

RECEIVED

AUG 25 2008

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
AUG 21 2008	
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

Case No. 39576

) SUBCASE: 36-07641

) ORDER OF REFERENCE APPOINTING
) SPECIAL MASTER TERRENCE A. DOLAN
)
)
)

On December 30, 1997, a *Partial Decree* was issued in the above-captioned water right. On August 21, 2008, a *Motion to Set Aside Partial Decree* was filed by Dewey Durfee for said water right.

Therefore, IT IS ORDERED that Special Master Terrence A. Dolan be appointed to preside over the above-captioned *Motion* and conduct all proceedings necessary to issue a recommendation consistent with AO1, and the authority previously conferred in the *Order of Reference for Basin 36*, as to the *Motion* and to the underlying merits as to how the *Partial Decree* should be amended, if it is determined that said *Partial Decree* should be set aside or amended.

Dated August 21, 2008.


JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER OF REFERENCE APPOINTING SPECIAL MASTER TERRENCE A DOLAN was mailed on August 21, 2008, with sufficient first-class postage to the following:

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

DEWEY D DURFEE
3443 S 1700 E
WENDELL, ID 83355
Phone: 208-536-2643

ORDER

Page 1 8/21/08

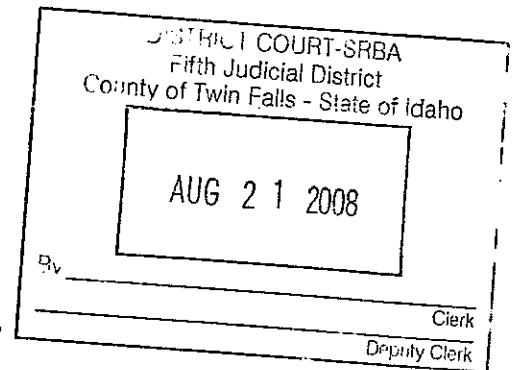
FILE COPY FOR 01929

Deputy Clerk

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 printed text "Deputy Clerk".

To whom it may concern .

On August 14 2008 while reviewing a water transfer at IDWR we discovered what they think is a clerical error concerning water right 36-7641. Historically rights from a common well have been used to supply water to a full pivot on the north and a half pivot on the south . I retain ownership of the land covered by the south half of the north pivot and also own the half pivot to the south . These lands were decreed rights 36-2312a 36-7387A and 36-7641 . The south half pivot is served by canal shares and supplemented by license 36-7641 . The original license 36-7641 was limited by rate when combined with license 36-2312 and 36-7387 but there was no acre limit . I have used license 36-7641 to supplement canal shares on the south half pivot to water hay before the canal water is turned in . The south half of the north has no canal shares and is solely supplied water from the original 36-2312 and 36-7387 licenses . For some reason this limitation per acre has been decreed and I missed it but this needs to be corrected . With this limitation it takes away the purpose of the license 36-7641 to allow watering of the 64 acres on the south half pivot prior to turning on the canal water. Please reconsider these conditions limiting my historical water use . I am sending along IDWRs recommendation . Please inform me of my next step .



Sincerely

Dewey Durfee

*34435 1700 E
Wendell, Id*

83355

Phone

*536-2643
539-2643*

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 36-7641

Priority: May 19, 1983

Amount: 1.28 CFS

256.0 AFA

This is to certify, that DEWEY DUFFEE

3442 S. 1700 E.

WENDELL, ID 83355

has complied with the terms and conditions of the permit issued pursuant to Application for Permit dated August 25, 1976, and has submitted proof to the Department of Water Resources on May 19, 1983, that water has been applied to a beneficial use; an examination by the Department indicates that the works have a diversion capacity of 2.26 cfs of water from a GROUNDWATER source and that a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>VOLUME</u>	
Irrigation	03/15 to 11/15	1.28 cfs	256.0 afa	
<u>LOCATION OF POINT OF DIVERSION(S):</u>		SENE, Sec. 25, Township 8S, Range 14E Gooding County		
<u>PLACE OF USE:</u> Irrigation				
<u>TWN</u> <u>RGE</u> <u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
8S 14E 25	NESE 32	NWSE 32		64
Total number of acres irrigated:				64

CONDITIONS/REMARKS:

1. The right to the use of the water hereby confirmed is limited to the amount which can actually be beneficially used and is restricted and appurtenant to the lands or place of use and to the purpose herein described, as provided by the laws of Idaho.
2. This right is subject to all prior water rights and may be forfeited by five years of non-use.
3. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
4. This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 4.0 afa per acre for the lands above.
5. The maximum combined rate of diversion under this right & Rights 36-2312 & 36-7387 shall not exceed 2.26 cfs.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code.
Witness the seal and signature of the Director, affixed at Boise, this 24th day
of SEPTEMBER, 1987.

MICROFILMED

OCT 02 1987

Subscribed for the

Director

[Signature]

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 36-07641

1997 DEC 30 AM 9:46

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

FILED _____

NAME & ADDRESS: DEWEY D DURFEE
3442 S 1700 E
WENDELL ID 83355

SOURCE: GROUNDWATER

QUANTITY: 1.28 CFS
256.0 AFY

USE OF THIS RIGHT WITH RIGHT NOS. 36-07387A AND 36-02312A IS
LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 1.19 CFS AND A
TOTAL ANNUAL DIVERSION VOLUME OF 264 AF.

