

2004 NOV 8 AM 11 53

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     | ) | SPECIAL MASTER'S REPORT  |
|                | ) |                          |
| Case No. 39576 | ) | FINDINGS OF FACT AND     |
|                | ) | CONCLUSIONS OF LAW       |
|                | ) |                          |
|                | ) | FOR WATER RIGHT 63-3447C |
| _____          | ) |                          |

I. FINDINGS OF FACT

A notice of claim was filed for this water right 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 this water right.

An objection was filed by the United States of America, Bureau of Reclamation and an objection was filed by the Boise Project Board of Control. Both objections were filed on January 31, 2003.

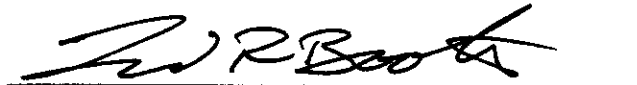
All objections to this water right were resolved with the filing of a *Standard Form 5*. All parties to the subcase and IDWR signed the *Standard Form 5*.

II. CONCLUSIONS OF LAW

Therefore, based on the file and record herein and pursuant to the *Standard Form 5*, it is RECOMMENDED that water right 63-3447C be decreed with the elements as set forth in the attached *Recommendation for Partial Decree Pursuant to I.R.C.P. 54(b)*.

DATE November 4, 2004.

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THEODORE R BOOTH  
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  
FILED *PK*

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In Re SRBA )  
                  ) PARTIAL DECREE PURSUANT TO  
                  ) I.R.C.P. 54(b) FOR  
Case No. 39576 )  
                  ) Water Right 63-03447C

NAME AND ADDRESS: DIANE BERKSON  
MICHAEL BERKSON  
52 SONSHINE LN  
BOISE, ID 83716

SOURCE: ASHTON GULCH CREEK TRIBUTARY: ROBIE CREEK

QUANTITY: 0.08 CFS

USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A TOTAL  
COMBINED DIVERSION RATE OF .10 CFS AND TO A TOTAL COMBINED  
ANNUAL DIVERSION VOLUME OF 39.1 AF. COMBINED RIGHT NOS.:  
63-3447B & 63-3447D

PRIORITY DATE: 04/26/1965

POINT OF DIVERSION: T04N R04E S30 LOT 2 ( SWNW) Within Boise County

| PURPOSE AND<br>PERIOD OF USE: | PURPOSE OF USE | PERIOD OF USE  | QUANTITY  |
|-------------------------------|----------------|----------------|-----------|
|                               | Irrigation     | 04-01 TO 10-15 | 0.08 CFS  |
|                               |                |                | 30.00 AFY |

THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS  
EARLY AS MARCH 15 AND MAY CONTINUE TO AS LATE AS NOVEMBER 15,  
PROVIDED OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED. THE USE  
OF WATER BEFORE APRIL 1 AND AFTER OCTOBER 15 UNDER THIS REMARK  
IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED EARLY  
OR LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN THE DATE  
A PARTIAL DECREE IS ENTERED FOR THIS RIGHT.  
DIVERSION FOR IRRIGATION UNDER THIS WATER RIGHT PRIOR TO APRIL 1  
AND AFTER OCTOBER 31 SHALL OCCUR ONLY AS AUTHORIZED BY THE WATER  
DISTRICT 63 WATERMASTER AND ONLY WHEN WATER IS BEING RELEASED  
FOR FLOOD CONTROL BY THE UNITED STATES FROM THE LUCKY PEAK DAM  
OUTLET UNDER PROCEDURES AND REQUIREMENTS FOR THE MEMORANDUM OF  
AGREEMENT BETWEEN THE U.S. DEPARTMENT OF THE ARMY AND THE U.S.  
DEPARTMENT OF THE INTERIOR FOR FLOOD CONTROL OPERATIONS OF THE  
BOISE RIVER RESERVOIRS, DATED NOVEMBER 20, 1953, THE WATER  
CONTROL MANUAL FOR BOISE RIVER RESERVOIR DATED APRIL 1985 AND  
ANY FUTURE AMENDMENTS OR REVISIONS MADE THERETO PURSUANT TO  
STATE OR FEDERAL PROCEDURES OR LAW; PROVIDED THAT ANY SUCH USE  
OF THIS WATER RIGHT PRIOR TO APRIL 1 AND AFTER OCTOBER 31 SHALL  
BE SUBORDINATED TO WATER RIGHTS FOR STORAGE IN LUCKY PEAK  
RESERVOIR AND/OR LAKE LOWELL AS DECREED IN SRBA CASE NO. 39576.

| PLACE OF USE: | Irrigation                     | Within Boise County |
|---------------|--------------------------------|---------------------|
|               | T04N R04E S30 LOT 2 (SWNW) 7.0 | SENW 5.0            |
|               | 12.0 Acres Total               |                     |

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE  
IRRIGATION OF A COMBINED TOTAL OF 15.2 ACRES IN A SINGLE  
IRRIGATION SEASON. COMBINED RIGHT NOS.: 63-3447B & 63-3447D

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

SRBA Partial Decree Pursuant to I.R.C.P. 54(b) (continued)

OTHER PROVISIONS (continued)

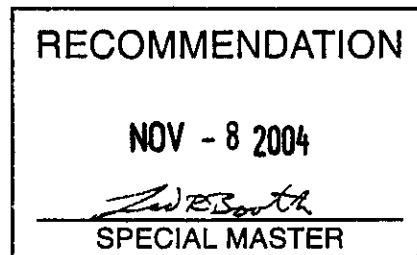
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE  
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

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.

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



DISTRICT COURT - SRBA  
TWIN FALLS CO., IDAHO  
FILED                     

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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): 63-03447C

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 November 08, 2004, with sufficient first-class postage prepaid to  
the following:

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

BOISE PROJECT BOARD OF CONTROL  
Represented by:  
ALBERT P. BARKER  
205 N 10TH ST, STE 520  
PO BOX 2139  
BOISE, ID 83701-2139  
Phone: 208-336-0700

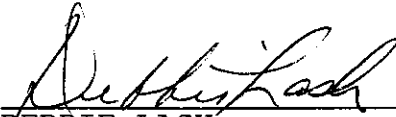
BOISE PROJECT BOARD OF CONTROL  
Represented by:  
ROCHELLE DAVIS  
205 N 10TH, STE 520  
PO BOX 2139  
BOISE, ID 83701-2139  
Phone: 208-336-0700

CERTIFICATE OF MAILING

PAGE 1  
11/08/04

UNITED STATES OF AMERICA  
Represented by:  
US DEPARTMENT OF JUSTICE  
ENVIRONMENT & NATL' RESOURCES  
550 WEST FORT STREET, MSC 033  
BOISE, ID 83724

DIANE BERKSON  
MICHAEL BERKSON  
52 SONSHINE LN  
BOISE, ID 83716

  
\_\_\_\_\_  
DEBBIE LASH  
Deputy Clerk

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In Re SRBA )  
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Case No. 39576 )  
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Water Right(s): 63-03447C

  
DEBBIE LASH  
Deputy Clerk