattle, Inc. ("AL Cattle") owns farmland located upstream of BWR's land, and holds, among others, water right no. 65-1985 (a domestic groundwater right) and irrigation right nos. 65-3124X and 65-10537 which are authorized to be diverted from Big Willow Creek ("AL's Water Rights"). Copies of the 1998 and 2004 partial decrees for AL's Water Rights are included in **Exhibit B** attached hereto and incorporated by reference. Copies of IDWR maps showing the points of diversion and places of use for AL's Water Rights are included in **Exhibit C** attached hereto and incorporated by reference.

6. Based on my experience working the BWR farmland adjacent to AL Cattle's land, and diverting the BWR water rights at points downstream of AL Cattle's diversions, I am familiar with the diversion and use of AL's Water Rights since they were decreed.

7. I have not witnessed diversion or beneficial use of AL's Water Rights for irrigation more recently than 2015, and the domestic right no more recently since the mid-1980s.

8. Included in **Exhibit D** attached hereto and incorporated by reference are pictures I took on August 17, 2023, showing the diversion and delivery system for AL's Water Rights for irrigation. These pictures show that the diversion structure and delivery ditch for AL's Water Rights for irrigation have not been used or maintained recently. Based on my personal observations, I do not believe the diversion structure or delivery ditch for AL's Water Rights for irrigation have not been used or maintained since 2015.

DATED August 31, 2023.

Joseph Gordon ("J.G.") Schwarz

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of September, 2023, the foregoing was filed, served, and copied as set out below.

DOCUMENT FILED:

Idaho Department of Water Resources The Idaho Water Center 322 E Front St, Ste. 648 Boise, ID 83702 E-file: file@idwr.idaho.gov	☐ ☐ ☐ ☐ ☒	U. S. Mail Hand Delivered Overnight Mail Facsimile E-file

SERVICE COPIES TO:

A L CATTLE CO INC C/O AGNES BRAILSFORD PO BOX 180 HAGERMAN, ID 83332 (IDWR record owner of 65-3124X)	☒ ☐ ☐ ☐ ☐	U. S. Mail Hand Delivered Overnight Mail Facsimile E-mail
A L CATTLE CO C/O GARY MALLORY (FOREMAN) PO BOX 608 EMMETT, ID 83617 2083655658 (IDWR record owner of 65-1985, 65-10537, and 65-22745)	☒ ☐ ☐ ☐ ☐	U. S. Mail Hand Delivered Overnight Mail Facsimile E-mail
TRAVIS L THOMPSON MARTEN LAW LLP 163 SECOND AVE W PO BOX 63 TWIN FALLS, ID 83303-0063 (IDWR record attorney for 65-22745)	☒ ☐ ☐ ☐ ☐	U. S. Mail Hand Delivered Overnight Mail Facsimile E-mail

By _____
Michael P. Lawrence

EXHIBIT A

Water Right No.	Basis	Priority Date	Div. Rate (cfs)	Water Use
65-2500	Decreed	9/17/1948	5	IRRIGATION
65-2501	Decreed	9/17/1948	1.46	IRRIGATION
65-3124A	Decreed	5/1/1871	0.04	IRRIGATION
65-3125	Decreed	6/1/1881	2	IRRIGATION
65-3126	Decreed	6/1/1881	1.8	IRRIGATION, STOCKWATER
65-3127	Decreed	10/14/1882	1	IRRIGATION
65-3128	Decreed	5/1/1890	0.6	IRRIGATION
65-7789	Decreed	12/14/1976	4	DIVERSION TO STORAGE, IRRIGATION FROM STORAGE
65-9076	Decreed	3/15/1904	1.43	DIVERSION TO STORAGE, IRRIGATION, IRRIGATION FROM STORAGE
65-10533	Decreed	5/2/1890	2.6	IRRIGATION
65-10534	Decreed	5/2/1890	1.52	IRRIGATION
65-10535	Decreed	5/2/1890	0.84	IRRIGATION
65-10536	Decreed	5/2/1890	0.36	IRRIGATION
65-23583	License	4/7/2014	0.1	STOCKWATER
65-23617	Permit	3/29/2016	6	DIVERSION TO STORAGE, IRRIGATION, IRRIGATION FROM STORAGE, IRRIGATION STORAGE
65-23731	Permit	8/21/2019	6	DIVERSION TO STORAGE, IRRIGATION FROM STORAGE, IRRIGATION STORAGE
65-24038	Permit	6/7/2021	0.67	STOCKWATER
65-24208	Permit	3/16/2023	0.83	STOCKWATER

EXHIBIT B

1998 AUG 28 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	)	PARTIAL DECREE PURSUANT TO
	)	I.R.C.P. 54(b) FOR
Case No. 39576	)	
	)	Water Right 65-01985

NAME AND ADDRESS: A L CATTLE INC
PO BOX 608
EMMETT, ID 83617

SOURCE: GROUNDWATER

QUANTITY: 0.04 CFS
1.20 AFY

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

PRIORITY DATE: 04/01/1919

POINT OF DIVERSION: T08N R02W S01 SWNE Within Gem County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Domestic 1 HOME	01-01 TO 12-31	0.04 CFS 1.20 AFY

PLACE OF USE: Domestic Within Gem County
T08N R02W S01 SWNE

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.

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

2004 JUN 02 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	)	PARTIAL DECREE PURSUANT TO
	)	I.R.C.P. 54(b) FOR
Case No. 39576	)	
	)	Water Right 65-03124X

NAME AND ADDRESS: A L CATTLE INC
PO BOX 608
EMMETT, ID 83617

SOURCE: BIG WILLOW CREEK TRIBUTARY: PAYETTE RIVER

QUANTITY: 0.96 CFS

PRIORITY DATE: 05/01/1871

POINT OF DIVERSION: T08N R02W S01 NESE Within Gem County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Irrigation	03-15 TO 11-15	0.96 CFS

PLACE OF USE: Irrigation

		Within Gem County
T08N R02W S01	SWNE 22.0	SENE 12.0
	SWNW 9.0	SENW 19.0
	NESE 2.0	

54.0 Acres Total

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

Basin 65 General Provisions No. 3, the Separate Streams General Provision, does not apply to appropriations of water after October 18, 1977.

This water right shall be administered as being from a separate source pursuant to Basin 65 General Provision No. 3. If the holder of this right seeks to change the right pursuant to Idaho Code Section 42-222 or successor statute, nothing in this general provision shall preclude any other person or entity from demonstrating that such change in use would cause injury to its water right or from receiving any relief provided by law in the event of injury.

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.

John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

2004 JUN 02 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	PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b) FOR
Case No. 39576	Water Right 65-10537

NAME AND ADDRESS: A L CATTLE INC
PO BOX 608
EMMETT, ID 83617

SOURCE: BIG WILLOW CREEK TRIBUTARY: PAYETTE RIVER

QUANTITY: 0.32 CFS

PRIORITY DATE: 05/02/1890

POINT OF DIVERSION: T08N R02W S01 NESE Within Gem County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Irrigation	03-15 TO 11-15	0.32 CFS

PLACE OF USE: Irrigation

		Within Gem County
T08N R02W S01	SWNE 22.0	SENE 12.0
	SWNW 9.0	SENW 19.0
	NESE 2.0	

54.0 Acres Total

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

Basin 65 General Provisions No. 3, the Separate Streams General Provision, does not apply to appropriations of water after October 18, 1977.

This water right shall be administered as being from a separate source pursuant to Basin 65 General Provision No. 3. If the holder of this right seeks to change the right pursuant to Idaho Code Section 42-222 or successor statute, nothing in this general provision shall preclude any other person or entity from demonstrating that such change in use would cause injury to its water right or from receiving any relief provided by law in the event of injury.

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.

Joseph M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

EXHIBIT C

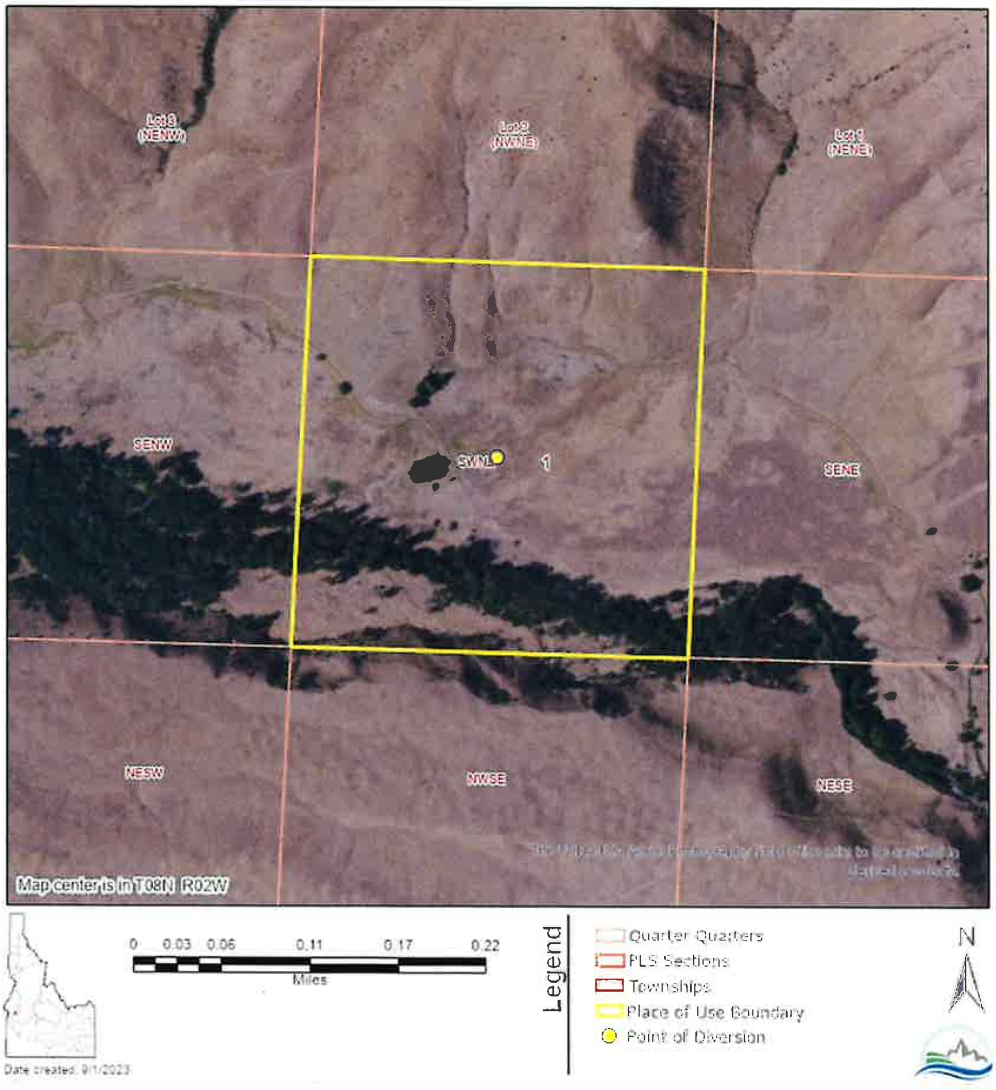
State of Idaho
Department of Water Resources

Water Right

65-1985

DOMESTIC

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.



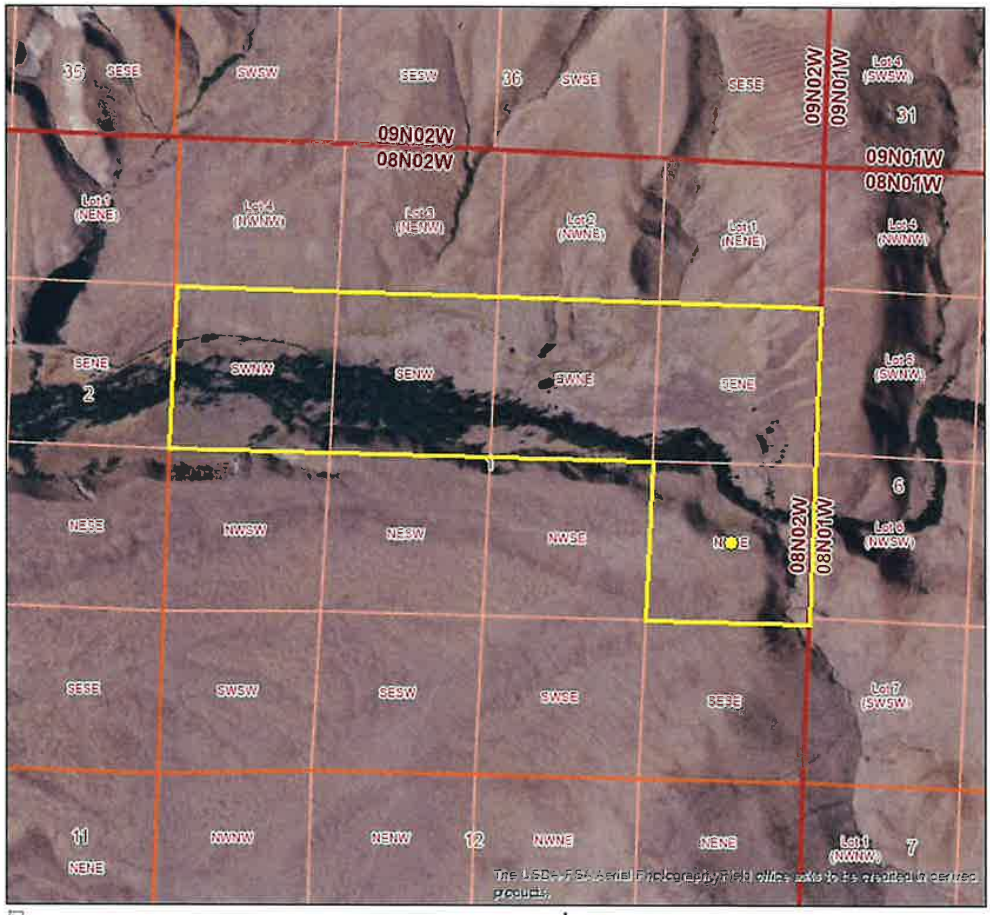
State of Idaho
Department of Water Resources

Water Right

65-3124X

IRRIGATION

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.



