

RECEIVED

SEP 23 2008

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
SEP 19 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

) SPECIAL MASTER'S REPORT
)
) FINDINGS OF FACT AND
) CONCLUSIONS OF LAW
)
) FOR WATER RIGHT 63-33082
)
) SPECIAL MASTER'S REPORT AND
) RECOMMENDATION OF
) DISALLOWANCE FOR WATER RIGHT
) CLAIMS 63-29739 and 63-33081

A notice of claim was filed for water right 63-29739 pursuant to I.C. § 42-1409. The Director of the State of Idaho Department of Water Resources (IDWR) examined the water system for this reporting area. The *Director's Report* recommended that water right claim 63-29739 be disallowed.

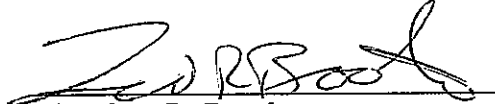
On June 14, 2007, the claimant of water right 63-29739, the Symms Fruit Ranch, Inc., filed an objection to the *Director's Report*, asserting that the water right should be allowed. On August 21, 2008, IDWR filed a *Notice of Completed Administrative Proceeding* (NCAP) that split water right 63-29739 into water rights 63-33081 and 63-33082. Pursuant to the NCAP, water right 63-33081 is still recommended as disallowed in the name of Symms Fruit Ranch, Inc., and 63-33082 is recommended to be allowed in the name of Francis Tuning and Myrna Tuning. On August 29, 2008, the Symms Fruit Ranch, Inc., filed a *Notice of Withdrawal of Objection* in subcase 63-29739. Accordingly, there are no unresolved objections.

II. CONCLUSIONS OF LAW

Therefore based on the file and record herein, IT IS RECOMMENDED that water right 63-33082 be decreed with the elements as set forth in the attached *Recommendation for Partial*

Decree Pursuant to I.R.C.P. 54(b). IT IS FURTHER RECOMMENDED that the SRBA District Court enter a final order **disallowing** water right claims 63-29739 and 63-33081.

Dated Sept. 19, 2008

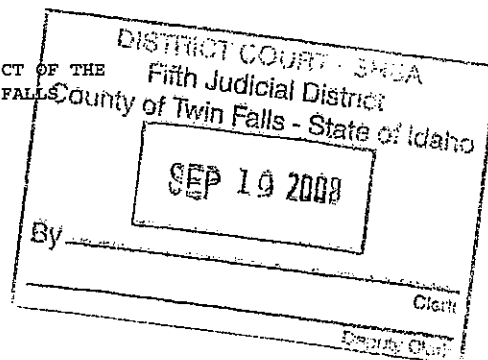

Theodore R. Booth
Special Master
Snake River Basin Adjudication

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)
Case No. 39576)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 63-33082



NAME AND ADDRESS: FRANCIS M TUNING
MYRNA L TUNING
24658 HOMEDALE RD
WILDER, ID 83676

SOURCE: SPRING TRIBUTARY: SNAKE RIVER

QUANTITY: 0.03 CFS

This right when combined with all other rights shall provide no
more than 0.02 cfs per acre at the field headgate.

PRIORITY DATE: 01/01/1953

POINT OF DIVERSION: T03N R05W S01 SWSESW Within Canyon County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-01 TO 11-15	0.03 CFS

PLACE OF USE: Irrigation Within Canyon County
T03N R05W S01 SESW 1.7
1.7 Acres Total

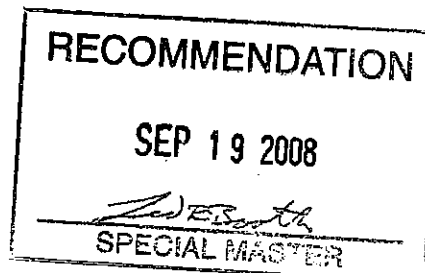
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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



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

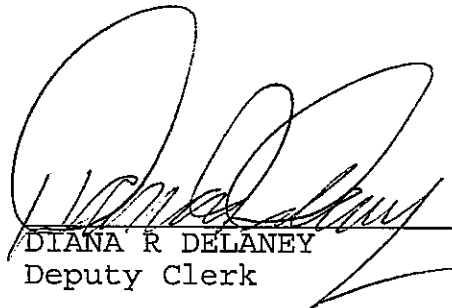
Water Right(s): 63-29739
63-33081 63-33082

On September 19, 2008, Special Master THEODORE R. BOOTH issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s) pursuant to SRBA Administrative Order 1 (AO1), Section 13a.

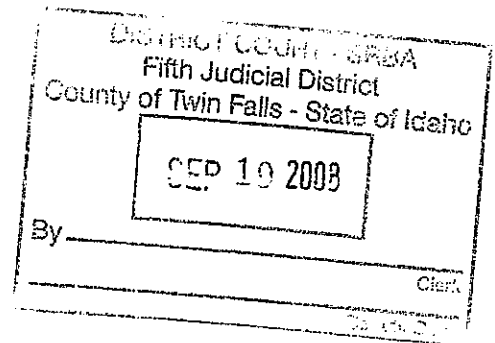
Pursuant to SRBA Administrative Order 1, Section 13a, any party to the adjudication including parties to the subcase, may file a Motion to Alter or Amend on or before the 28th day of the next month.

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 September 19, 2008.



DIANA R DELANEY
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)

CERTIFICATE OF MAILING

Water Right(s): 63-29739
63-33081 63-33082

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 September 19, 2008, with sufficient first-class postage prepaid to the following:

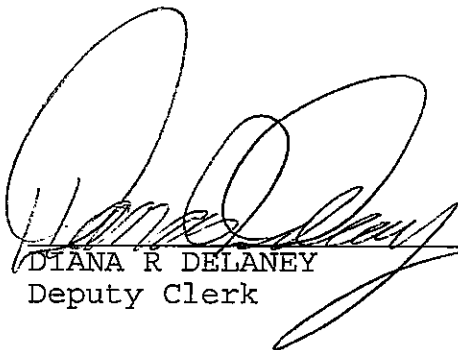
DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

SYMMS FRUIT RANCH INC
Represented by:
G. DARWIN SYMMS II
14068 SUNNYSLOPE RD
CALDWELL, ID 83605
Phone: 208-459-4821

SYMMS FRUIT RANCH INC
14068 SUNNY SLOPE RD
CALDWELL, ID 83607

FRANCIS M TUNING
MYRNA L TUNING
24658 HOMEDALE RD
WILDER, ID 83676

CERTIFICATE OF MAILING


PAGE 1
09/19/08
DIANA R DELANEY
Deputy Clerk