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DISTRICT COURT-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	)	Subcases 45-327E, 45-7366 and 45-10502
	)	(Warthen)
Case No. 39576	)	
	)	ORDER GRANTING JOINT MOTION
	)	FOR COURT APPROVAL OF WATER
	)	RIGHTS SETTLEMENT AGREEMENT
	)	AND DISMISSAL OF OBJECTIONS
	)	and DRAFT AMENDED
	)	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 claims 45-327E, 45-7366 and 45-10502 to Earl L. Warthen, Box 145, Albion, Idaho, 83311, for between .4 cfs and 1.25 cfs from groundwater, Howell Creek and Spring Creek to irrigate a combined total of 86 acres in Cassia County from April 1 and April 4 to October 31 with priority dates of March 1, 1881, December 14, 1978, and May 26, 1964, based on a decree, license and beneficial use.

Earl Warthen filed an *Objection* in subcase 45-10502 on January 3, 2005, objecting to priority date. Norman and Delores Smyer were granted leave to participate in subcase 45-10502 on July 12, 2005. On January 3, 2006, the Special Master entered an *Order Adopting Stipulation to Join Subcase 45-10502 with Subcases 45-10408, 45-10481 and 45-12906 for Trial and Scheduling*.

IDWR filed a *Supplemental Director's Report* in subcase 45-10502, plus four other related subcases, on February 8, 2006, restating its earlier recommendation. On February 9, 2006, the United States of America, Department of Agriculture, Forest

Service was granted leave to participate in subcases 45-10502 and another related subcase

On February 24, 2006, Mr. Warthen filed a *Withdrawal of Objection* in subcase 45-10502 and the same date filed a *Motion to Amend Claim No. 45-10502 and for Leave of the Court to File a Late Claim*. On March 10, 2006, the Special Master entered an ***Order Granting Motion to Amend Claim No. 45-10502***.

On March 22, 2006, IDWR filed an *Amended Director's Report* in subcase 45-10502 recommending the claim for .4 cfs from Spring Creek to irrigate a combined total of 86 acres with a priority date of May 26, 1964, based on beneficial use. No one objected to IDWR's amended recommendation, including the USDA Forest Service.

The Special Master entered a ***Special Master Report*** in subcase 45-10502 on August 3, 2006, but on September 11, 2006, Mr. Warthen and IDWR filed a *Standard Form 5* in subcase 45-327E identifying it as an uncontested overlap with an amended period of use beginning on April 1 instead of April 4. No one objected to the amendment. IDWR also identified 45-7366 as an uncontested overlapping claim.

On November 6, 2006, Mr. Warthen and the Smyers filed a *Joint Motion for Court Approval of Water Rights Settlement Agreement and Dismissal of Objections* in subcase 45-10502, plus five other related subcases (45-10408, 45-10481, 45-12906, 45-13669 and 45-13991). In the *Water Right Settlement Agreement*, recorded November 2, 2006, with the Cassia County Recorder, No. 311858, Mr. Warthen and the Smyers agreed:

All of the Parties' water right claims shall be presented to the Court as reflected in the decree or claims referred to herein. It is intended that "Other Provisions Necessary" of the Parties' claims as finally decreed shall contain a reference to this recorded Agreement and be administered accordingly.

No one opposed the *Joint Motion*.

Order

THEREFORE, IT IS ORDERED that the parties' *Joint Motion for Court Approval of Water Rights Settlement Agreement and Dismissal of Objections* in subcase 45-10502 is **granted**.

Conclusions of Law

Mr. Warthen is entitled to partial decrees adjudicating water rights as described in IDWR's *Amended Director's Report*, the *SF-5* and the attached *Special Master Recommendations for Partial Decrees for Water Rights 45-327E, 45-7366 and 45-10502* (amended).