State of Idaho
Department of Water Resources

Water Right

65-10537

IRRIGATION

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.

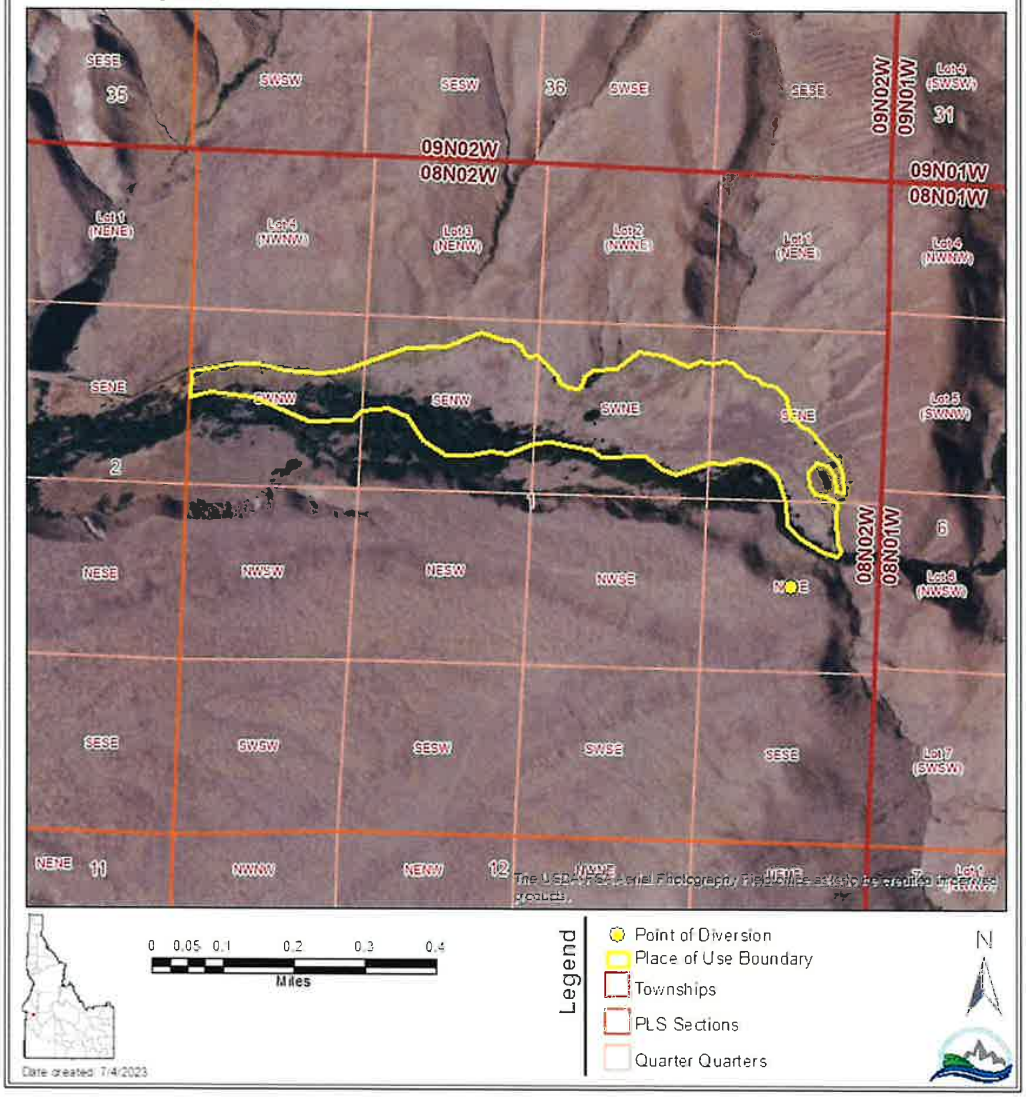
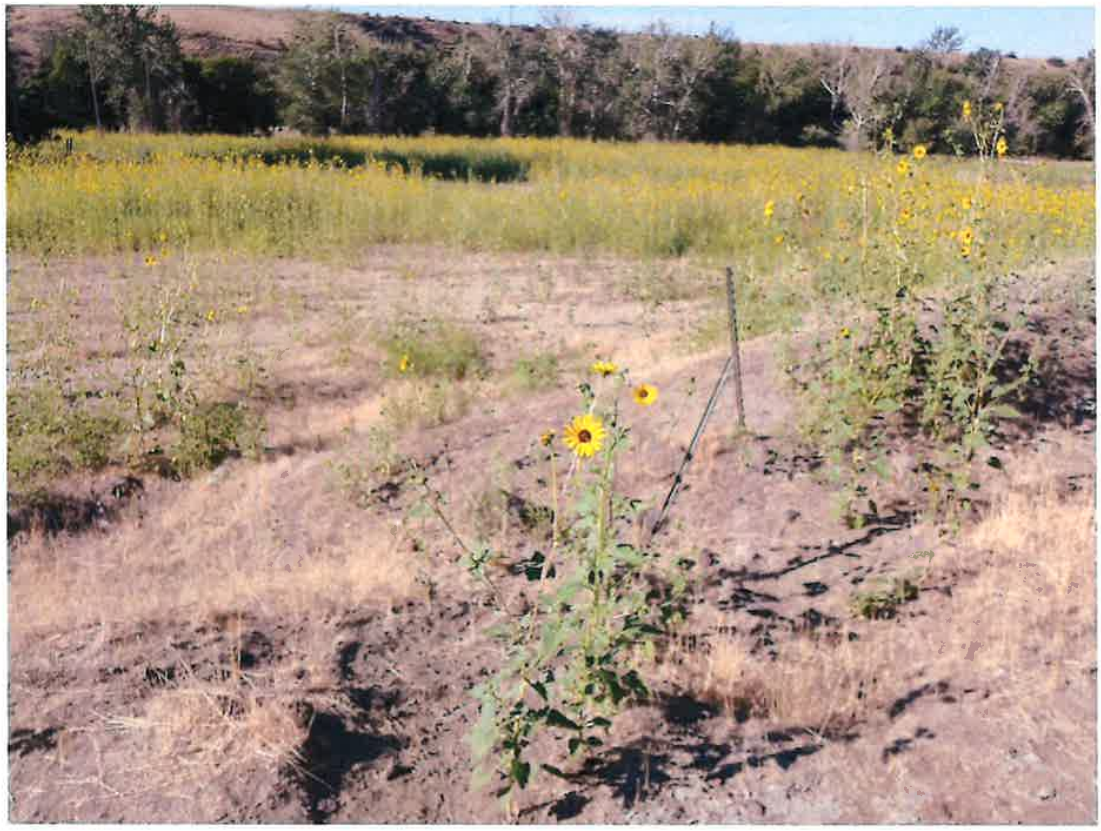


EXHIBIT D



Michael P. Lawrence, ISB #7288
GIVENS PURSLEY LLP
601 W Bannock St
PO Box 2720
Boise, Idaho 83702
Telephone: 208-388-1294
Facsimile: 208-388-1300
mpl@givenspursley.com
Counsel for Big Willow Ranch, LLC

BEFORE THE DEPARTMENT OF WATER RESOURCES OF

THE STATE OF IDAHO

IN THE MATTER OF A. L. CATTLE, INC.'S WATER RIGHT NOS. 65-1985, 65-3124X, AND 65-10537	DECLARATION OF TERRY SCANLAN, P.E., P.G.

I, TERRY SCANLAN, declare and state as follows:

1. I am over the age of eighteen and the facts and opinions stated herein are based on my personal knowledge and experience, and if called as a witness I would and could truthfully testify thereto. I make this declaration pursuant to Idaho Code Section 9-1406. I declare under penalty of perjury pursuant to the law of the State of Idaho that the following is true and correct.

2. Attached hereto as **Exhibit A** and incorporated herein by reference is a memorandum dated September 5, 2023, which I prepared regarding aerial imagery of the authorized place of use for water right nos. 65-3124X and 65-10537.

DATED September 5, 2023.

Terry M Scanlan
TERRY SCANLAN, P.E., P.G.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of September, 2023, the foregoing was filed, served, and copied as set out below.

DOCUMENT FILED:

Idaho Department of Water Resources The Idaho Water Center 322 E Front St, Ste. 648 Boise, ID 83702 E-file: file@idwr.idaho.gov	☐ ☐ ☐ ☐ ☒	U. S. Mail Hand Delivered Overnight Mail Facsimile E-file

SERVICE COPIES TO:

A L CATTLE CO INC C/O AGNES BRAILSFORD PO BOX 180 HAGERMAN, ID 83332 (IDWR record owner of 65-3124X)	☒ ☐ ☐ ☐ ☐	U. S. Mail Hand Delivered Overnight Mail Facsimile E-mail
A L CATTLE CO C/O GARY MALLORY (FOREMAN) PO BOX 608 EMMETT, ID 83617 2083655658 (IDWR record owner of 65-1985, 65-10537, and 65-22745)	☒ ☐ ☐ ☐ ☐	U. S. Mail Hand Delivered Overnight Mail Facsimile E-mail
TRAVIS L THOMPSON MARTEN LAW LLP 163 SECOND AVE W PO BOX 63 TWIN FALLS, ID 83303-0063 (IDWR record attorney for 65-22745)	☒ ☐ ☐ ☐ ☐	U. S. Mail Hand Delivered Overnight Mail Facsimile E-mail

By _____
Michael P. Lawrence

EXHIBIT A

See attached memorandum dated September 5, 2023, regarding aerial imagery of the authorized place of use for water right nos. 65-3124X and 65-10537.

Confidential Attorney Work Product

Memo

Date: September 5, 2023

Project: Big Willow Ranch Water Rights

To: Michael Lawrence – Givens Pursley

From: Terry Scanlan, P.E., P.G.

Subject: Aerial Imagery Review of the Authorized Place of Use for Water Rights 65-3124X and 65-10537

At your request, HDR has compiled aerial imagery for the place of use for water rights 65-3124X and 65-10537. The following images were located:

- Google Earth (USDA/FPAC/GEO) 4/28/2004
- Google Earth (USDA/FPAC/GEO) 6/15/2004
- Google Earth (USDA/FPAC/GEO) 6/22/2006
- Google Earth (USDA/FPAC/GEO) 6/23/2009
- Google Earth 6/29/2013
- Google Earth 7/27/2013
- Google Earth 6/25/2015
- Google Earth 8/2/2019
- NAIP 9/1/2017
- NAIP 7/19/2019
- GIS World Imagery 4/2020
- NAIP 5/17/2021

Google Earth images are georeferenced into ESRI GIS. NAIP and GIS World Imagery are GIS raster graphics files available from on-line sources.

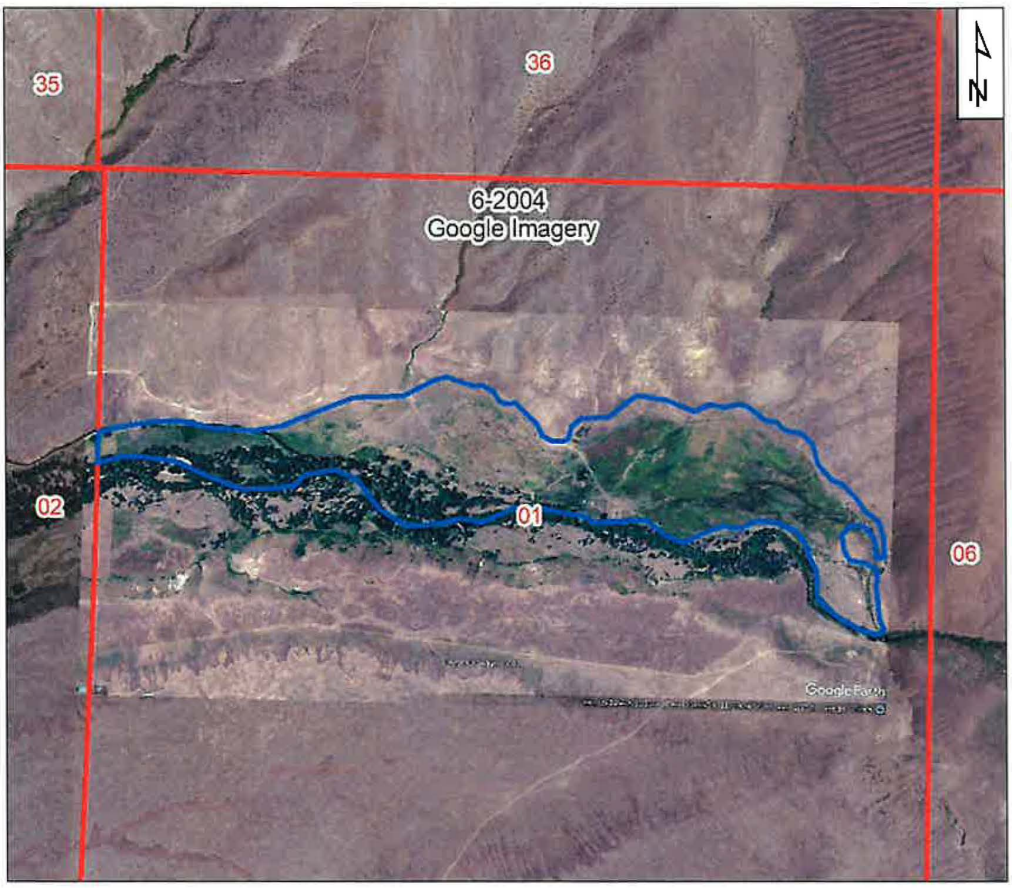
Each of the images are presented in subsequent pages, along with brief review notes. The place of use for 65-3124X and 65-10537 is outlined in blue on each image. In general, this compilation shows that the place of use for water rights 65-3124X and 65-10537 was partially irrigated from 2004 through 2013, with no evidence of active irrigation in 2015 and later images.