PRIORITY DATE: 05/19/1983

POINT OF DIVERSION: T08S R14E S25 SESENE

Within GOODING County

PURPOSE AND
PERIOD OF USE: PURPOSE OF USE
IRRIGATION

PERIOD OF USE
Irrigation Season

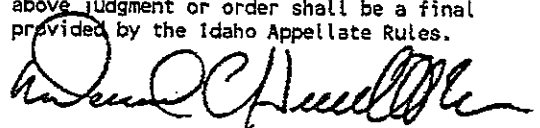
QUANTITY
1.28 CFS
256.0 AFY

PLACE OF USE: IRRIGATION Within GOODING County
T08S R14E S25 NESE 32 NWSE 32
64 ACRES TOTAL

USE OF THIS RIGHT WITH RIGHT NOS. 36-07387A AND 36-02312A IS
LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 66 ACRES IN A
SINGLE IRRIGATION SEASON.

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.


DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 36-07641

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all three
need to be changed
36-07387A and 36-02312A should be
limited to 66 acres. 36-7641 should
have a separate 64 acres and not
be limited by season.

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 36-07641

1997 DEC 30 AM 9:46

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

FILED _____

NAME & ADDRESS: DEWEY D DURFEE
3442 S 1700 E
WENDELL ID 83355

SOURCE: GROUNDWATER

QUANTITY: 1.28 CFS
256.0 AFY

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PRIORITY DATE: 05/19/1983

POINT OF DIVERSION: T08S R14E S25 SESENE Within GOODING County

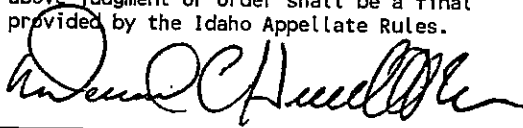
PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION		Irrigation Season	1.28 CFS 256.0 AFY

PLACE OF USE: IRRIGATION Within GOODING County
T08S R14E S25 NESE 32 NWSE 32
64 ACRES TOTAL

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DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
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)
)
Case No. 39576)
_____)

Water Right 36-07641

ORDER AMENDING IRRIGATION PERIOD OF USE ELEMENT
IN PARTIAL DECREE AND INCORPORATING INTO PARTIAL
DECREE AN EXPRESS STATEMENT REGARDING GENERAL
PROVISIONS, *NUNC PRO TUNC*

A *Partial Decree* was entered for the above-captioned irrigation water right on December 30, 1997. The period of use element was decreed as "irrigation season." In *A&B Irrigation Dist. v. Idaho Conservation League*, 131 Idaho 411, 423, 958 P.2d 568, 580 (1998), the Idaho Supreme Court remanded with the directive to include specific dates for the period of use element. Following remand, IDWR filed a *Supplemental Director's Report, Reporting Area 3, IDWR Basin 36, Regarding Revision of Period of use (For Irrigation Water Uses) and Conjunctive Management General Provisions*, which included an irrigation period of use recommendation for this water right. No objections were filed to this recommendation and the time period for filing objections has now expired.

THEREFORE, IT IS ORDERED that the period of use for the irrigation element of the above-captioned water right is hereby amended and decreed as:

PERIOD OF USE: 03-15 11-15

IT IS FURTHER ORDERED that the *Partial Decree* for the above-captioned water right is hereby amended and decreed to contain the following:

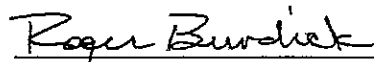
This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the court at a point in time no later than the entry of a final unified decree. I.C. section 42-1412(6).

This order is being entered *nunc pro tunc* as of the date the *Partial Decree* was issued and is not intended to modify any subsequent administrative changes for the water right, if any, which occurred following entry of the *Partial Decree*.

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.

Dated August 27, 2001



ROGER BURDICK
Presiding Judge
Snake River Basin Adjudication

District Court
Snake River Basin Adjudication
PO Box 2707
Twin Falls, ID 83303-2707

Important Information About Your Water Right

August 27, 2001

DEWEY D DURFEE
3443 S 1700 E
WENDELL, ID 83355

Dear Water Right Claimant(s):

The reverse side of this letter contains a copy of an *Order Amending Irrigation Period of Use Element in Partial Decree and Incorporating into Partial Decree An Express Statment Regarding General Provisions, Nunc Pro Tunc* (hereinafter "*Order*") for water right number 36-07641. According to Idaho Department of Water Resources (IDWR) records, you are the current owner of this water right. If you are not the current owner, please contact IDWR immediately at:

Idaho Department of Water Resources
1301 North Orchard
Boise, ID 83706
800-451-4129

The Purpose of the *Order* is to set forth beginning and ending dates for the irrigation period of use for this water right. As stated in the face of the *Order*, this action was necessary following the decision of the Idaho Supreme Court in *A&B Irrigation Dist. v. Idaho Conservation League*, 131 Idaho 411, 423, 958 P.2d 568, 580 (1998). This *Order* also incorporates into the *Partial Decree* an express statement that the *Partial Decree* is subject to such general provisions necessary for the definition or for the efficient administration of the water right. This express statement is necessary to comply with the requirements of Idaho Code section 42-1412(6). This *Order* in combination with the *Partial Decree* that was issued for this water right on December 30, 1997, sets forth all of the elements of your water right. The Snake River Basin Adjudication (SRBA) Court suggests that you keep this document in a safe location together with a copy of the *Partial Decree* to show evidence of the water right. The original of this *Order* and the original of the *Partial Decree* for this water right are on file with SRBA Court. If you do not have a copy of the original *Partial Decree*, one can be obtained by contacting the SRBA Court at (208) 736-3011. Please note that the *Order* is entered *Nunc Pro Tunc*, meaning that the *Order* will be treated as if it were issued the same date that the *Partial Decree* was originally issued.

Sincerely,



Diana Delaney
Case Administrator