DATED April 18, 2007



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

In Re SRBA)
) PARIAL DECREE PURSUANI TO
Case No. 39576) I.R.C.P. 54(b) FOR
) Water Right 45-00327E

NAME AND ADDRESS: EARL WARTHEN
BOX 145
ALBION, ID 83311

SOURCE: HOWELL CREEK TRIBUTARY: MARSH CREEK

QUANTITY: 1.25 CFS

This right when combined with all other rights shall provide no more than 4.0 cfs per acre at the field headgate for irrigation of the lands described below.
This right when combined with all other rights shall provide no more than 0.02 cfs per acre.

PRIORITY DATE: 03/01/1881

POINT OF DIVERSION: T12S R25E S16 SESENE Within Cassia County
NWSENE

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	1.25 CFS

The use of water for irrigation under this right may begin as early as March 15 provided other elements of the right are not exceeded. The use of water before April 1 under this remark is subordinate to all water rights having no subordinated early irrigation use and a priority date earlier than the date a partial decree is entered for this right.

PLACE OF USE:	Irrigation	Within Cassia County
	T12S R25E S16	NENE 37.0 SENE 16.0
		NWNW 15.0 NESW 18.0
	86.0 Acres Total	

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 86 ACRES IN A SINGLE IRRIGATION SEASON.
COMBINED RIGHT NOS. 45-7366, 45-327E, and 45-10502.

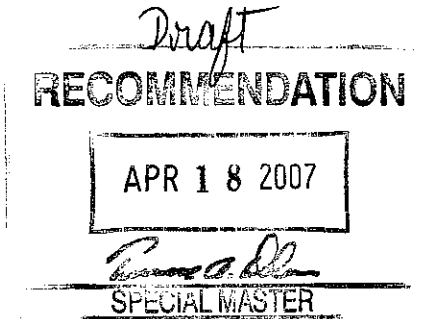
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS RIGHT AND RIGHT NOS. 45-10480, 45-10481, 45-10502, 45-12906, AND 45-13991 SHALL BE ADMINISTERED IN ACCORDANCE WITH THAT CERTAIN WATER RIGHTS SETTLEMENT AGREEMENT RECORDED AS INSTRUMENT NUMBER 311858, CASSIA COUNTY RECORDERS OFFICE.

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

In Re SRBA) PARIIAL DECREE PURSUANI TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
) Water Right 45-07366

QUANTITY: 0.61 CFS

PRIORITY DATE: 12/14/1978

POINT OF DIVERSION: T12S R25E S16 SENESW Within Cassia County

PLACE OF USE:	Irrigation	Within Cassia County
	T12S R25E S16	NENW 37.0 NWNW 15.0
	67.0 Acres total	SEnw 15.0

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A
COMBINED TOTAL OF 86 ACRES IN A SINGLE IRRIGATION SEASON.
COMBINED RIGHT NOS. 45-7366, 45-327E, AND 45-10502.

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

THIS RIGHT AND RIGHT NOS. 45-10480, 45-10481, 45-10502, 45-12906,
AND 45-13991 SHALL BE ADMINISTERED IN ACCORDANCE WITH THAT
CERTAIN WATER RIGHTS SETTLEMENT AGREEMENT RECORDED AS INSTRUMENT
NUMBER 311858, CASSIA COUNTY RECORDERS OFFICE.

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John M. Melanson
Presiding Judge of the
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Draft
AMENDED

RECOMMENDATION

APR 18 2007

James A. Bell
SPECIAL MASTER

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

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING,
DRAFT AMENDED SPECIAL MASTER REPORT was mailed on April 18,
2007, with sufficient first-class postage to the following:

NORMAN L & DELORES J SMYER

Represented by:

MICHAEL P TRIBE

MICHAEL P. TRIBE

615 H STREET

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RUPERT, ID 83350-0396

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EARL WARTHEN

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SHELLEY M. DAVIS

1010 W JEFFERSON, STE 102

PO BOX 2139

BOISE, ID 83701-2139

Phone: 208-336-0700

UNITED STATES OF AMERICA (FS)

Represented by:

US DEPARTMENT OF JUSTICE

ENVIRONMENT & NATL' RESOURCES

550 WEST FORT STREET, MSC 033

BOISE, ID 83724

EARL LAVELL WARTHEN

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BOX 145

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DIRECTOR OF IDWR

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