

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 )  
PARTIAL DECREE PURSUANT TO  
I.R.C.P. 54(b) FOR  
Water Right 45-10754

DISTRICT COURT-SRBA  
Fifth Judicial District  
County of Twin Falls - State of Idaho

MAR 22 2006

By \_\_\_\_\_ Clerk  
\_\_\_\_\_  
Deputy Clerk

NAME AND ADDRESS: DELROY MITTON  
SIDNEE MITTON  
BOX 231  
OAKLEY, ID 83346

SOURCE: BIRCH CREEK TRIBUTARY: GOOSE CREEK

QUANTITY: 0.01 CFS

The quantity of water under this right shall not exceed 13,000  
gallons per day.

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED  
DIVERSION RATE OF 0.269 CFS AT THE POINT OF MEASUREMENT IN THE  
SESESE OF SECTION 14, T14S, R22E. COMBINED RIGHT NOS.: 45-79A,  
45-79J, 45-79K, 45-79L, 45-79M, 45-79N, 45-79P, 45-79Q, 45-79R,  
45-79S, 45-79T, 45-79U, 45-10008, 45-10249, 45-10690, 45-10754,  
45-10767, 45-10891, AND 45-11104.

PRIORITY DATE: 12/05/1882

POINT OF DIVERSION: T14S R22E S14 SESESE Within Cassia County

| PURPOSE AND<br>PERIOD OF USE: | PURPOSE OF USE | PERIOD OF USE  | QUANTITY |
|-------------------------------|----------------|----------------|----------|
|                               | Domestic       | 02-28 TO 11-15 | 0.01 CFS |

Domestic use is for 1 lawn.

PLACE OF USE: Domestic Within Cassia County  
T14S R22E S04 LOT 2 (NWNE)

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

THE OPERATION AND USE OF THIS WATER RIGHT IS ALSO SUBJECT TO THE  
TERMS AND CONDITIONS OF THE WATER ROTATION AGREEMENT  
("AGREEMENT") ENTERED INTO BY CERTAIN USERS ON 10 SEPTEMBER 1992.  
THE AGREEMENT WAS FILED AND RECORDED IN THE OFFICE OF THE CASSIA  
COUNTY RECORDER ON 27 MAY, 1993 AS INSTRUMENT NO.: 224804; THE  
PROVISIONS OF SUCH AGREEMENT TO APPLY FULLY TO 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).

SCAN  
MAR 24 2006

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

MAR 22 2006

*James A. Melanson*

SPECIAL MASTER

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

MAR 22 2006

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

) Subcases 45-77AA, *et al.*

) [see list of 83 subcases attached]

Case No. 39576

) (Birch Creek Water Users Association)

)

) SPECIAL MASTER REPORT

**Findings of Fact**

The Director of the Idaho Department of Water Resources filed his *Director's Report for Irrigation and Other, Reporting Area 10, IDWR Basin 45* on September 7, 2004. The Director recommended the above 83 claims to members of the Birch Creek Water Users Association for various amounts of water from Birch Creek for irrigation and domestic uses from March 15 to November 15 with priority dates of March 1, 1875, April 1, 1881, May 4, 1881, April 15, 1882, December 5, 1882, October 11, 1903, and February 21, 1925, based on decrees.

Tim Payton, president of the Birch Creek Water Users Association, filed *Objections* on December 30, 2004, objecting to point of diversion and period of year.<sup>1</sup> On March 15 and 17, 2006, Tim Payton, with IDWR's concurrence, filed *Standard Forms 5* with the following language added:

The operation and use of this water right is also subject to the terms and conditions of the Water Rotation Agreement ("Agreement") entered into by certain users on 10 September, 1992. The Agreement was filed and recorded in the office of the Cassia County Recorder on 27 May, 1993 as Instrument No.: 224804; the provisions of such Agreement to apply fully to this water right.

<sup>1</sup> Two of the above 83 subcases were identified by IDWR as uncontested overlapping claims (45-79P and 45-79Q).