hdrinc.com

HDR, River Quarry at Parkcenter, 412 E Parkcenter Blvd Suite 100, Boise, ID 83706
(208) 872-9500

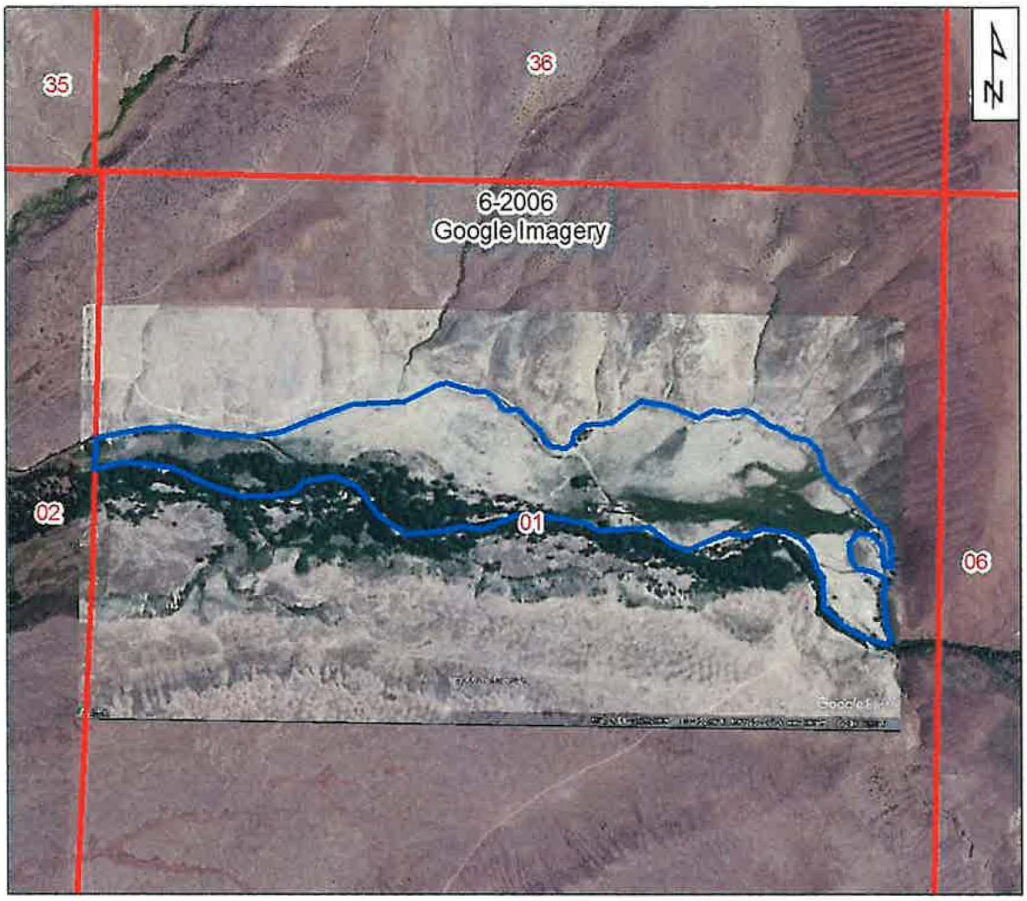
Google Earth (USDA/FPAC/GEO) 4/28/2004

- No visible irrigation or diversion to the 65-3124X and 65-10537 place of use.
- Visible diversion through ditch to Big Willow Ranch.



Google Earth (USDA/FPAC/GEO) 6/15/2004

- Place of use for 65-3124X and 65-10537 appears to be partially irrigated.
- No visible diversion through 65-3124X and 65-10537 ditch, although water in the ditch might be obscured by vegetation in uppermost reach.
- Visible diversion through ditch to Big Willow Ranch.

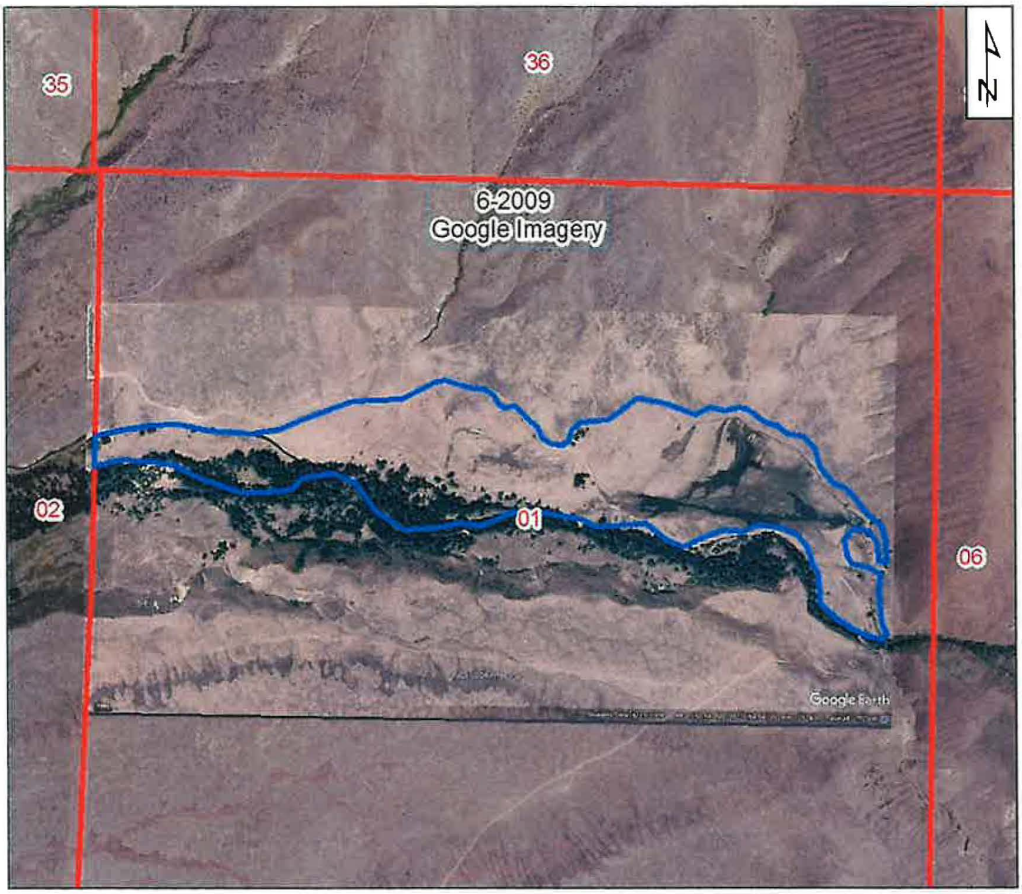


Google Earth (USDA/FPAC/GEO) 6/22/2006

- Place of use for 65-3124X and 65-10537 appears to be partially irrigated in a narrow band within the eastern portion of the place of use.
- Evidence of diversion through uppermost reach of the 65-3124X and 65-10537 ditch.
- Visible diversion through ditch to Big Willow Ranch.

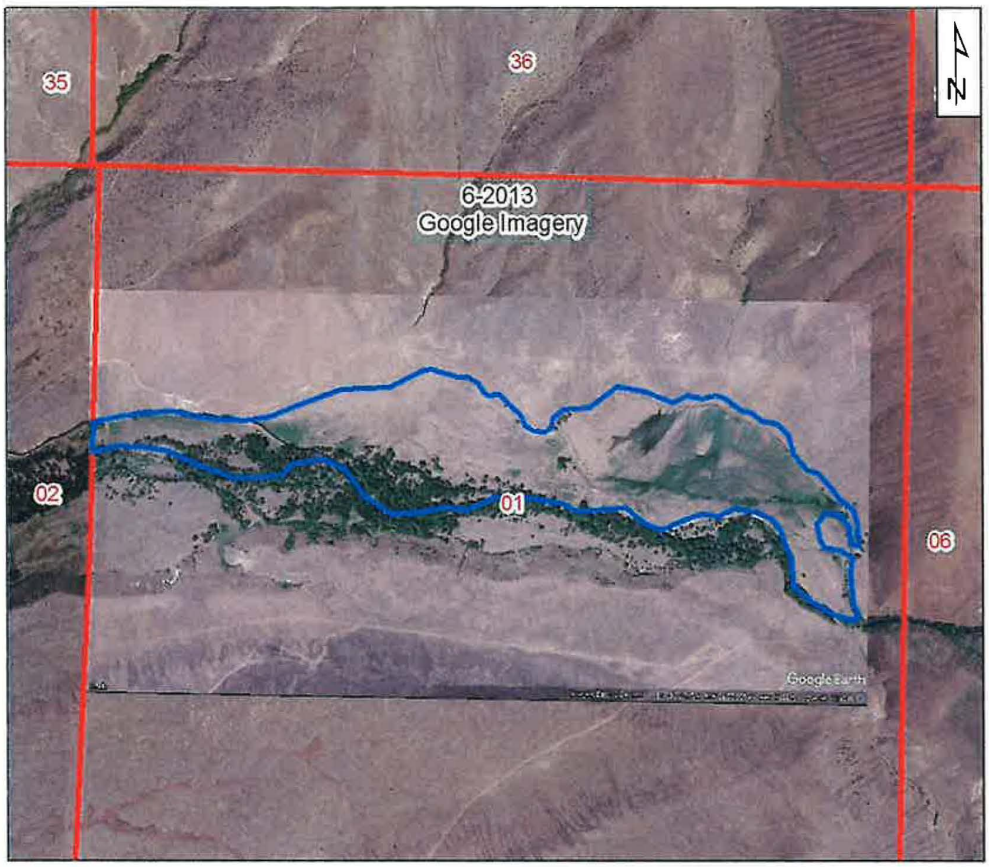
hdrinc.com

HDR, River Quarry at Parkcenter, 412 E Parkcenter Blvd Suite 100, Boise, ID, 83706
(208) 872-9500



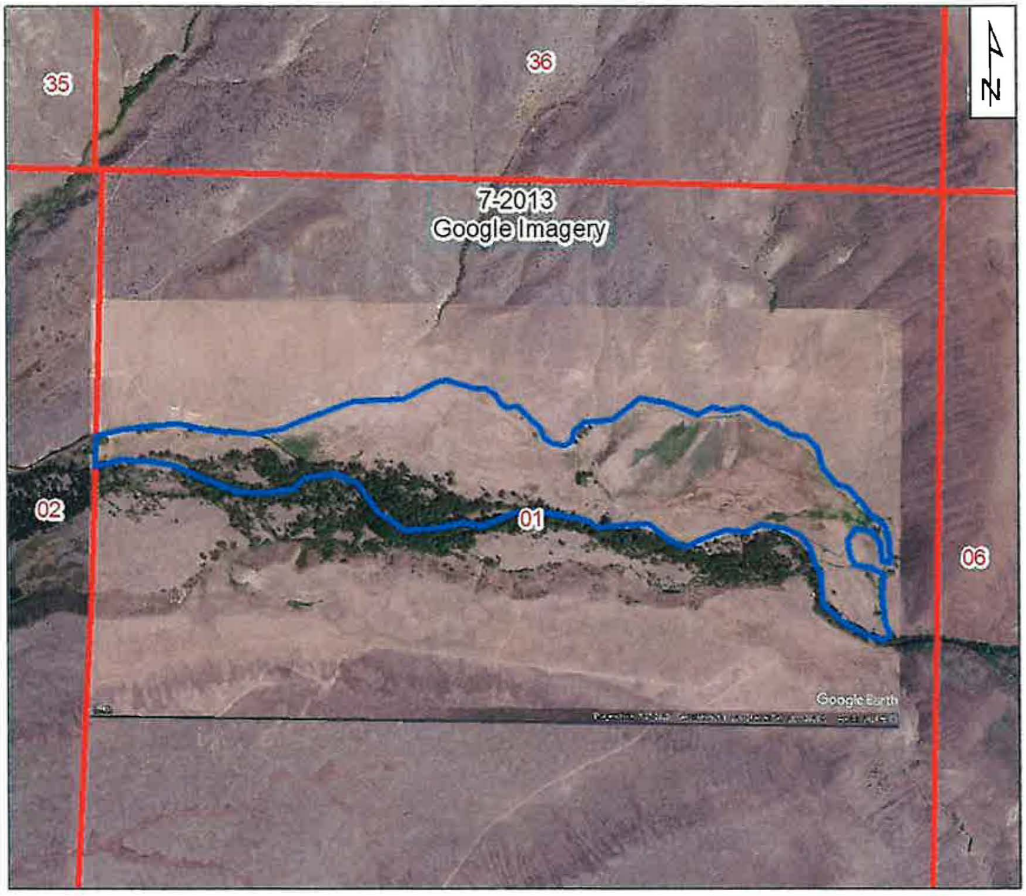
Google Earth (USDA/FPAC/GEO) 6/23/2009

- Place of use for 65-3124X and 65-10537 appears to be partially irrigated in the eastern portion of the place of use.
- Evidence of diversion through upper one third of the 65-3124X and 65-10537 ditch.
- Visible diversion through ditch to Big Willow Ranch.



