



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 1341 Fillmore Street, Suite 200 • Twin Falls, Idaho 83301-3380

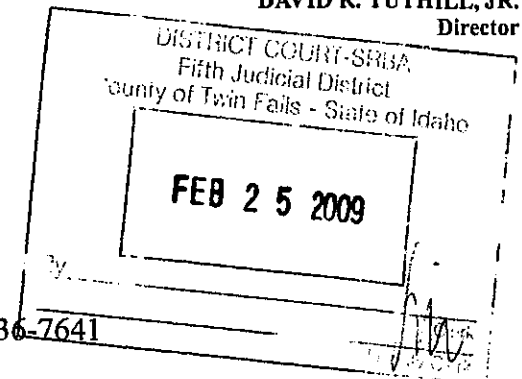
Phone: (208) 736-3033 • Fax: (208) 736-3037 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

2/25/2009

Special Master Ted Booth
SRBA Court
By hand



RE: Durfee Motion to Set Aside and Correct Partial Decree 36-7641

Dear Special Master Booth,

My review of the water right and associated rights indicate that IDWR caused a clerical error that impermissibly limited all the rights to a total of 66 acres during an ownership change processing. Two of the rights would appropriately be limited to 66 acres (36-2312A and 36-7387), but 36-7641 stands alone with 64 acres. Mr. Durfee should be able to irrigate 130 acres under all the rights. I respectfully request that the court rule favorably for Mr. Durfee; however, associated rights 36-2312A and 36-7387A also need corrections to make all rights consistent with each other.

Attached is my analysis of the situation with attached printouts of the original recommendations for the rights and printouts of my proposed Amended Director's Reports in MS Word's "Track Changes" format. Mr. Durfee has been provided copies for review prior to the hearing set before you on 3/5/2009. It is my intention that I will attend this hearing to answer any questions though an out-of-town trip prior to the hearing date could complicate this plan.

Thank you for your consideration of this matter.

Sincerely,

Douglas Jones, PE
Technical Engineer
Southern Adjudication Unit

Cc: Dewey Durfee

MEMORANDUM

TO: Files 36-7641, 36-2312A, 36-7387A
FROM: Douglas Jones
DATE: 2-9-2009
RE: Correction of limiting condition analysis

A recent transfer approval involving one or more of the above water right decrees alerted Mr Durfee that a condition on the partial decrees inappropriately restricts use of the rights. Mr Durfee correctly and timely filed a petition for reconsideration of the transfer approval and has worked with this office to evaluate the various remedies. Since the partial decree contains the troublesome condition we advised Mr Durfee that the partial decree for, at least, 36-7641 (and perhaps all of them) needed to be set aside in order for IDWR to potentially correct the problem. Mr Durfee has motioned the court to set aside the partial decree(s). The matter was referred to the special master who has requested input from IDWR regarding the matter. This analysis is being conducted to determine the origin of the condition and to propose appropriate language for one or more of the rights (if necessary) that the court can consider in their deliberation of the merits of the motion.

The following is a summary of the development of the rights leading to licensing:

36-2312: This 1956 priority right was licensed for 1.5 cfs of ground water for use as supplemental water to canal company shares on 147 acres in the S1/2NE & N1/2SE S25. The right was transferred in 1976 to irrigate 147 acres in the NE1/4 S25, still supplemental to canal shares, from the same well.

36-7387: This 1973 priority right added flow rate capacity up to 2.38 cfs (an additional 0.88 cfs) for 140 acres in the NE1/4 S25. This right fully overlaps right 36-2312.

36-7641: This 1983 priority right is for the 64 acres in the N1/2SE S25 that was dried up in the 1976 transfer of 36-2312 and is limited to the same 2.38 cfs well head flow rate capacity previously licensed under 36-2312 and 36-7387 (also supplemental to canal shares).

SRBA Activity:

Director's Reports: (copies attached)

36-2312: Mr Durfee claimed and was recommended 132 acres in the NE1/4 S25. The decrease in acres represented areas removed from irrigation or areas not irrigated with supplemental ground water. Appropriate limiting conditions were included in the Director's Report (i.e. flow rate limits with 36-7387 and 36-7641 set at 2.38 cfs and acre limit with 36-7387 set at 132 acres).

36-7387: Mr Durfee claimed and was recommended 132 acres – all elements are consistent with the recommendation of 36-2312.

36-7641: Recommended as claimed with the appropriate flow rate limit of 2.38 cfs when combined with the earlier two licenses.

