

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
SEP - 1 2005	
By _____	Clerk
_____	Deputy Clerk

**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 DENYING MOTION TO SET
	)	ASIDE PARTIAL DECREE
Case No. 39576	)	
	)	FOR WATER RIGHT: 29-07135
_____	)	

A *Partial Decree* was issued for the above water right on May 17, 2004. The Claimants to the right are Randy and Sharon Bertagnole. On June 1, 2005, a late *Objection* was filed by Kenneth R. Degn. The Court referred the *Objection* to Special Master Brigitte Bilyeu on June 1, 2005. Special Master Bilyeu treated the *Objection* as a *Motion to Set Aside Partial Decree*, and on July 6, 2005, the Special Master issued a *Special Master's Report and Recommendation on Motion to Set Aside Partial Decree* recommending that the *Motion to Set Aside Partial Decree* be denied.

No Challenges were filed to the *Special Master's Report*, and the time for Challenges has expired. The Court has reviewed the *Report and Recommendation* and wholly adopts it as its own. Further, the Court notes that the *Partial Decree* was based on a licensed right. Proof of beneficial use for the license was submitted and approved during portion of the alleged period of non-use. The *Motion to Set Aside* constitutes an impermissible collateral attack on the license.

Therefore, IT IS ORDERED that the *Motion to Set Aside Partial Decree* for the above-captioned water rights is hereby **dismissed with prejudice**.

Dated: August 31, 2005.



 JOHN M. MELANSON
 Presiding Judge
 Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER DENYING MOTION TO SET ASIDE PARTIAL DECREE was mailed on September 01, 2005, with sufficient first-class postage to the following:

RANDY BERTAGNOLE
SHARON BERTAGNOLE
Represented by:
KENT W FOSTER
PO BOX 50130
IDAHO FALLS, ID 83405
Phone: 208-523-0620

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

KENNETH DEGN
19748 SO DEGN RD
DOWNEY, ID 83234
Phone: 208-897-5792

A handwritten signature in cursive script, reading "Julie Murphy", is written over a horizontal line. The signature is in dark ink and is positioned to the right of the "Deputy Clerk" text.