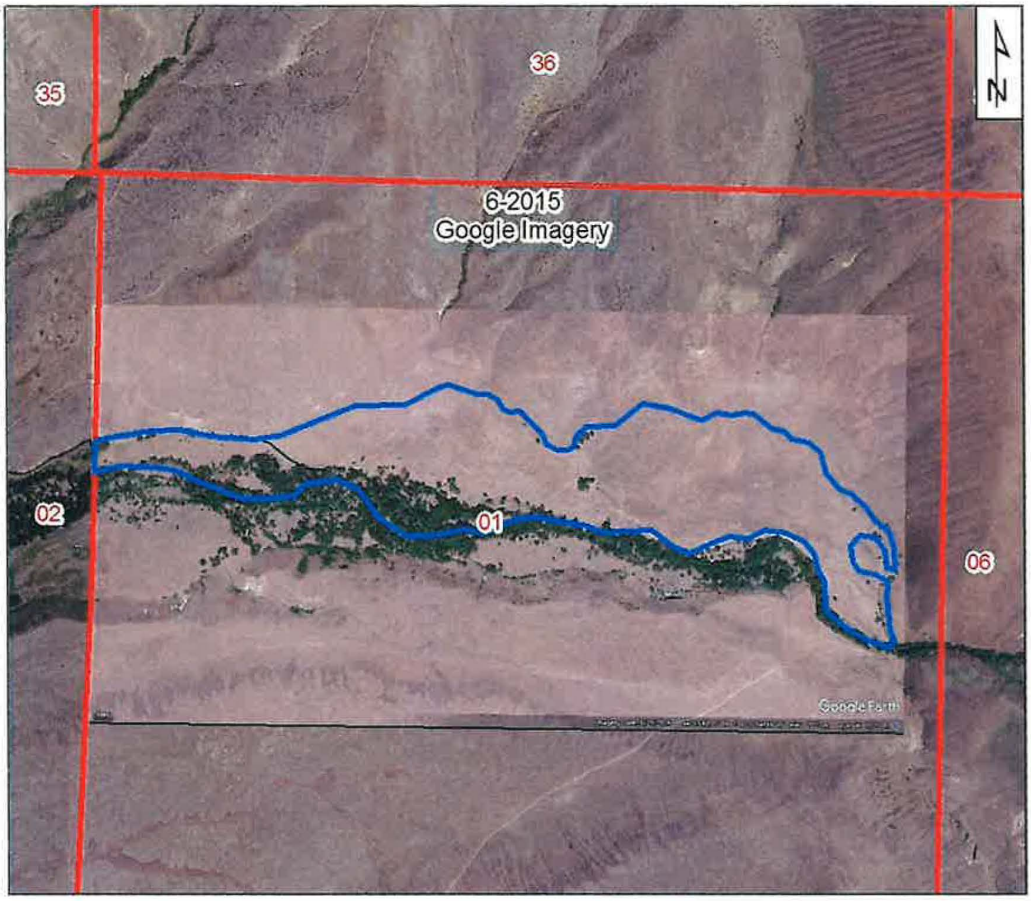
Google Earth 6/29/2013

- Place of use for 65-3124X and 65-10537 appears to be partially irrigated in the eastern portion of the place of use.
- Evidence of diversion through upper third of the 65-3124X and 65-10537 ditch.
- Visible diversion through ditch to Big Willow Ranch.
- Some green vegetation in the western portion of the place of use, although this may be residual from spring precipitation.



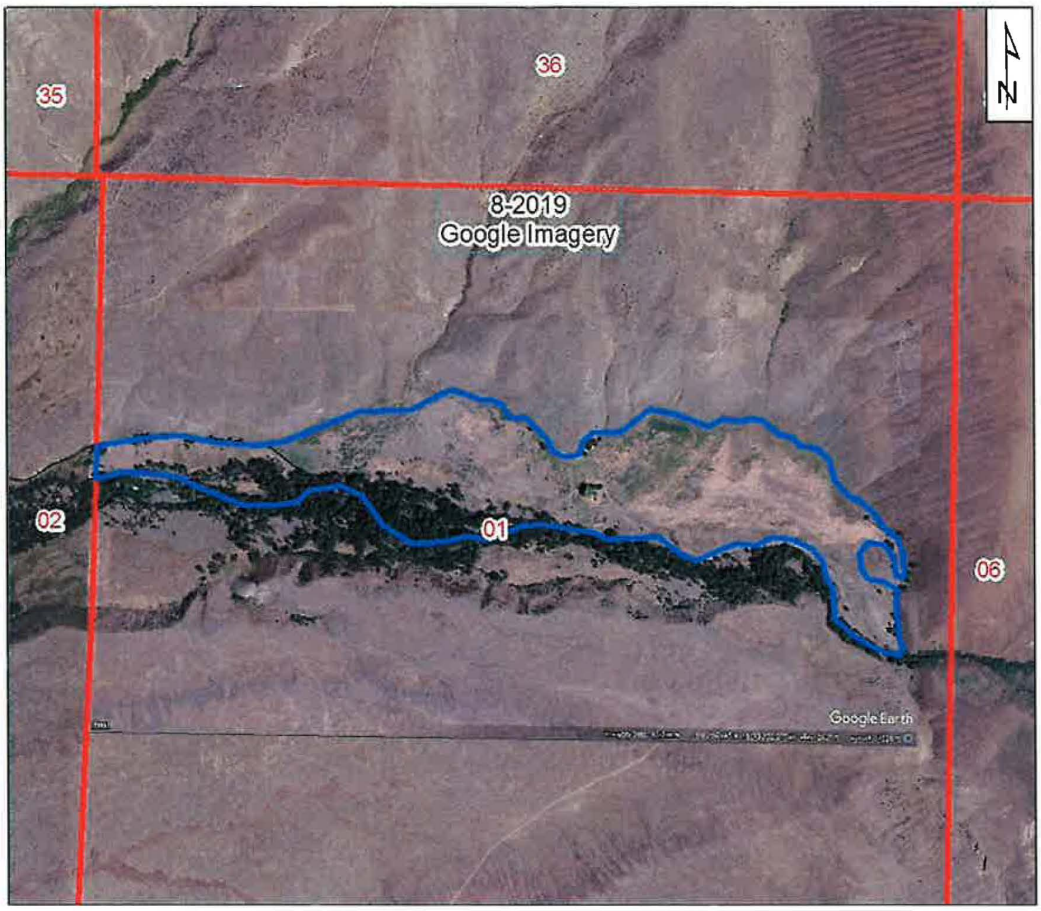
Google Earth 7/27/2013

- Place of use for 65-3124X and 65-10537 appears to be partially irrigated in the eastern portion of the place of use.
- Evidence of diversion through upper third of the 65-3124X and 65-10537 ditch.
- Visible diversion through ditch to Big Willow Ranch.
- Some green vegetation in the western portion of the place of use, although this may be residual from spring precipitation.



Google Earth 6/25/2015

- Place of use for 65-3124X and 65-10537 is not irrigated.
- Uppermost 800 feet of ditch has green vegetation.
- Visible diversion through ditch to Big Willow Ranch.

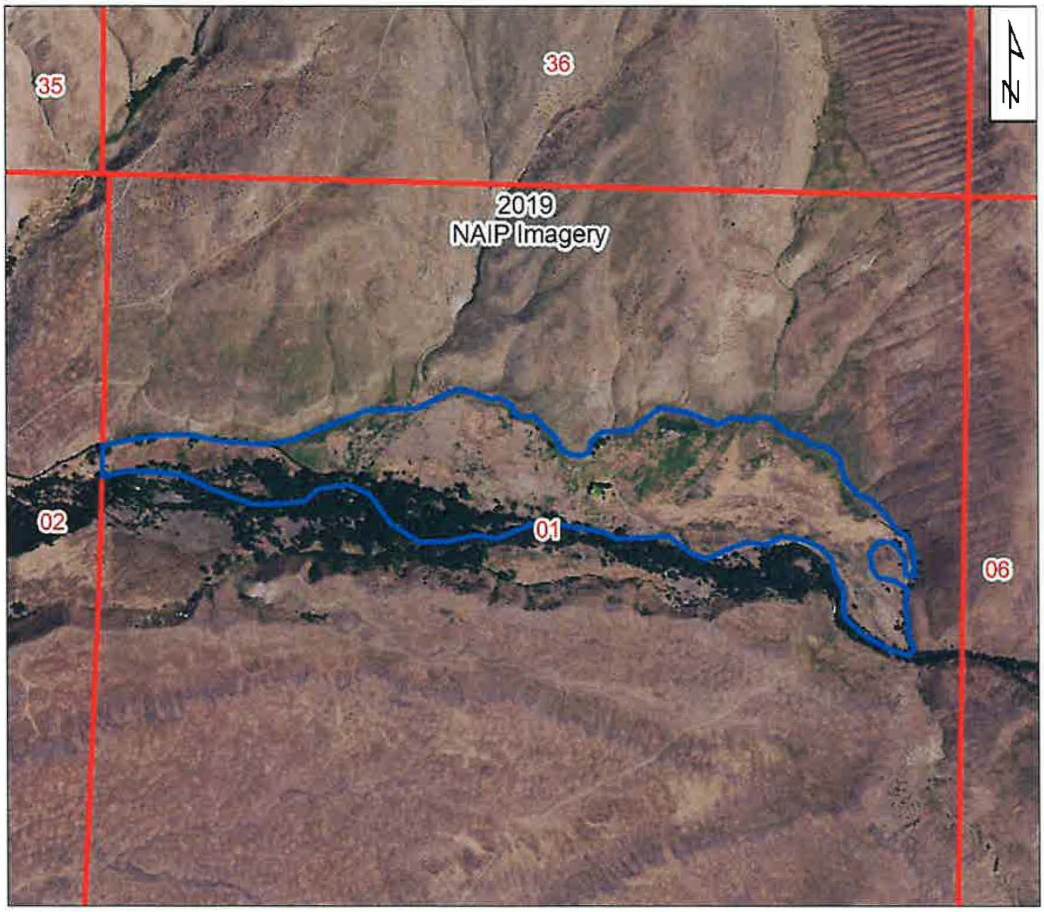


Google Earth 8/2/2019

- Place of use for 65-3124X and 65-10537 is not irrigated.
- Uppermost 200 feet of ditch has green vegetation.
- Visible diversion through ditch to Big Willow Ranch.

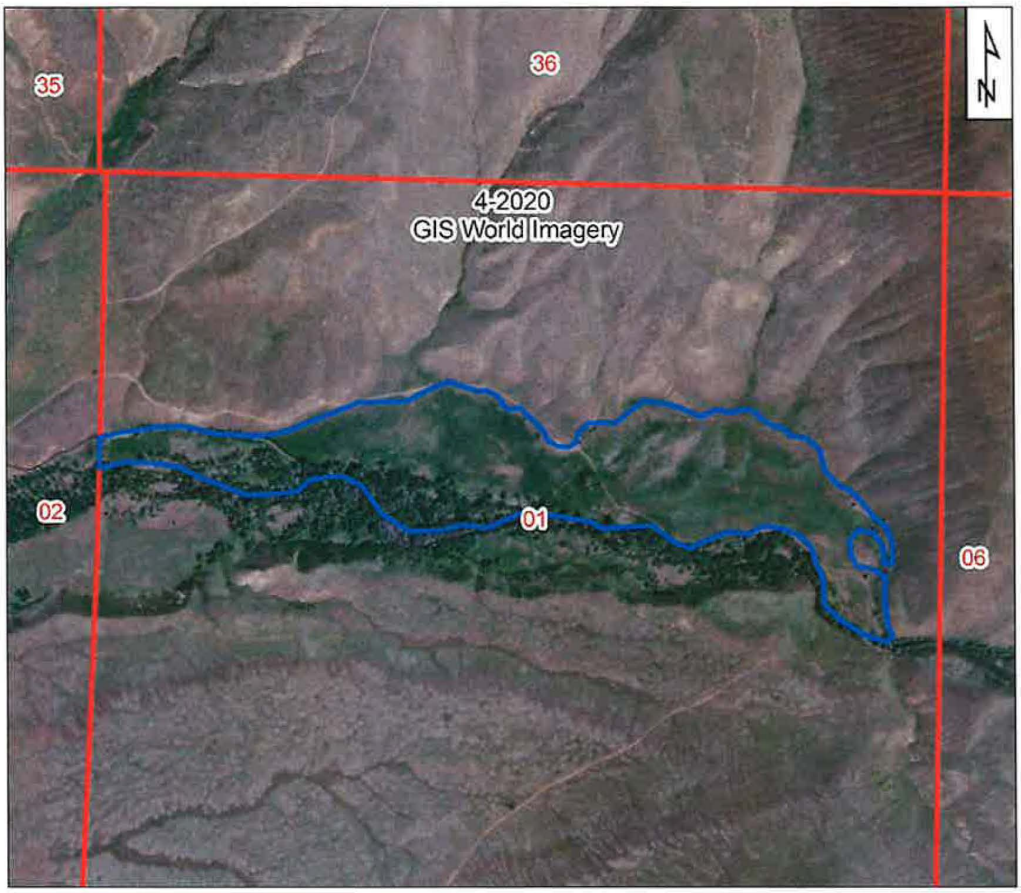
NAIP 9/1/2017

- Place of use for 65-3124X and 65-10537 is not irrigated.
- Visible diversion through ditch to Big Willow Ranch.



