

2003 JUL -8 PM 4: 05
DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

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JUL -9 2003
Department of Water Resources

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

In Re SRBA) Subcases 36-07373 and 36-15161
Case No. 39576) (Bettencourt)
)
) SPECIAL MASTER REPORT
) AND RECOMMENDATION

Findings of Fact

The Director of the Idaho Department of Water Resources filed his *Director's Report for Reporting Area 3 (Basin 36)* on November 2, 1992. The Director recommended 36-07373 to Larry Kober for 4.46 cfs from groundwater to irrigate 227 acres within a 267 acre place of use in Jerome County from April 1 to October 31 with a priority date of August 31, 1973, based on a license. The Director also recommended 36-15161 as an enlargement claim to Mr. Kober for .67 cfs from groundwater to irrigate 40 acres within the same 267 acre place of use in Jerome County from April 1 to October 31 with a priority date of March 15, 1977, based on beneficial use.

When no objections were filed, *Partial Decrees* were entered on January 15, 1998 (36-07373), April 13, 1998 (36-15161) and August 27, 2001 (36-07373 amended season of use). On July 12, 1999, William and Judy Gulley were granted leave to file a late objection in 36-15161 objecting to place of use because the Gulleys own 8.45 acres included in both 36-07373 and 36-15161.

On November 23, 2001, IDWR filed a *Notice of Completed Administrative Proceeding* in 36-07373 and 36-15161 for a substitution of party from Lesleen Kober (Larry Kober is now deceased) to Luis M. Bettencourt, P.O. Box 587, Jerome, Idaho, 83338. Finally, on July 3, 2003,

Mr. Bettencourt and the Gulleys, with IDWR's concurrence, filed *Standard Forms 5* in subcases 36-07373 and 36-15161 agreeing to a 258 acre place of use for both rights.¹

Conclusions of Law

William and Judy Gulley have shown good cause to have the *Partial Decrees* in 36-07373 and 36-15161 set aside and modified as described in the *SF-5*'s.

Recommendation

THEREFORE, IT IS RECOMMENDED that the *Partial Decrees* in 36-07373 and 36-15161 be set aside and modified as described in the *SF-5*'s and the attached *Special Master Recommendations for Amended Partial Decrees for Water Rights 36-07373 and 36-15161*.

DATED July 8, 2003.



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

¹ The land owned by William and Judy Gulley and mistakenly decreed to Larry Kober is included in a place of use for the Gulleys' permit now pending before IDWR and not part of the SRBA.

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

AMENDED

2003 JUL -8 PM 3:59

In Re SRBA)
Case No. 39576)
_____)

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

Water Right 36-07373

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

NAME AND ADDRESS: LUIS M BETTENCOURT
PO BOX 587
JEROME, ID 83338

SOURCE: GROUNDWATER

QUANTITY: 4.46 CFS

USE OF THIS RIGHT WITH RIGHT NO. 36-15161 IS LIMITED TO A TOTAL
COMBINED DIVERSION RATE OF 4.46 CFS, AND A TOTAL COMBINED ANNUAL
DIVERSION VOLUME OF 1068 AF.

PRIORITY DATE: 08/31/1973

POINT OF DIVERSION: T07S R16E S28 SWNWSW Within Jerome County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-15 TO 11-15	4.46 CFS

PLACE OF USE:	Irrigation	Within Jerome County
	T07S R16E S28	SWNW 6.0 NESW 40.0
		NWSW 40.0 SWSW 40.0
		SESW 31.0
	S29	SENE 35.0 NESE 33.0
		SESE 33.0
	258.0 Acres Total	

USE OF THIS RIGHT WITH RIGHT NO. 36-15161 IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 258 ACRES IN A SINGLE
IRRIGATION SEASON.
THIS RIGHT IS LIMITED TO THE IRRIGATION OF 250 ACRES WITHIN THE
PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

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

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance
with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a
final judgment and that the court has and does hereby direct that the above judgment or order shall be a final
judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

RECOMMENDATION

JUL 8 2003

Roger A. Burdick

SPECIAL MASTER

Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

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

AMENDED

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
) Water Right 36-15161

2003 JUL -8 PM 3:59

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

NAME AND ADDRESS: LUIS M. BETTENCOURT
PO BOX 587
JEROME, ID 83338

SOURCE: GROUNDWATER

QUANTITY: 0.14 CFS

USE OF THIS RIGHT WITH RIGHT NO 36-07373 IS LIMITED TO A TOTAL
COMBINED DIVERSION RATE OF 4.46 CFS AND A TOTAL COMBINED ANNUAL
DIVERSION VOLUME OF 1068 AF.

PRIORITY DATE: 03/15/1977

THIS WATER RIGHT IS SUBORDINATE TO ALL WATER RIGHTS WITH A
PRIORITY DATE EARLIER THAN APRIL 12, 1994, THAT ARE NOT DECREED
AS ENLARGEMENTS PURSUANT TO SECTION 42-1426, IDAHO CODE. AS
BETWEEN WATER RIGHTS DECREED AS ENLARGEMENTS PURSUANT TO SECTION
42-1426, IDAHO CODE, THE EARLIER PRIORITY RIGHT IS THE SUPERIOR
RIGHT.

POINT OF DIVERSION: T07S R16E S28 SWNWSW Within Jerome County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-15 TO 11-15	0.14 CFS

PLACE OF USE:	Irrigation	Within Jerome County
	T07S R16E S28	SWNW 6.0 NESW 40.0
		NWSW 40.0 SWSW 40.0
		SESW 31.0
	S29	SENE 35.0 NESE 33.0
		SESE 33.0
	258.0 Acres Total	

USE OF THIS RIGHT WITH RIGHT NO. 36-7373 IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 258 ACRES IN A SINGLE
IRRIGATION SEASON.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 8 ACRES WITHIN THE
PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

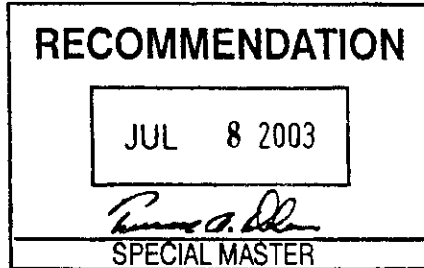
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS RIGHT IS BASED UPON AN ENLARGEMENT OF RIGHT NO 36-07373
PURSUANT TO SECTION 42-1426, IDAHO CODE.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.



Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

2003 JUL -8 PM 3: 59

DISTRICT CLERK AT-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)

CERTIFICATE OF MAILING

Case No. 39576)
_____)

Water Right(s): 36-07373
36-15161

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 July 08, 2003, with sufficient first-class postage prepaid to the following:

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

COURTESY COPY

Represented by:
ROBERT E. WILLIAMS III
PO BOX 168
117 SOUTH ADAMS STREET
JEROME, ID 83338
Phone: 208-324-2303

LUIS M BETTENCOURT
LUIS M. BETTENCOURT
PO BOX 587
JEROME, ID 83338

CERTIFICATE OF MAILING

PAGE 1
07/08/03

WILLIAM F & JUDY L GULLEY
450 N 242 W
JEROME, ID 83338
Phone: 208-324-8001



ROBBIN HALL
Deputy Clerk

2003 JUL -8 PM 3: 59

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
Case No. 39576)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

Water Right(s): 36-07373
36-15161

On July 08, 2003, Special Master TERRENCE A. DOLAN 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 July 08, 2003.



ROBBIN HALL
Deputy Clerk