Post Report Activity:

In March 1997 IDWR received an ownership change that split rights 36-2312 and 36-7387 in half – each with 66 acres. During processing this split IDWR staff inadvertently created the condition limiting use of 36-2312A, 36-7387A and 36-7641 to 66 acres. It was appropriate to limit use of 36-2312A and 36-7387A to 66 acres, but NOT to include 36-7641 in that condition. NCAPs were filed in April 1997 reflecting the ownership change and splits. The error was not uncovered at that time.

With respect to 36-7641 IDWR failed to recognize that the flow rate of this right was contingent on the flow rate of the senior rights (enlargement of the existing rights) and needed to be adjusted to the combined rate limit of 36-2312A and 36-7387A owned by Durfee (i.e. 1.19 cfs). This rate adjustment was incorporated in the recent transfer approval that caused this motion to set aside to be filed.

During 1999 IDWR submitted Amended Director's Reports representing an address update and then Supplemental Director's Reports for Basin 36 recommendation that represented condition reformatting and other refinements based on Basin Wide Issue resolutions. The error was not discovered and addressed at that time either.

Proposed Alternative Recommendation Reports: (See attached ADRs)

On 2/10/2009 Mr Durfee reviewed the proposed alternative recommendations for the rights, we discussed the changes included on these ADRs and he has concurred that the corrections address the issues. Mr Durfee has also recognized that the flow rate on 36-7641 needed to be modified and has been updated.

Summary:

Partial decrees were issued based on IDWR-generated Amended Director's Reports that erroneously limited use of the three rights, 36-2312A, 36-7387A and 36-7641 to 66 acres instead of to a total of 130 acres. This problem was the result of clerical error on the part of IDWR during the ownership change and we concur that it should be corrected. These corrections have been reviewed by Mr Durfee in person and the proposed reports have been mailed to him for careful consideration prior to the scheduled conference before the court on March 5, 2009.

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAWDATE: NOV-2-1992
PAGE: A-1565

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
SOURCE: GROUNDWATER						
36-02312	DEWEY D DURFEE RT 1 WENDELL ID 83355 JAMES M DURFEE RT 1 BOX 301 WENDELL ID 83355	11/26/1956	IRRIGATION	04-01 10-31	1.5 CFS	LICENSE
			TOTAL QUANTITY:		1.5 CFS	
	POINT OF DIVERSION: T08S R14E S25	SESENE				
	PLACE OF USE: IRRIGATION					
	T08S R14E S25	NENE 33.0	NWNE 33.0	SWNE 33.0	SENE 33.0	
	132.0 ACRES TOTAL					
REMARKS:	USE OF THIS RIGHT IS COMBINED WITH WATER FROM NORTH SIDE CANAL CO. LTD. USE OF THIS RIGHT WITH RIGHT NO. 36-07387 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 2.38 CFS, A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 528 AF, A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 396 AF, AND TO THE IRRIGATION OF A COMBINED TOTAL OF 132 ACRES IN A SINGLE IRRIGATION SEASON. RIGHTS LISTED BELOW ARE ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE, AND THE TOTAL COMBINED RATE OF DIVERSION OF THESE RIGHTS IS LIMITED TO 2.38 CFS. OTHER RIGHT NOS.: 36-07387 AND 36-07641.					
36-14352	APPLETON GRANGE #127 INC C/O INETA DOWNING 600 1ST AVE E JEROME ID 83358	12/15/1956	DOMESTIC	01-01 12-31	.02 CFS	BENEFICIAL USE
			TOTAL QUANTITY:		.02 CFS	
	NON-IRRIGATION-USES: DOMESTIC, SINK AND RESTROOMS IN GRANGE HALL					
	POINT OF DIVERSION: T08S R16E S17	SESESE				
	PLACE OF USE: DOMESTIC					
	T08S R16E S17	SESE				
REMARKS:	PARCEL NO. RL 08S16E179480.					