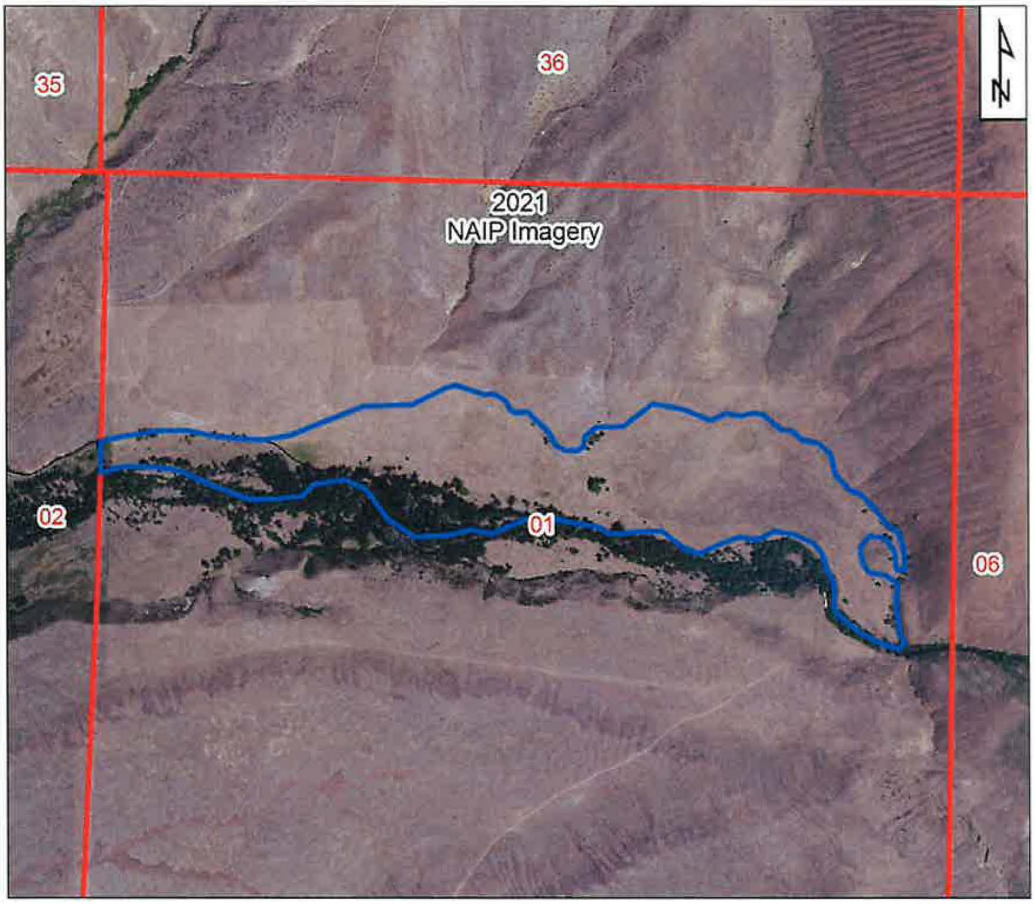
NAIP 7/19/2019

- Place of use for 65-3124X and 65-10537 does not appear to be irrigated.
- Green vegetation in the SENE Section 1 appears to be natural vegetation.
- Visible diversion through ditch to Big Willow Ranch.



GIS World Imagery 4/2020

- Place of use for 65-3124X and 65-10537 has green vegetation, but no evidence of irrigation application. Green vegetation is assumed to be a function of winter/spring precipitation given the April imagery date and homogeneous appearance of vegetation activity across the place of use.
- Visible diversion through ditch to Big Willow Ranch.



NAIP 5/17/2021

- Place of use for 65-3124X and 65-10537 does not appear to be irrigated.
- Visible diversion through ditch to Big Willow Ranch.

Travis L. Thompson, ISB #6168
Abby R. Bitzenburg, ISB #_____[1]
MARTEN LAW LLP
163 Second Ave. West
P.O. Box 63
Twin Falls, Idaho 83303-0063
Telephone: (208) 733-0700
Email: tthompson@martenlaw.com
abitzenburg@martenlaw.com

Attorneys for A.L. Cattle, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF A.L. CATTLE, INC.'S WATER RIGHT NOS. 65-1985, 65-3124X, AND 65-10537	**NOTICE OF APPEARANCE**

Travis L. Thompson and Abby R. Bitzenburg, of the firm MARTEN LAW LLP, hereby provide notice of their appearance on behalf of A.L. Cattle, Inc. in this matter. Pursuant to IDAPA 37.01.01.200, all future filings and documents should be served on the undersigned counsel. A.L. Cattle reserves the right to respond to the petition.

Dated this 15th day of September, 2023.

MARTEN LAW LLP

Travis L. Thompson
Attorneys for A.L. Cattle, Inc.

[1] Ms. Bitzenburg recently passed the bar examination for the Idaho State Bar and is awaiting her bar number.

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September, 2023, I served a true and correct copy of the foregoing **NOTICE OF APPEARANCE**:

By U.S. Mail and Email to the following:

Idaho Department of Water Resources
State Office
322 E. Front St.
Boise, Idaho 83702-0098
file@idwr.idaho.gov

Michael P. Lawrence
Givens Pursley LLP
P.O. Box 2720
Boise, Idaho 83702
mpl@givenspursley.com

Attorneys for Petitioner Big Willow Ranch LLC

Travis L. Thompson

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF A.L. CATTLE, INC.'S WATER RIGHT NOS. 65-1985, 65-3124X, AND 65-10537	))))	**PRELIMINARY ORDER DENYING PETITION FOR FORFEITURE**

BACKGROUND

On September 5, 2023, the Idaho Department of Water Resources ("Department") received a *Petition for Forfeiture in the Matter of A.L. Cattle, Inc.'s Water Right Nos. 65-1985, 65-3124X, and 65-10537* ("Petition") filed by Michael P. Lawrence of Givens Pursley LLP on behalf of Big Willow Ranch, LLC ("Big Willow Ranch").

The Petition requests the Department find water right nos. 65-1985, 65-3124X, and 65-10537 (together, "A.L. Cattle's Water Rights") forfeited based on the *Declaration of J.G. Schwartz* ("Schwartz Declaration") and the *Declaration of Terry Scanlan, P.E., P.G.* ("Scanlan Declaration") filed contemporaneously with the Petition. The Snake River Basin Adjudication ("SRBA") issued a partial decree for water right no. 65-1985 in 1998. The SRBA issued a partial decree for water right nos. 65-3124X and 65-10537 in 2004. The Schwartz Declaration and Scanlan Declaration provide evidence supporting Big Willow Ranch's assertion that A.L. Cattle's Water Rights are now forfeited.

A.L. Cattle's Water Rights are not included in any water right administrative action currently pending before the Department, such as an application for transfer or an application for extension of time to avoid forfeiture.

RELEVANT STATUES AND AUTHORITIES

Idaho Code § 42-222(1) states, in pertinent part:

> Any person, entitled to the use of water…who shall desire to change the point of diversion, place of use, period of use or nature of use of all or part of the water, under the right shall first make application to the department of water resources for approval of such change… The director of the department of water resources shall examine all the evidence and available information and shall approve the change… provided no other water rights are injured thereby…

Idaho Code § 42-222(2) states:

> All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be

lost through nonuse or forfeiture such rights to such water shall revert to the state and be again subject to appropriation under this chapter; except that any right to the use of water shall not be lost through forfeiture by the failure to apply the water to beneficial use under certain circumstances as specified in 42-223, Idaho Code. The party asserting that a water right has been forfeited has the burden of proving the forfeiture by clear and convincing evidence.

Idaho Code § 42-222(3) states:

Upon proper showing before the director of the department of water resources of good and sufficient reason for nonapplication to beneficial use of such water for such term of five (5) years, the director of the department of water resources is hereby authorized to grant an extension of time extending the time for forfeiture of title for nonuse thereof, to such water for a period not to exceed five (5) additional years.

Idaho Code § 42-223 states, in pertinent part:

A right to the use of water shall not be lost by forfeiture pursuant to the provisions of section 42-222, Idaho Code, for a failure to apply the water to beneficial use under the conditions specified in any subsection of this section…

Idaho Code § 42-1401B(1) states, in pertinent part:

The director's role under this chapter is as an independent expert and technical assistant to assure that claims to water rights acquired under state law are accurately reported in accordance with chapter 14, title 42, Idaho Code. The director shall make recommendations as to the extent of beneficial use and administration of each water right under state law…

Idaho Code § 42-224 establishes the procedure for a petition to find a stockwater water right forfeited. Idaho Code § 42-224(1) mandates that, upon receiving a petition that a stockwater water right has not been used for a term of five (5) years, the Director of the Department determines whether the petition or other information presents a prima facie case that the stockwater water right has been forfeited. If the Director determines the petition or other evidence establishes prima facie evidence, Idaho Code § 42-224(2) states, the Director must issue a show cause order why the stockwater water right has not been lost through forfeiture. Idaho Code §§ 42-224(7) and 42-224(8) state the Director must ultimately issue an order determining whether the stockwater water right has been forfeited. Idaho Code § 42-224(10) states once the Director issues an order finding a stockwater water right has been forfeited, "the state of Idaho, by and through the office of the attorney general, must initiate a civil action by electronically filing in the district court for the fifth judicial district, Twin Falls County… a complaint requesting a declaration that the stockwater right is forfeited..." Idaho Code § 42-224(12) states, in pertinent part, "[a]t the conclusion of the action, the district court shall issue an order determining whether the stockwater right has been forfeited pursuant to section 42-222, Idaho Code."

ANALYSIS

The Department has the authority to consider forfeiture only in certain limited circumstances. When an application for transfer is filed requesting to change the point of diversion or other element of a water right, Idaho Code § 42-222(1) requires that the Department evaluate, based on all the available evidence, whether the proposed change will injure other water rights. In *Jenkins v. State, Dep't of Water Res.*, the Idaho Supreme Court found that "evidence which demonstrates that the right sought to be transferred has been abandoned or forfeited, is probative as to whether that transfer would injure other water rights." *Jenkins v. State, Dep't of Water Res.*, 103 Idaho 384, 387, 647 P.2d 1256, 1259 (1982). Thus, when a water right is sought to be transferred, the Department does have statutory authority as part of the injury analysis to consider whether a water right has been forfeited.

A.L. Cattle's Water Rights are not currently included in any transfer proceedings before the Department. Therefore, the Department does not have the opportunity to limit use under these water rights to avoid injury that may result from any proposed change to the water rights' elements.

Pursuant to Idaho Code § 42-1401B(1), the Department serves as the technical expert for the district court in the adjudication of water rights. In this capacity, the Department evaluates the extent of beneficial use occurring under a water right in its water right recommendations to the court. If the Department finds that a water right has not been used in the five (5) years prior to the claim being filed, and there is no qualifying defense to forfeiture under Idaho Code § 42-223 or approved extension of time to avoid forfeiture under Idaho Code § 42-222(3), the Department will recommend the water right as forfeited to the court. If the court agrees with the Department's recommendation, the court will decree the water right forfeited.

As stated in the Petition, in 1998 and 2004, the SRBA Court decreed A.L. Cattle's Water Rights as valid water rights. A.L. Cattle's Water Rights are not currently pending recommendation before the SRBA Court. Therefore, the Department does not have the opportunity to recommend the SRBA decree A.L. Cattle's Water Rights forfeited.

Idaho Code § 42-224 directs the Department to issue an order determining a stockwater water right has been forfeited after it receives a petition, if that petition or other information contains prima facie evidence that the stockwater water right has been lost to forfeiture pursuant to Idaho Code § 42-222(2). While the statute requires the Department to issue an order determining forfeiture, ultimately the State of Idaho Attorney General's Office must file a civil action with the fifth judicial district court at the conclusion of which the district court will issue a judgement that the stockwater water right has been forfeited. Idaho Code § 42-224(12). Even though Idaho Code § 42-224 grants the Department the authority to issue an order determining a stockwater water right has been forfeited, it expressly mandates that the district court must confirm the Department's order by issuing its own order and judgement that the stockwater water right has been forfeited.

Idaho Code § 42-222(2) does not grant the Department the express authority to find a water right forfeited under the statute. Idaho Code § 42-222(2) does afford any party the opportunity to file a civil action in district court to find that a water right has been forfeited.

While Idaho Code grants the Department authority to evaluate and determine forfeiture in some specific circumstances, there are no statutes expressly granting the Department authority to evaluate the evidence presented in the Petition and make a determination regarding forfeiture of A.L. Cattle's Water Rights in this matter. Big Willow Ranch may file a civil action in district court if it wants A.L. Cattle's Water Rights declared forfeited.

CONCLUSIONS OF LAW

The Department should issue an order denying the Petition given the Department does not have the statutory authority to find A.L. Cattle's Water Rights forfeited as a result of the Petition.

ORDER

IT IS HEREBY ORDERED the Petition for Forfeiture is DENIED.

Dated this 1st day of February, 2024

Angela M. Hansen
Water Allocation Bureau Chief

CERTIFICATE OF SERVICE

I certify that on the 1st day of February 2024, I served or caused to be served the Preliminary Order Denying Petition for Forfeiture to the parties by the following method(s):

MICHAEL P LAWRENCE
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601 W BANNOCK ST
PO BOX 2720
BOISE,ID 83702
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Attorney for Petitioner

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- ☐ U.S. Mail, postage prepaid
- ☐ Overnight Mail
- ☑ Email

BIG WILLOW RANCH, LLC
C/O JG SCHWARTZ
1 DIXIE LN
PAYETTE, ID 83661-5030
Petitioner

- ☐ U.S. Mail, Certified, postage prepaid
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TRAVIS L THOMPSON
MARTEN LAW LLP
163 SECOND AVE W
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IDWR record attorney for A.L. Cattle, Inc.

- ☐ U.S. Mail, Certified, postage prepaid
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A L CATTLE CO INC
C/O AGNES BRAILSFORD
PO BOX 180
HAGERMAN, ID 83332
Water right 65-3124X owner of record

- ☐ U.S. Mail, Certified, postage prepaid
- ☒ U.S. Mail, postage prepaid
- ☐ Overnight Mail
- ☐ Email

A.L. CATTLE CO
C/O GARY MALLORY (FOREMAN)
PO BOX 608
EMMETT, ID 83617
(208)365-5658
Water right 65-1985 and 65-10537 owner of record

- ☐ U.S. Mail, Certified, postage prepaid
- ☒ U.S. Mail, postage prepaid
- ☐ Overnight Mail
- ☐ Email

Jean Hersley
Technical Records Specialist II

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

> Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:
>
> (a) The petition for reconsideration is disposed of; or
> (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

i. A hearing was held,
ii. The final agency action was taken,
iii. The party seeking review of the order resides, or
iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

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Counsel for Big Willow Ranch, LLC

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

IN THE MATTER OF A. L. CATTLE, INC.'S WATER RIGHT NOS. 65-1985, 65-3124X, AND 65-10537	**BIG WILLOW'S EXCEPTIONS TO PRELIMINARY ORDER DENYING PETITION FOR FORFEITURE**

Big Willow Ranch, LLC ("Big Willow") by and through its attorneys of record Givens Pursley LLP, pursuant to Idaho Department of Water Resources ("IDWR" or "Department") Rule of Procedure 730, IDAPA 37.01.01.730, hereby files these exceptions to the Director of IDWR concerning the Department's February 1, 2024 *Preliminary Order Denying Petition for Forfeiture* ("*Preliminary Order*").