### Conclusions of Law

The named members of the Birch Creek Water Users Association are entitled to partial decrees adjudicating water rights as described in the *SF-5s* and the attached *Special Master Recommendations for Partial Decrees for Water Rights*.

DATED March 22, 2006.

  
TERRENCE A. DOLAN  
Special Master  
Snake River Basin Adjudication

EXHIBIT A

Subcase Nos:

|            |           |
|------------|-----------|
| 45-00077AA | 45-00082K |
| 45-00077L  | 45-00086D |
| 45-00077M  | 45-00086E |
| 45-00077N  | 45-00086F |
| 45-00077P  | 45-00087E |
| 45-00077Q  | 45-00088  |
| 45-00077R  | 45-00092A |
| 45-00077S  | 45-00156  |
| 45-00077T  | 45-10006  |
| 45-00077U  | 45-10007  |
| 45-00077X  | 45-10008  |
| 45-00077Y  | 45-10249  |
| 45-00077Z  | 45-10410  |
| 45-00078A  | 45-10598  |
| 45-00078G  | 45-10630  |
| 45-00078H  | 45-10688  |
| 45-00078J  | 45-10689  |
| 45-00078K  | 45-10690  |
| 45-00078L  | 45-10754  |
| 45-00078M  | 45-10765  |
| 45-00078Q  | 45-10766  |
| 45-00078R  | 45-10767  |
| 45-00078T  | 45-10788  |
| 45-00078U  | 45-10891  |
| 45-00079A  | 45-11004  |
| 45-00079J  | 45-11104  |
| 45-00079K  | 45-11149  |
| 45-00079L  | 45-11152  |
| 45-00079M  | 45-11495  |
| 45-00079N  | 45-13639  |
| 45-00079P  | 45-13754  |
| 45-00079Q  | 45-13755  |
| 45-00079R  | 45-13756  |
| 45-00079S  |           |
| 45-00079T  |           |
| 45-00079U  |           |
| 45-00080A  |           |
| 45-00080G  |           |
| 45-00080H  |           |
| 45-00080J  |           |
| 45-00080K  |           |
| 45-00081A  |           |
| 45-00081G  |           |
| 45-00081H  |           |
| 45-00081J  |           |
| 45-00081K  |           |
| 45-00082A  |           |
| 45-00082G  |           |
| 45-00082H  |           |
| 45-00082J  |           |

(Subcase list: BIRCHCREEK)  
3/21/06

SCANNED  
MAR 24 2006

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT AND RECOMMENDATION AND NOTICE OF ISSUANCE was mailed on March 22, 2006, with sufficient first-class postage to the following:

TIM PAYTON, PRESIDENT

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SPECIAL MASTER REPORT AND RECOMMENDATION

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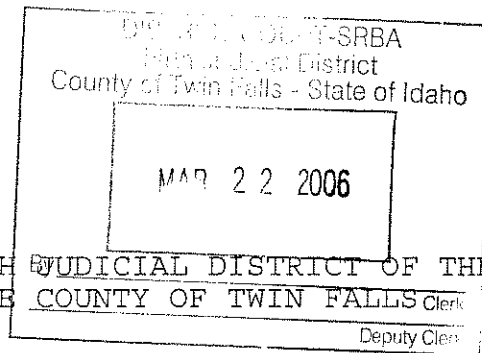
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*Robbin Hall*  
Deputy Clerk

SCANNED  
MAR / 4 2006



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

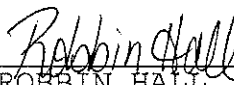
Water Right(s): 45-00077AA  
(SEE ATTACHED EXHIBIT A)

On March 22, 2006, 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 March 22, 2006.

  
ROBBIN HALL  
Deputy Clerk

NOTICE OF ISSUANCE

SCANNED PAGE 1  
03/22/06  
MAR 24 2006

Exhibit A

Subcase Nos:

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