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Department of Water Resources

DISTRICT COURT - SRBA  
TWIN FALLS CO., IDAHO  
FILED \_\_\_\_\_

2004 JUN 30 PM 3 00

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 35-07784            |
|                | ) | (Mickelsen Properties, LLC) |
| Case No. 39576 | ) |                             |
|                | ) | ORDER GRANTING WITHDRAWAL   |
|                | ) | OF OBJECTIONS and           |
|                | ) | SPECIAL MASTER REPORT       |

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**Findings of Fact**

F. & R. Associates or Otto A. Bessey filed a *Notice of Claim to a Water Right* on November 23, 1988, in subcase 35-07784 claiming 3.21 cfs from groundwater to irrigate 275 acres in Jefferson County from April 1 to November 1 with a priority date of February 7, 1978, based on a license. The Director of the Idaho Department of Water Resources filed his *Director's Report for Irrigation & Other Uses, Reporting Area 5, Part I (IDWR Basin 35)* on June 19, 1998, and his *Corrected Director's Report* on July 10, 1998. In both *Reports*, the Director recommended claim 35-07784 as filed, but to Peter M. Cannon for irrigation from April 1 to November 15 (later changed to November 1).

The Twin Falls and North Side Canal Companies filed *Objections* on August 24, 1998, and June 2, 1999, objecting to source, quantity, other provisions and alleging the water right should not exist. On August 27, 2001, the Special Master entered an *Order Granting Respondents' Motions for Partial Summary Judgment* in consolidated subcases 35-07200 and 41-02016 dismissing the Canal Companies' conjunctive management objections (Basin-Wide Issue 5).

On September 5, 2001, IDWR filed a *Notice of Completed Administrative Proceeding* in subcases 35-02501, 35-02575, 35-02595 and 35-07784 for a substitution of party from Peter M. Cannon to Cannon-Shelley Properties, Ltd. On June 22, 2004, IDWR filed another *NCAP* for a substitution of party from Cannon-Shelley Properties Ltd to Mickelsen Properties, LLC, 1050 W.

Riverview Drive, Idaho Falls, Idaho, 83401. Finally, on June 23, 2004, the Twin Falls and North Side Canal Companies filed a *Notice of Withdrawal of Objections* in subcases 35-02501, 35-02575, 35-02595 and 35-07784 requesting an order of dismissal.

### **Conclusions of Law**

1. The Twin Falls and North Side Canal Companies have shown good cause to withdraw the remainder of their *Objections* in subcases 35-02501, 35-02575, 35-02595 and 35-07784; and
2. Mickelsen Properties, LLC, is entitled to a partial decree adjudicating a water right as described in the June 22, 2004 *NCAP* and the attached *Special Master Recommendation for Partial Decree for Water Right 35-07784*.

### **Order**

THEREFORE, IT IS ORDERED that the Twin Falls and North Side Canal Company *Notice of Withdrawal of Objections* in subcases 35-02501, 35-02575, 35-02595 and 35-07784 is **granted** and the *Objections* are **dismissed**.

DATED June 30, 2004.

  
TERRENCE A. DOLAN  
Special Master  
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

DISTRICT COURT-SRBA  
TWIN FALLS CO., IDAHO  
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In Re SRBA )  
Case No. 39576 )  
PARTIAL DECREE PURSUANT TO  
I.R.C.P. 54(b) FOR  
Water Right 35-07784

NAME AND ADDRESS: MICKELSEN PROPERTIES LLC  
1050 WEST RIVERVIEW DRIVE  
IDAHO FALLS, ID 83401

SOURCE: GROUNDWATER

QUANTITY: 3.21 CFS

USE OF THIS RIGHT WITH RIGHT NO. 35-02595 IS LIMITED TO A  
TOTAL COMBINED DIVERSION RATE OF 3.43 CFS.

USE OF THIS RIGHT WITH RIGHTS LISTED ABOVE IS LIMITED TO A  
TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 1100 AF.

PRIORITY DATE: 02/07/1978

POINT OF DIVERSION: T04N R37E S28 SWSE Within Jefferson County

| PURPOSE AND<br>PERIOD OF USE: | PURPOSE OF USE | PERIOD OF USE  | QUANTITY |
|-------------------------------|----------------|----------------|----------|
|                               | Irrigation     | 04-01 TO 11-01 | 3.21 CFS |

| PLACE OF USE: | Irrigation        | Within Jefferson County |
|---------------|-------------------|-------------------------|
|               | T04N R37E S28     | NESW 40.0 SWSW 35.0     |
|               |                   | SESW 40.0 NESE 40.0     |
|               |                   | NWSE 40.0 SWSE 40.0     |
|               |                   | SESE 40.0               |
|               | 275.0 Acres Total |                         |

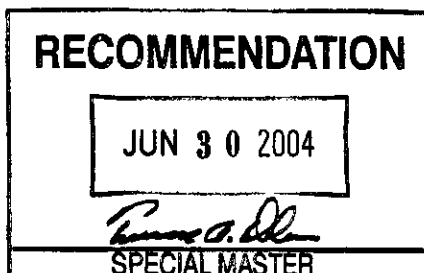
USE OF THIS RIGHT WITH RIGHT NO. 35-02595 IS LIMITED TO THE  
IRRIGATION OF A COMBINED TOTAL OF 275 ACRES IN A SINGLE  
IRRIGATION SEASON.

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.



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

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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 )  
\_\_\_\_\_ )

CERTIFICATE OF MAILING

Water Right(s): 35-07784

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 June 30, 2004, with sufficient first-class postage prepaid to the following:

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

ABERDEEN-AMERICAN FALL GROUND  
ABERDEEN-AMERICAN FALLS GROUND  
BINGHAM GROUND WATER DIST.  
BINGHAM GROUND WATER DISTRICT  
MICKELSEN PROPERTIES LLC  
UPPER VALLEY IRRIGATORS ASSOC  
UPPER VALLEY IRRIGATORS ASSOC.

Represented by:  
JEFFREY C. FEREDAY  
PO BOX 2720  
BOISE, ID 83701-2720  
Phone: 208-388-1200

CERTIFICATE OF MAILING

PAGE 1  
06/30/04

FREMONT-MADISON IRR DIST

Represented by:

JERRY R. RIGBY

PO BOX 250

REXBURG, ID 83440-0250

Phone: 208-356-3633

NORTH SIDE CANAL COMPANY

TWIN FALLS CANAL COMPANY

Represented by:

JOHN K. SIMPSON

205 N 10TH ST, STE 520

PO BOX 2139

BOISE, ID 83701-2139

Phone: 208-336-0700

STATE OF IDAHO

Represented by:

NATURAL RESOURCES DIV CHIEF

STATE OF IDAHO

ATTORNEY GENERAL'S OFFICE

PO BOX 44449

BOISE, ID 83711-4449



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ROBBIN HALL

Deputy Clerk

DISTRICT COURT-SRBA  
TWIN FALLS CO., IDAHO  
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NOTICE OF ISSUANCE OF  
SPECIAL MASTER'S  
RECOMMENDATION

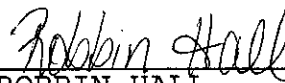
Water Right(s): 35-07784

On June 30, 2004, 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 June 30, 2004.

  
\_\_\_\_\_  
ROBBIN HALL  
Deputy Clerk