INTRODUCTION

On September 5, 2023, Big Willow filed with the Department its *Petition for Forfeiture* ("*Petition*") asking the Department to declare that A. L. Cattle, Inc.'s Water Right Nos. 65-1985, 65-3124X, and 65-10537 (collectively, the "Water Rights") have been forfeited for non-use. Big Willow's *Petition* was accompanied and supported by the *Declaration of J.G. Schwarz* ("*Schwarz Declaration*") and the *Declaration of Terry Scanlan, P.E., P.G.* ("*Scanlan Declaration*").

On February 1, 2024, the Department's Water Allocation Bureau Chief issued the *Preliminary Order*, which stated that "the Department does not have the statutory authority to find A.L. Cattle's Water Rights forfeited . . . ." *Preliminary Order* at 4.

Big Willow files these exceptions to the Director asking him to determine that IDWR has authority to declare the Water Rights forfeited.[1]

ARGUMENT

I. THE DEPARTMENT HAS EXCLUSIVE AUTHORITY OVER THE APPROPRIATION OF IDAHO'S PUBLIC WATERS, AND NO OTHER INSTRUMENTALITY OF THE STATE MAY PROHIBIT, RESTRICT, OR REGULATE APPROPRIATIONS.

Idaho Code § 42-201(7) states:

> This title delegates to the department of water resources exclusive authority over the appropriation of the public surface and ground waters of the state. No other agency, department, county, city, municipal corporation or other instrumentality or political subdivision of the state shall enact any rule or ordinance or take any other action to prohibit, restrict or regulate the appropriation of the public surface or ground waters of the state, and any such action shall be null and void.

This statutory provision is not ambiguous, and therefore should be given its plain meaning. *Callies v. O'Neal*, 147 Idaho 841, 847, 216 P.3d 130, 136 (2009) ("statutory interpretation begins with the literal language of the statute. If the statutory language is unambiguous, we need not engage in statutory construction and are free to apply the statute's plain meaning." (internal citation omitted)). Section 42-201(7)'s plain meaning leaves no question that the Department has exclusive authority to determine whether water rights have been forfeited for non-use.

[1] Big Willow does not here raise any issues concerning the merits of its *Petition* or the evidence set forth in the *Schwarz Declaration* or the *Scanlan Declaration* because the *Preliminary Order* did not address them, but rather addressed only IDWR's authority to determine forfeiture. Big Willow reserves all rights to argue the merits of its *Petition*.

The first sentence of Section 42-201(7) states that the Department has "exclusive authority over the appropriation of the public surface and ground waters of the state." (Emphasis added.) Black's Law Dictionary defines "exclusive" as "[l]imited to a particular person, group, entity, or thing <exclusive right>." EXCLUSIVE, Black's Law Dictionary (11th ed. 2019). And Black's Law Dictionary defines "appropriation" as "[t]he exercise of control over property, esp. without permission; a taking of possession." APPROPRIATION, Black's Law Dictionary (11th ed. 2019). Taken together, Section 42-201(7) says that the "exclusive authority over the [the exercise of control] of the public surface and ground waters of the state" is limited to the Department. Authority over the exercise of control of the state's public waters necessarily means determining whether a water right is valid or has been forfeited (*i.e.*, whether a party has any right to exercise control over the public waters).

The second sentence of Section 42-201(7) further emphasizes that the Department's authority to determine forfeiture is exclusive. It states that no other "instrumentality" of the state may "take any other action to prohibit, restrict or regulate the appropriation of the public surface or ground waters of the state . . . ." Like obtaining a water right and changing a water right, a determination of forfeiture clearly is an "action to prohibit, restrict, or regulate" the appropriation of water. Indeed, it is difficult to fathom an act that is more prohibiting, restricting, or regulating than making a determination that a water right has been forfeited.

The *Preliminary Order* concludes that parties can "file a civil action in district court to find that a water right has been forfeited." *Preliminary Order* at 4. But Section 42-201(7) prohibits district courts from determining forfeiture because they are "instrumentalities" of the state. Black's Law Dictionary defines "instrumentality" as:

> 1. A thing used to achieve an end or purpose.
> 2. A means or agency through which a function of another entity is

accomplished, such as a branch of a governing body.

INSTRUMENTALITY, Black's Law Dictionary (11th ed. 2019). Idaho's courts fall within both definitions of "instrumentality." First, they are a thing used to achieve an end or purpose—namely, the interpretation and enforcement of the state's laws. IDAHO CONST. Art. V §§ 1, 2.[2] Second, they are a branch of a governing body through which a function of another entity (*i.e.*, the State of Idaho) is accomplished. Idaho's courts represent one of three constitutionally mandated branches of state government, *see* IDAHO CONST. Arts. III-V, and therefore constitute a branch of a governing body. Accordingly, Section 42-201(7)'s second sentence generally prohibits the district courts from prohibiting, restricting, or regulating water appropriations.[3]

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[2] IDAHO CONST. Art. V § 1 reads in full:

> The distinctions between actions at law and suits in equity, and the forms of all such actions and suits, are hereby prohibited; and there shall be in this state but one form of action for the enforcement or protection of private rights or the redress of private wrongs, which shall be denominated a civil action; and every action prosecuted by the people of the state as a party, against a person charged with a public offense, for the punishment of the same, shall be termed a criminal action.
>
> Feigned issues are prohibited, and the fact at issue shall be tried by order of court before a jury.

IDAHO CONST. Art. V § 2 reads in full:

> The judicial power of the state shall be vested in a court for the trial of impeachments, a Supreme Court, district courts, and such other courts inferior to the Supreme Court as established by the legislature. The courts shall constitute a unified and integrated judicial system for administration and supervision by the Supreme Court. The jurisdiction of such inferior courts shall be as prescribed by the legislature. Until provided by law, no changes shall be made in the jurisdiction or in the manner of the selection of judges of existing inferior courts.

[3] At least one district court has determined that it was unable to decide whether a water right was forfeited because Title 42 of the Idaho Code gives the Department exclusive authority over the appropriation of public waters. *Henderson v. Madlen*, No. CV02-21-000003, Idaho Dist. Ct., Adams County (Feb. 24, 2023) (oral ruling on the record).

Of course, district courts have specific statutory authority to address certain water matters, such as on judicial review (Chapter 52, Title 67, Idaho Code) and in water rights adjudications (Chapter 14, Title 42, Idaho Code), and these specific statutes control over Section 42-201(7) in those contexts. *Valiant Idaho, LLC v. JV L.L.C.*, 164 Idaho 280, 289, 429 P.3d 168, 177 (2018) ("A basic tenet of statutory construction is that the more specific statute or section addressing the issue controls over the statute that is more general. Thus, the more general statute should not be interpreted as encompassing an area already covered by one which is more specific." (internal citations omitted)). But, unlike these examples, there is no other statute expressly giving a branch of government other than IDWR authority to determine forfeiture of water rights.[4]

In sum, it is clear that the Idaho Legislature has given IDWR exclusive authority over the exercise of control of the state's public waters. This must include determining whether a water right is forfeited because one who has forfeited their water right is not entitled to exercise control over the state's waters. Moreover, the Legislature did not merely give IDWR that authority, but (aside from specific circumstances that do not include determining forfeiture) it also has expressly prohibited any other "instrumentality" of the state (including Idaho's courts) from prohibiting, restricting, or regulating the appropriation of state's public waters.

II. THE STATUTES CITED IN THE *PRELIMINARY ORDER* DO NOT SUPPORT THE *PRELIMINARY ORDER'S* CONCLUSION.

The *Preliminary Order* concludes that "[t]he Department has the authority to consider forfeiture only in certain limited circumstances." *Preliminary Order* at 3. Its analysis

[4] To the extent that a water right is real property (Idaho Code § 55-101) and district courts have jurisdiction to determine title to real property (Idaho Code § 5-401), Section 42-201(7) is the more specific statute giving IDWR exclusive authority over the "appropriation of the public surface and ground waters of the state."

specifically cites the statutory authority to determine forfeiture in a water right transfer (I.C. § 42-222(1)), in a water rights adjudication (42-1401B(1)), and in a petition to declare stockwater rights forfeited (I.C. § 42-224). But the existence of these specific authorizations does not mean that the Department may not determine forfeiture under Idaho Code § 42-222(2) in other contexts.

Idaho Code § 42-222(2) sets forth the general rule of forfeiture. It states in full:

> All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through nonuse or forfeiture such rights to such water shall revert to the state and be again subject to appropriation under this chapter; except that any right to the use of water shall not be lost through forfeiture by the failure to apply the water to beneficial use under certain circumstances as specified in section 42-223, Idaho Code. The party asserting that a water right has been forfeited has the burden of proving the forfeiture by clear and convincing evidence.

While this statutory provision does not declare which state entity has jurisdiction to determine a forfeiture claim, it also does not state that district courts have jurisdiction as concluded by the Department. *Preliminary Order* at 4. Read in tandem with Section 42-201(7), discussed above, it is clear that the Legislature intended that IDWR would determine forfeiture under its exclusive authority over the appropriation of public waters. This conclusion is consistent with the Legislature's determination that IDWR should serve as "an independent expert and technical assistant to assure that claims to water rights acquired under state law are accurately reported [to an adjudication court]." I.C. 42-1401B. IDWR is, after all, the state's premier governmental resource for evaluating the technical parameters of water rights.

It is true that A. L. Cattle's Water Rights "are not currently pending recommendation before the SRBA Court." *Preliminary Order* at 3. However, this does not mean that the

Department is without authority to use its technical expertise to evaluate forfeiture by exercising its "exclusive authority over the appropriation of the public surface and ground waters of the state" under Idaho Code § 42-201(7). The adjudication statute cited in the *Preliminary Order* (Idaho Code § 42-1401B) was enacted in 1994 as part of a legislative package amending several portions of the water adjudication statutes (Idaho Code §§ 42-1401 to 1428) to remedy several perceived problems with the Snake River Basin Adjudication. 1994 Idaho Sess. Laws, ch. 454 (H.B. 969). This legislation removed the Department as a party to the adjudication and added Section 42-1401B designating the Director (and hence the Department) an "independent expert and technical assistant to assure that claims to water rights . . . are accurately reported . . . ." This change clarified the Department's role in the adjudication, and predated by 12 years the Legislature's 2006 addition of Subsection (7) in Idaho Code 42-201 which expressly gives the Director "exclusive authority over the appropriation of the public surface and ground waters of the state." It defies logic and fundamental tenets of statutory construction to conclude that the Legislature's broad delegation of exclusive authority in 2006 is limited by its 1994 clarification of the Department's role in adjudications. *City of Idaho Falls v. H-K Contractors, Inc.*, 163 Idaho 579, 584, 416 P.3d 951, 956 (2018) ("Courts must construe statutes under the assumption that the [L]egislature knew of all legal precedent and other statutes in existence at the time the statute was passed." (internal quotation marks omitted)). There is no indication that, when enacting Section 42-201(7), the Legislature intended to limit IDWR's exclusive authority over water appropriations such that it would not include determining forfeiture outside of adjudications (or other specific contexts such as transfers).

It also is true that A. L. Cattle's Water Rights "are not currently included in any transfer proceedings before the Department." *Preliminary Order* at 3. Again, however, this does not

mean that the Department is without authority to use its technical expertise to evaluate forfeiture under its "exclusive authority over the appropriation of the public surface and ground waters of the state" under Idaho Code § 42-201(7). The *Preliminary Order* cites *Jenkins v. State, Dep't of Water Res.*, 103 Idaho 384, 647 P.2d 1256 (1982), as recognizing that "the Department does have statutory authority as part of the injury analysis [in a transfer proceeding under Idaho Code § 42-222(1)] to consider whether a water right has been forfeited." *Preliminary Order* at 3. The *Jenkins* Court stated that "[t]he director is statutorily required to examine all evidence of whether the proposed transfer will injure other water rights or constitute an enlargement of the original right, and evidence which demonstrates that the right sought to be transferred has been abandoned or forfeited, is probative as to whether that transfer would injure other water rights." *Jenkins*, 103 Idaho at 387, 647 P.2d at 1259. But it does not expressly state that a forfeiture analysis is required. Rather, the *Jenkins* Court found that it is implicitly required. Likewise, it is clear that analyzing forfeiture is implicitly included as part of the Department's "exclusive authority over the appropriation of the public surface and ground waters of the state" under Section 42-201(7).

The *Preliminary Order* also mistakenly relies on Idaho Code § 42-224 as a basis for concluding the Department does not have general authority to determine forfeiture. That statute was enacted in 2020 and amended in 2022. The 2020 enactment was part of a legislative package addressing stockwater rights on federal land. Importantly, it amended Idaho Code § 42-501, which was enacted as part of legislation in 2017 adding Chapter 5 to Title 42 to "codify the findings of the Idaho Supreme Court in the case of *Joyce Livestock Company v. United States of America*, 144 Idaho 1, 156 P.3d 502 (2007)." Statement of Purpose, S.B. 1111 (2017). Section 42-501 describes the Legislature's intent in adding Chapter 5 and, as originally enacted in 2017,

it did not include any language concerning forfeiture. 2017 Idaho Sess. Laws, ch. 178 (S.B. 1111). In 2018, the Legislature amended Section 42-501 by adding "Further, in order to comply with the Joyce decision, it is the intent of the Legislature that stockwater rights acquired in a manner contrary to the *Joyce* decision are subject to forfeiture." 2018 Idaho Sess. Laws, ch. 320 (H.B. 718). That provision in Section 42-501 was further amended by the same 2020 legislation enacting Section 42-224 (the statute relied on the *Preliminary Order*) by adding to its end "pursuant to sections 42-222(2) and 42-224, Idaho Code." This connection between Sections 42-501 and 42-224 shows that Section 42-224 was enacted to address specific issues and procedures concerning the forfeiture of stockwater rights in the aftermath of the *Joyce Livestock* case.

