

2007 AUG 22 PM 1: 51

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 35-7632B, 35-13599 and 35-13600
	)	(Knittel & Behrend)
Case No. 39576	)	
	)	SPECIAL MASTER REPORT
_____	)	AND RECOMMENDATION

Findings of Fact

The Director of the Idaho Department of Water Resources filed his *Director's Report for Irrigation and Other Uses, Reporting Area 5, Part III (IDWR Basin 35)* on January 29, 1999. The Director recommended claim 35-7632B to Chester Wahlen for 4.38 cfs from groundwater to irrigate 287 acres in Power County from April 1 to October 31 with a priority date of August 5, 1976, based on a license.

The North Side Canal Company filed an *Objection* on June 2, 1999, objecting to source, quantity, other provisions and alleging the water right should not exist. IDWR filed a *Notice of Completed Administrative Proceeding* in subcase 35-7632B on December 14, 2000, for a substitution of party to Debra, Paul, Kristin and Nicholas Behrend and Gregory and Jennecca Knittel. On August 27, 2001, the Special Master entered an *Order Granting Respondents' Motions for Partial Summary Judgment* in consolidated subcases 35-7200 and 41-2016 dismissing the Canal Company *Objections* in multiple subcases, including subcase 45-7632B.

IDWR filed another *NCAP* on June 26, 2007, for transfers in point of diversion and place of use and split of water 35-7632B into 35-13599 and 35-13600 to:

Paul and Debra Behrend, 2706 West, 1800 South, Aberdeen, Idaho, 83210

Kristin and Nicholas Behrend, 2976 West, 2000 South, Aberdeen, Idaho, 83210

Gregory and Jennecca Knittel, 1780 South, 2800 West, Aberdeen, Idaho, 83210.

Conclusions of Law

1. The Behrends and the Knittells are **not** entitled to a partial decree for claim 35-7632B, the claim having been split; and
2. The Behrends and the Knittells **are** entitled to partial decrees adjudicating water rights for claims 35-13599 and 35-13600 as described in the June 26, 2007 *NCAP* and the attached *Special Master Recommendations for Partial Decrees for Water Rights 35-13599 and 35-13600*.

Recommendation

THEREFORE, IT IS RECOMMENDED that claim 35-7632B **not** be decreed as a water right.

DATED August 22, 2007.



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

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KRISTIN R BEHREND
NICHOLAS P BEHREND
2976 W 2000 S
ABERDEEN, ID 83210

QUANTITY: 3.24 CFS
774.40 AFY

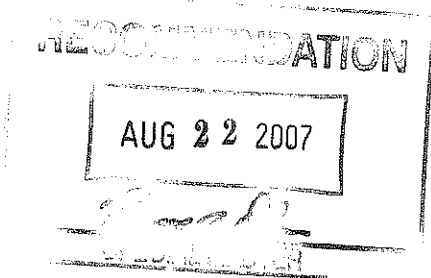
POINT OF DIVERSION: T05S R29E S13 SWSE Within Power County

THE RIGHTS LISTED BELOW ARE LIMITED TO THE IRRIGATION OF A
COMBINED TOTAL OF 212 ACRES IN A SINGLE IRRIGATION SEASON.
COMBINED RIGHT NOS.: 35-13599, 35-13596, 35-13598
THIS RIGHT IS LIMITED TO THE IRRIGATION OF 193.6 ACRES WITHIN
THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

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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KRISTEN R BEHREND
NICHOLAS P BEHREND
2976 W 2000 S
ABERDEEN, ID 83210

SOURCE: GROUNDWATER

QUANTITY: 1.14 CFS
273.60 APY

RIGHTS 35-7835, 35-13597 AND 35-13600 WHEN COMBINED SHALL NOT EXCEED A TOTAL DIVERSION RATE OF 5.87 CFS, A TOTAL ANNUAL MAXIMUM DIVERSION VOLUME OF 1248 AF AT THE FIELD HEADGATE.

THIS RIGHT WHEN COMBINED WITH ALL OTHER RIGHTS SHALL PROVIDE NO MORE THAN 0.02 CFS PER ACRE NOR MORE THAN 4.0 AFA PER ACRE AT THE FIELD HEADGATE FOR IRRIGATION OF THE LANDS ABOVE.

RIGHTS 35-13597 AND 35-13600 WHEN COMBINED SHALL NOT EXCEED A
TOTAL DIVERSION RATE OF 1.14 CFS.

PRIORITY DATE: 08/05/1976

POINT OF DIVERSION: T05S R30E S21 NWNW Within Power County

PURPOSE AND			
PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	1.14 CFS
			273.60 AFY

PLACE OF USE:	Irrigation	Within Power County
	T05S R30E S20	NENE 38.0 NWNE 39.0
		SWNE 40.0 SENE 39.0
	S21	NENW 39.0 NWNW 38.0
		SWNW 39.0 SENW 40.0
	312.0 Acres Total	

RIGHT NOS. 35-7835, 35-13597, AND 35-13600 ARE LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 312 ACRES IN A SINGLE IRRIGATION SEASON.

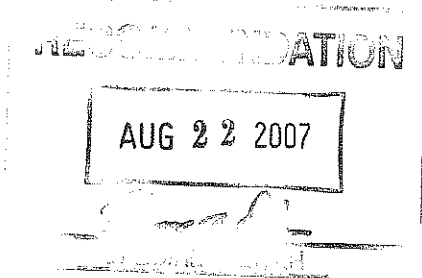
THIS RIGHT IS LIMITED TO THE IRRIGATION OF 68.4 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

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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In Re SRBA)

CERTIFICATE OF MAILING

Case No. 39576)

Water Right(s): 35-07632B

35-13599 35-13600

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 August 22, 2007, with sufficient first-class postage prepaid to the following:

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

DEBRA J BEHREND
Represented by:
JEFFREY C FEREDAY
601 W BANNOCK ST
PO BOX 2720
BOISE, ID 83701-2720
Phone: 208-388-1200

NORTH SIDE CANAL COMPANY
TWIN FALLS CANAL COMPANY
Represented by:
JOHN K SIMPSON
1010 W JEFFERSON, STE 102
PO BOX 2139
BOISE, ID 83701-2139
Phone: 208-336-0700

CERTIFICATE OF MAILING

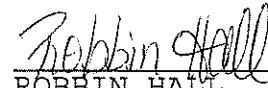
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STATE OF IDAHO
Represented by:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
PO BOX 44449
BOISE, ID 83711-4449

GREGORY W KNITTEL
JENNECCA S KNITTEL
KNITTEL, GREGORY W
1780 S 2800 W
ABERDEEN, ID 83210

DEBRA J BEHREND
GREG KNITTEL
JENNECCA KNITTEL
KRISTIN R BEHREND
NICHOLAS P BEHREND
PAUL W BEHREND
2706 W 1800 S
ABERDEEN, ID 83210

KRISTEN R BEHREND
KRISTIN R BEHREND
NICHOLAS P BEHREND
2976 W 2000 S
ABERDEEN, ID 83210


ROBBIN HALL
Deputy Clerk

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Case No. 39576

Water Right(s): 35-07632B
35-13599 35-13600

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