There is no indication that the Legislature intended to abrogate or limit the Director's ability to generally determine forfeiture under its "exclusive authority over the appropriation of the public surface and ground waters of the state" in Section 42-201(7). The legislation enacting Section 42-224 did not expressly amend or repeal Section 42-201(7), and nor did it amend or repeal it by implication. "Repeal by implication occurs when two statutes are inconsistent and irreconcilable." *Callies v. O'Neal*, 147 Idaho 841, 847, 216 P.3d 130, 136 (2009) (internal quotation marks omitted). However, "[c]ourts disfavor repeal by implication and, therefore, attempt to interpret seemingly conflicting statutes in a manner that gives effect to both provisions." *Id.* Section 42-224 does not conflict with Section 42-201(7). Rather, Section 42-224 provides for specific procedures to determine whether certain stockwater rights are forfeited. Section 42-201(7), on the other hand, is a general statement of the Department's exclusive authority over the exercise of control over state waters. These statutory provisions can and must be read together without conflict.

CONCLUSION

Section 42-201(7) gives IDWR "exclusive authority over the appropriation" of the state's public waters, and further prohibits any other "instrumentality" of the state from prohibiting, restricting, or regulating the exercise of control over the state's waters (with specific limited exceptions set forth in other statutes). This makes sense because IDWR is the state's premier governmental resource for evaluating the technical parameters of water rights.

The *Preliminary Order's* conclusions about forfeiture determination are mistaken. Accordingly, Big Willow respectfully requests that the Director determine that IDWR has authority to determine the merits of the forfeiture claims set forth in Big Willow's *Petition*, and remand the matter to the Hearing Officer for further proceedings.

Respectfully submitted this 15th day of February, 2024.

GIVENS PURSLEY LLP

By _____
Michael P. Lawrence
Attorneys for Big Willow Ranch, LLC

.

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of February, 2024, a true and correct copy of the foregoing was filed and/or served upon the following individual(s) by the means indicated:

DOCUMENT FILED:

Idaho Department of Water Resources The Idaho Water Center 322 E Front St, Ste. 648 Boise, ID 83702 E-file: file@idwr.idaho.gov	☐ ☐ ☐ ☐ ☒	U. S. Mail Hand Delivered Overnight Mail Facsimile E-file

SERVICE COPIES TO:

TRAVIS L THOMPSON ABBY BITZENBURG MARTEN LAW LLP 163 SECOND AVE W PO BOX 63 TWIN FALLS, ID 83303-0063 (IDWR record attorney for A.L. Cattle, Inc.)	☒ ☐ ☐ ☐ ☒	U. S. Mail Hand Delivered Overnight Mail Facsimile E-mail

By:_____
Michael P. Lawrence

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF A. L. CATTLE, INC.'S WATER RIGHT NOS. 65-1985, 65-3124X, AND 65-10537	**ORDER EXTENDING DEADLINE TO ISSUE FINAL ORDER**

BACKGROUND

On September 5, 2023, Big Willow Ranch, LLC ("Big Willow"), filed a *Petition for Forfeiture* with the Idaho Department of Water Resources ("Department") asking the Department to declare A.L. Cattle, Inc.'s Water Right Nos. 65-1985, 65-3124X, and 65-10537 ("Water Rights") forfeited for non-use.

On September 15, 2023, A.L. Cattle provided notice of their appearance in this matter.

On February 1, 2024, the Department's Water Allocation Bureau Chief Angela Hansen issued a *Preliminary Order Denying Petition for Forfeiture* ("*Preliminary Order*") concluding "the Department does not have the statutory authority to find A.L. Cattle's Water Rights forfeited as a result of the Petition." *Preliminary Order* at 4.

On February 15, 2024, the Department received *Big Willow's Exceptions to Preliminary Order Denying Petition for Forfeiture* ("*Exceptions*") asking the Director "to determine that IDWR has authority to declare the Water Rights forfeited." *Exceptions* at 2. A.L. Cattle did not respond to the *Exceptions*.

ANALYSIS

The Department's Rule of Procedure 730.02.e requires the Director to issue a final order within fifty-six days of receipt of written briefs or oral argument regarding exceptions to a preliminary order, "whichever is later, unless extended for good cause." IDAPA 37.01.01.730.02.e. No additional supportive or responsive briefs have been filed in this contested case since the February 15, 2024 *Exceptions*. Therefore, the Director is required to issue a final order by April 11, 2024, unless "good cause" is shown to extend the deadline. *Id.*

Good cause exists to extend the deadline for the Director to issue a final order. The *Exceptions* raise important legal and policy issues that require careful consideration and extensive legal research. Additional time is needed prior to issuance of a final order. Accordingly, the Director will extend the deadline for issuing a final order by four weeks, to May 9, 2024.

ORDER

IT IS HEREBY ORDERED that the deadline for the Director to issue a final order is EXTENDED to May 9, 2024.

Dated this 11th day of April 2024.

MATHEW WEAVER
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of April 2024, the above and foregoing, was served by the method indicated below, and addressed to the following:

Michael P. Lawrence GIVENS PURSLEY LLP PO Box 2720 Boise, ID 83702 mpl@givenspursley.com *Attorney for Big Willow Ranch, LLC*	☒ U.S. Mail, postage prepaid ☒ Email
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Sarah Tschohl
Paralegal

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF A. L. CATTLE, INC.'S WATER RIGHT NOS. 65-1985, 65-3124X, AND 65-10537	**ORDER ON EXCEPTIONS; FINAL ORDER DENYING PETITION FOR FORFEITURE**

BACKGROUND

On September 5, 2023, Big Willow Ranch, LLC ("Big Willow"), filed a *Petition for Forfeiture* ("*Petition*") with the Idaho Department of Water Resources ("Department") asking the Department to declare A.L. Cattle, Inc.'s Water Right Nos. 65-1985, 65-3124X, and 65-10537 ("Water Rights") forfeited for non-use.

On September 15, 2023, A.L. Cattle submitted its notice of appearance in this matter.

On February 1, 2024, the Department's Water Allocation Bureau Chief Angela Hansen issued a *Preliminary Order Denying Petition for Forfeiture* ("*Preliminary Order*") concluding "the Department does not have the statutory authority to find A.L. Cattle's Water Rights forfeited as a result of the Petition." *Preliminary Order*, at 4.

On February 15, 2024, the Department received *Big Willow's Exceptions to Preliminary Order Denying Petition for Forfeiture* ("*Exceptions*") asking the Director "to determine that IDWR has authority to declare the Water Rights forfeited." *Exceptions*, at 2. A.L. Cattle did not respond to the *Exceptions*.

EXCEPTIONS

After careful consideration of the record, the Director is not persuaded by Big Willow's *Exceptions*. In this order, the Director discusses the various arguments raised in Big Willow's *Exceptions* and concludes that Big Willow's *Exceptions* are denied. The Director adopts the *Preliminary Order's* findings and conclusions of law and supplements the analysis with the findings and conclusions set forth in this order.

Big Willow's *Exceptions* relate primarily to the Department's authority to render a forfeiture decision. *Exceptions*, at 2. First, Big Willow argues the Department has authority to declare A.L. Cattle's Water Rights forfeited based on the Department's exclusive authority over the appropriation of Idaho's waters under Idaho Code § 42-201(7). *Exceptions*, at 2. Second, Big Willow argues the statutory provisions cited in the *Preliminary Order* do not support the *Preliminary Order*'s denial of forfeiture. *Exceptions*, at 5.

I. The Legislature did not enact Idaho Code § 42-201(7) for the purpose of granting the Department with exclusive authority to render a forfeiture decision.

In its *Exceptions*, Big Willow primarily argues that the Department's statutory authority to render a forfeiture decision is prescribed in Idaho Code § 42-201(7). *See generally Exceptions*. Big Willow argues that § 42-201(7) is unambiguous, so the plain meaning of the statute applies. *Exceptions*, at 2. Section 42-201(7) states:

> This title delegates to the department of water resources *exclusive* authority over the *appropriation* of the public surface and ground waters of the state. No other agency, department, county, city, municipal corporation or other *instrumentality* or political subdivision of the state shall enact any rule or ordinance or take any other action to *prohibit*, *restrict* or *regulate* the appropriation of the public surface or ground waters of the state, and any such action shall be null and void.

I.C. § 42-201(7) (emphasis added). First, Big Willow argues the Department's "exclusive authority over the appropriation" of the state's waters grants the Department with exclusive authority to render a forfeiture decision under the plain meaning of "appropriation." *Exceptions*, at 2 (quoting I.C. § 42-201(7)). Second, Big Willow argues that district courts are instrumentalities of the state that do not have authority to render a forfeiture decision because, under § 42-201(7), no other instrumentality of the state may prohibit, restrict, or regulate the appropriation of the state's waters. *Id.* at 3.

A. Idaho Code § 42-201(7) was enacted to grant the Department exclusive authority over the statutory application, permit, and license process.

Big Willow argues that Idaho Code § 42-201(7) is unambiguous, so the plain meaning of "appropriation" and "exclusive" empowers the Department with "exclusive authority over [the exercise of control] of the public surface and ground waters of the state." *Exceptions*, at 3.

The Idaho Supreme Court has held that "courts give effect to the statute as written" when the "statute is plain and unambiguous" without engaging in tools of statutory construction. *City of Idaho Falls v. H-K Contractors, Inc.*, 163 Idaho 579, 582, 416 P.3d 951, 954 (2018) (quoting *Curlee v. Kootenai Cnty. Fire & Rescue*, 148 Idaho 391, 398, 224 P.3d 458, 465 (2008)). However, if the language of the statute is considered ambiguous (i.e., "reasonable minds might differ or be uncertain as to its meaning"), then courts will apply rules of statutory construction to interpret the meaning of the statute. *Id.* (quoting *Payette River Prop. Owners Ass'n v. Bd. of Comm'rs of Valley Cnty.*, 132 Idaho 551, 557, 976 P.2d 477, 483 (1999)). In applying the rules of statutory construction, the courts consider the state's public policy and legislative history in enacting the statute. *Id.* at 583, 416 P.3d at 955 (citing *In re Adoption of Doe*, 156 Idaho 345, 349, 326 P.3d 347, 351 (2014)).

Big Willow is correct in arguing that § 42-201(7) is unambiguous. However, Big Willow cites a general definition of "appropriation," which is a definition not used in a water rights context: "[t]he exercise of control over property, esp. without permission; a taking of possession." *Exceptions*, at 3 (quoting *Appropriation*, *Black's Law Dictionary* (11th ed. 2019)).

Big Willow has erred in its argument by not using the plain meaning of "appropriation" within the context of § 42-201(7), which pertains specifically to the appropriation of water rights. Because Chapter 2, Title 42, Idaho Code is explicitly titled "Appropriation of Water — Permits, Certificates, and Licenses — Survey," and § 42-201 specifically formulates the process of obtaining a water right through "appropriation," the meaning of "appropriation" must be understood within the context of establishing a legal right to divert water and apply it to beneficial use (in other words, establishing a water right). *See e.g.*, *Appropriative Water Right*, *Black's Law Dictionary* (11th ed. 2019) (defining "appropriative water right" as "a right to take or receive a specific volume of water for a particular use at a specified place and time"); *Appropriation*, *Black's Law Dictionary* (5th ed. 1979) (defining "appropriation" as "[t]he act of appropriating or setting apart; prescribing the destination of a thing" and "appropriation of water" as "[a]n appropriation of water flowing on the public domain consists in the capture, impounding, or diversion of it from its natural course . . . and its actual application to some beneficial use"). In addition, the statutory process for obtaining a water right is distinct from the statutory process of determining whether a water right is forfeited. *Compare* I.C. § 42-203A, *with* I.C. § 42-224; *see also* I.C. § 42-222(2) (referring to the terms "forfeiture" and "appropriation" as separate processes—"when any right to the use of water shall be lost through nonuse or *forfeiture* such rights to such water shall revert to the state and be again subject to *appropriation* under this chapter") (emphasis added). Because "appropriation" within § 42-201(7) unambiguously refers to the process of obtaining a water right from the Department, the Department has exclusive authority over the legal process for establishing a water right, not the process for forfeiting an already established water right. Section 42-201(7) does not grant the Department exclusive authority to render forfeiture decisions under the plain meaning of "appropriation."

Furthermore, if a court concludes that reasonable minds may differ as to the meaning of "appropriation," the legislative history of § 42-201(7) clearly establishes that the statute was intended to give the Department authority over the process for obtaining a water right, not to vest the Department with exclusive authority to render forfeiture decisions. Legislative history provides context into the legislative intent and public policy reasons supporting the enactment of the subsection. *See City of Idaho Falls*, 163 Idaho at 582, 416 P.3d at 954.

According to its legislative history, § 42-201(7) was enacted in 2006 to:

> Delegate[] comprehensive authority to the [IDWR] over the appropriation of the waters of the State . . . [to] preempt[] other agencies and political subdivisions from regulating the appropriation of the public waters of the State. This legislation further clarifies these principles to ensure that no other agency or political subdivision takes any action which impinges upon the [IDWR's] exclusive jurisdiction over the appropriation of the waters of the state.

Statement of Purpose, S.B. 1353, 58th Leg., 2d Reg. Sess. (Idaho 2006). In addition, the Senate Resources and Environment Committee clarified that the purpose of § 42-201(7) was to ensure the Department had jurisdiction in issuing water right licenses via the statutory method of appropriation instead of allowing counties, cities, or other agencies to get involved in regulating the state's waters. *See* Hearing on S.B. 1353 Before the S. Comm. on Res. & Env't, 58th Leg., 2d

Reg. Sess. (Idaho 2006) (statement of Norm Semanko, Exec. Dir., Idaho Water Users Ass'n, Inc.). After enacting § 42-201(7), the Idaho Supreme Court even clarified that the purpose of adding the subsection was "to require compliance with the statutory application, permit, and license procedure in order to acquire new water rights." *Joyce Livestock Co. v. U.S.*, 144 Idaho 1, 7, 156 P.3d 502, 508 (2007). Moreover, the general purpose of Idaho Code § 42-201 ensures the Department has jurisdiction over issuing permits or licenses in compliance with the statutory method of appropriation and establishes exceptions for emergency diversions. Nothing in the legislative history of § 42-201 discusses an exclusive authority of the Department to render a forfeiture decision.

The Director concludes the meaning of "appropriation" within § 42-201(7) is unambiguous as it pertains to the appropriation of water rights, and the legislative history supports the purpose of enacting § 42-201(7) was to grant the Department with exclusive jurisdiction over the appropriation of water rights and not to render a forfeiture decision.

B. Rendering a forfeiture decision is not within the list of enumerated actions delegated to the Department under Idaho Code § 42-201(7).

Big Willow argues that the second sentence of § 42-201(7) grants the Department with exclusive authority to determine forfeiture because no other state "instrumentality" may "take any other action to prohibit, restrict or regulate the appropriation of the public surface or ground waters of the state . . . ." *Exceptions*, at 3. Specifically, Big Willow argues that parties may not file a civil action in district court to deem a water right forfeited because: (1) district courts are considered "instrumentalities;" and (2) rendering a forfeiture decision specifically falls under the Department's jurisdiction as an "action to prohibit, restrict, or regulate the appropriation." *Id.*

First, Big Willow argues that district courts may not hear forfeiture matters because district courts are considered an "instrumentality" of the state. *Id.* at 4 (defining "instrumentality" as "a thing used to achieve an end or purpose" or "[a] means or agency through which a function of another entity is accomplished, such as a governing body" (quoting *Instrumentality*, *Black's Law Dictionary* (11th ed. 2019)). In addition, Big Willow cited a recent case where the district court judge dismissed a case because the court claimed it could not render a forfeiture decision over a water right. *Id.* at 4 n.3 (citing *Henderson v. Madlen*, No. CV02-21-000003 (Adams Cnty. Dist. Ct. Idaho Feb. 24, 2023) (oral ruling on the record)).[1] It is true that a district court would be considered an "instrumentality." However, as argued in Section A above, the Legislature created the list of governing bodies in subsection 7 to ensure that various government agencies do not interfere with the Department's jurisdiction in regulating and issuing water rights licenses, not to grant the Department exclusive authority to render a forfeiture decision.

In addition, Big Willow argues that district courts may only address certain water rights matters on judicial review under the Idaho Administrative Procedure Act ("IAPA") (Chapter 52, Title 67, Idaho Code) and the adjudication of water rights (Chapter 14, Title 42, Idaho Code). *Exceptions*, at 5. In essence, Big Willow argues that because "there is no other statute expressly giving a branch of government other than IDWR authority to determine forfeiture of water rights," § 42-201(7) is generally applicable and grants the Department with forfeiture decision-

[1] The Department was not a party to this case, so this decision is not binding on the Department.

making authority. *Id.* (claiming IAPA and the water rights adjudication statutes are specific statutes that would control in those contexts only opposed to a general statute).

However, as cited in the *Preliminary Order*, there are examples of specific statutes referencing the Department's and district court's forfeiture decision-making authority. *See Preliminary Order*, at 3. For example, Idaho Code § 42-224(12) specifically requires district courts to issue an order and judgment affirming the Department's forfeiture order of stockwater rights. If the Legislature wished to grant the Department with authority to render a forfeiture decision without judicial review by a district court, the Legislature would have explicitly granted the forfeiture decision-making authority to the Department. Thus, Idaho Code § 42-201(7) does not provide forfeiture decision-making authority to the Department, and the specific judicial review statutes do not limit a district court's discretion in issuing a forfeiture order**.**

Second, Big Willow argues that a forfeiture decision is considered an "action to prohibit, restrict, or regulate" the appropriation of water. *Exceptions*, at 3. If Big Willow desired to follow through with its plain meaning argument, it should have defined "prohibit," "restrict," "regulate," and "forfeiture" to help support whether rendering a forfeiture decision would be considered an "action to prohibit, restrict, or regulate" the appropriation of water.

"Restrict" is defined as confining, restraining, or limiting the use or enjoyment of property. *See Restrict*, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/restrict (last visited April 10, 2024) (defining "restrict" as "to confine within bounds: restrain" or "to place under restrictions as to use or distribution"); *Restriction*, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/restriction (last visited April 10, 2024) (defining "restriction" as "a regulation that restricts or restrains" or "a limitation on the use or enjoyment of property"). "Prohibit" is defined as "[t]o forbid by law" or "[t]o prevent, preclude, or severely hinder." *Prohibit*, *Black's Law Dictionary* (11th ed. 2019). "Regulate" is defined as "[t]o control (an activity or process) esp. through the implementation of rules." *Regulate*, *Black's Law Dictionary* (11th ed. 2019). "Forfeiture" is defined as "[t]he loss of a right, privilege, or property because of a . . . breach of obligation[] or neglect of duty. Title is instantaneously transferred to another, such as the government . . . " or "[a] judicial proceeding, the object of which is to effect a confiscation or divestiture." *Forfeiture*, *Black's Law Dictionary* (11th ed. 2019).

The definitions of "prohibit, restrict, or regulate" do not exactly align with the definition of "forfeiture." Although "restrict" is the most akin to "forfeiture," the two meanings are still different because "restrict" does not divest a right or a privilege while "forfeiture" divests a right or privilege and reverts the right or privilege back to the government. If the Legislature intended to include "forfeiture" as one of the Department's enumerated actions in § 42-201(7), the Legislature would have expressly included it within the provision itself because its use and meaning within Chapter 2, Title 42, Idaho Code, has a different meaning than the actions listed in the provision.

Therefore, the purpose of enacting § 42-201(7) was to grant the Department exclusive jurisdiction in issuing permits or licenses in compliance with the statutory method of appropriation as opposed to multiple governmental agencies or instrumentalities getting involved

in the process. In granting this authority to the Department, the Legislature did not grant the Department with exclusive authority to render forfeiture decisions.

II. The statutes cited in the *Preliminary Order* support the *Preliminary Order's* conclusion as providing specific examples of when the Department may render a forfeiture decision.

In its *Exceptions*, Big Willow argues that Idaho Code § 42-201(7) read in tandem with § 42-222(2) grants broad authority to the Department to render a forfeiture decision, and the statutory provisions cited in the *Preliminary Order* do not apply. *See Exceptions*, at 5–9. In her *Preliminary Order*, Ms. Hansen described examples of the limited circumstances in which the Department may render a forfeiture decision such as within a water rights transfer proceeding (§ 42-222(1)), a water rights adjudication (§ 42-1401B(1)), or forfeiture of stockwater rights (§ 42-224). *Preliminary Order*, at 3.

An administrative agency can only undertake actions authorized by the legislature. *In re Idaho Workers Compensation Bd.*, 167 Idaho 13, 20, 467 P.3d 377, 384 (2020). For example, § 42-222(1) authorizes the Director to approve or deny a transfer request "to change the point of diversion, place of use, period of use or nature of use of all or part of the water" based on the information and evidence presented to him. In *Jenkins*, the Idaho Supreme Court concluded the Director "has jurisdiction to determine the question of abandonment and forfeiture" in a transfer proceeding to "determine[e] whether or not the proposed transfer would injure other water rights" or enlarge an existing right. *Jenkins v. State, Dep't of Water Res.*, 103 Idaho 384, 387, 647 P.2d 1256, 1259 (1982). Pursuant to § 42-222(2),[2] the Court required the Director to conduct a forfeiture analysis to determine whether the party proposing the transfer has established sufficient clear and convincing evidence to support a finding of statutory forfeiture. *Id.* at 389–90, 647 P.2d at 1261–62. The purpose of finding statutory forfeiture is to ensure that once a forfeited water right becomes available for further appropriation, any subsequent appropriator will not be injured by the resumption of use of a forfeited water right. *Id.* at 388, 647 P.2d at 1260. Another example of the Director's explicit authority to render a forfeiture decision is § 42-224 which explicitly authorizes the Director to determine forfeiture of stockwater rights.[3]

These statutes exemplify circumstances in which the Legislature expressly authorized the Director to render a forfeiture decision. Conversely, § 42-222(2) does not contain language expressly authorizing the Director to determine forfeiture. If Big Willow requested the Director to determine forfeiture pursuant to a transfer proceeding under § 42-222(1) or forfeiture of stockwater rights under § 42-224, then the Director may have been authorized to decide

[2] Idaho Code § 42-222(2) states: "All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through nonuse or forfeiture such rights to such water shall revert to the state and be again subject to appropriation under this chapter . . . . The party asserting that a water right has been forfeited has the burden of proving the forfeiture by clear and convincing evidence."

[3] Idaho Code § 42-224 states: "Within thirty (30) days of receipt by the director of the department of water resources of a petition or other information that a stockwater right has not been put to beneficial use for a term of five (5) years, the director must determine whether the petition or other information, or both, presents prima facie evidence that the stockwater right has been lost through forfeiture pursuant to section 42-222(2), Idaho Code."

forfeiture. However, because Big Willow did not request forfeiture under the limited circumstances in which the Director is authorized to determine forfeiture, Big Willow may file a civil action in district court to determine whether a water right has been forfeited as suggested in the *Preliminary Order*. *Preliminary Order*, at 4. Therefore, as explained above, the Department does not have express authority to render a forfeiture decision under Idaho Code §§ 42-201(7) or 42-222(2).

Based on the above discussion, the Director concludes the findings of fact and conclusions of law contained in the Water Allocation Bureau Chief's *Preliminary Order Denying Petition for Forfeiture* should be adopted as final incorporating the reasoning set forth in this order.

CONCLUSIONS OF LAW

Big Willow has not demonstrated that the Department has the express authority to render a forfeiture decision of A.L. Cattle's Water Rights. Specifically, Idaho Code § 42-201(7) grants the Department exclusive jurisdiction in issuing permits or licenses in compliance with the statutory method of appropriation and does not grant authority to render forfeiture decisions. In addition, while the Department has specific authority to render forfeiture decisions in limited circumstances, there are no statutes that expressly grant the Department the authority to render a forfeiture decision of A.L. Cattle's Water Rights. Therefore, the Director concludes Big Willow's *Exceptions* should be denied.

ORDER

IT IS HEREBY ORDERED that the Director adopts the *Preliminary Order's* findings and conclusions of law and supplements the analysis with the findings and conclusions set forth in this order.

IT IS FURTHER ORDERED that *Big Willow's Exceptions to Preliminary Order Denying Petition for Forfeiture* is DENIED.

DATED this 9th day of May 2024.

MATHEW WEAVER
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of May 2024, the above and foregoing, was served by the method indicated below, and addressed to the following:

Michael P. Lawrence GIVENS PURSLEY LLP PO Box 2720 Boise, ID 83702 mpl@givenspursley.com *Attorney for Big Willow Ranch, LLC*	☒ U.S. Mail, postage prepaid ☒ Email
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Sarah Tschohl
Paralegal

EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 740.02)

The accompanying order is a "**Final Order**" issued by the department pursuant to section 67-5246, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: The petition must be received by the Department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5246(4), Idaho Code.

REQUEST FOR HEARING

Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person who is aggrieved by the action of the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action. The person shall file with the director, within fifteen (15) days after receipt of written notice of the action issued by the director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the director and requesting a hearing. See section 42-1701A(3), Idaho Code. **Note: The request must be received by the Department within this fifteen (15) day period.**

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which:

i. A hearing was held,
ii. The final agency action was taken,
iii. The party seeking review of the order resides, or
iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of: a) the service date of the final order, b) the service date of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

RAÚL R. LABRADOR
ATTORNEY GENERAL

SCOTT L. CAMPBELL
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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BIG WILLOW RANCH LLC, Petitioner, vs. THE IDAHO DEPARTMENT OF WATER RESOURCES, Respondent.	Case No. CV01-24-09674 **NOTICE OF LODGING THE AGENCY RECORD WITH THE AGENCY**
IN THE MATTER OF A.L. CATTLE, INC.'S WATER RIGHT NOS. 65-1985, 65-3124X, AND 65-10537	

TO: THE DISTRICT COURT AND THE PARTIES OF RECORD

In accordance with I.R.C.P. 84(j), YOU ARE HEREBY NOTIFIED that the agency record, having been prepared pursuant to I.R.C.P. 84(f), is lodged with the Idaho Department of Water Resources for the purpose of settlement.

A copy of the agency record filed with the Department has been uploaded to the Department's website. The parties may visit https://idwr.idaho.gov/legal-actions/district-court-actions/big-willow-v-idwr/ and follow their browser's document download procedure to obtain a copy of the agency record after expanding the accordion labeled "Agency Record" and clicking on the PDF titled "Agency Record on Appeal."

The parties have fourteen (14) days from the date of this notice to file any objections to the record. The agency's decision on any objection timely filed along with all evidence, exhibits, and written presentations on the objection shall be determined by the agency within fourteen (14) days and included in the record. If no objections are filed within that time, the record shall be deemed settled. Subsequently, the agency will lodge the settled record with the District Court pursuant to I.R.C.P. 84(k) and the Court's July 29, 2024 *Order Granting 2nd Motion for Extension of Time to Lodge Agency Record*.

DATED this 29th day of July 2024.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

GARRICK L. BAXTER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of July 2024, I caused to be served a true and correct copy of the foregoing *Notice of Lodging the Agency Record With the Agency*, via iCourt E-File and Serve, upon the following:

Michael P. Lawrence
Taylor J Barton
GIVENS PURSLEY LLP
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tjb@givenspursley.com

GARRICK L. BAXTER
Deputy Attorney General