AJ5856NP

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAWDATE: NOV-2-1992
PAGE: A-2687

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
SOURCE: GROUNDWATER						
36-07387	DEWEY D DURFEE RT 1 WENDELL ID 83355	10/27/1973	IRRIGATION	04-01 10-31	.88 CFS	LICENSE
	JAMES M DURFEE RT 1 BOX 301 WENDELL ID 83355					
	POINT OF DIVERSION: T08S R14E S25	SESENE				
	PLACE OF USE: IRRIGATION					
	T08S R14E S25	NENE 33.0	NWNE 33.0	SWNE 33.0	SENE 33.0	
	132.0 ACRES TOTAL					
REMARKS:	USE OF THIS RIGHT IS COMBINED WITH WATER FROM NORTH SIDE CANAL CO. LTD. USE OF THIS RIGHT WITH RIGHT NO. 36-02312 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 2.38 CFS, A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 528 AF, A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 396 AF, AND TO THE IRRIGATION OF A COMBINED TOTAL OF 132 ACRES IN A SINGLE IRRIGATION SEASON. RIGHTS LISTED BELOW ARE ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE, AND THE TOTAL COMBINED RATE OF DIVERSION OF THESE RIGHTS IS LIMITED TO 2.38 CFS. OTHER RIGHT NOS.: 36-02312 AND 36-07641.					

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAWDATE: NOV-2-1992
PAGE: A-3506

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
-----------------	----------------	------------------	----------------	--------------------------	---------------------	----------------

SOURCE: GROUNDWATER

36-07641	DEWEY D DURFEE 3442 S 1700 E WENDELL ID 83355	05/19/1983	IRRIGATION	04-01 10-31	1.28 CFS 256.0 AFY	LICENSE
					TOTAL QUANTITY:	1.28 CFS 256.0 AFY
					CONSUMPTIVE USE:	192.0 AFY
POINT OF DIVERSION: T08S R14E S25 SESENE						
PLACE OF USE: IRRIGATION						
T08S R14E S25 NESE 32.0 NWSE 32.0 64.0 ACRES TOTAL						
REMARKS: USE OF THIS RIGHT IS COMBINED WITH WATER FROM NORTH SIDE CANAL CO. LTD. RIGHTS LISTED BELOW ARE ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE, AND THE TOTAL COMBINED RATE OF DIVERSION OF THESE RIGHTS IS LIMITED TO 2.38 CFS. OTHER RIGHT NOS.: 36-02312 AND 36-07387.						

36-08194	NORINE O PETERSON ARVEL R PETERSON PO BOX 416 PAUL ID 83347	05/24/1983	IRRIGATION	04-01 10-31	.03 CFS 4.0 AFY	LICENSE
					TOTAL QUANTITY:	.03 CFS 4.0 AFY
					CONSUMPTIVE USE:	3.0 AFY
POINT OF DIVERSION: T09S R22E S20 NWNENE						
PLACE OF USE: IRRIGATION						
T09S R22E S20 NENE 1.0 1.0 ACRES TOTAL						
REMARKS: RIGHT NO. 36-15332 IS ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE, AND THE TOTAL COMBINED RATE OF DIVERSION OF THESE RIGHTS IS LIMITED TO 0.05 CFS.						

02/10/2009

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 36-7641

NAME AND ADDRESS: YNES V DURFEE
3443 S 1700 E
WENDELL ID 83355

Formatted: Underline

Formatted: Underline

Formatted: Underline

Formatted: Underline

DEWEY D DURFEE
3443 S 1700 E
WENDELL ID 83355

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0 1.19 CFS
256.00 AFY

Deleted: 1.28

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 520 AF.

Deleted: 264

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

3/15 11/15

1.19 CFS
256.00 AFY

Deleted: 1.280

PLACE OF USE: IRRIGATION in GOODING County

T08S R14E S25

NESE

32.00

T08S R14E S25

NWSE

32.00

64 ACRES TOTAL

Deleted: USE OF THIS RIGHT
WITH RIGHT NOS. 36-07387A
AND 36-02312A IS

Deleted: LIMITED TO THE
IRRIGATION OF A COMBINED
TOTAL OF 66 ACRES IN A

Deleted: 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. SECTION
42-1412(6), IDAHO CODE.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

RIGHT NOS. 36-02313A, 36-02312B, 36-07387A & 36-07387B ARE ALSO
DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE.

USE OF THIS RIGHT IS COMBINED WITH WATER FROM NORTH SIDE CANAL
CO. LTD.

02/10/2009

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 36-2312A
NAME AND ADDRESS: DEWEY D DURFEE
3443 S 1700 E
WENDELL ID 83355
YNES V DURFEE
3443 S 1700 E
WENDELL ID 83355

SOURCE: GROUND WATER TRIBUTARY:
QUANTITY: 0.750 CFS
264.00 AFY

USE OF THIS RIGHT WITH RIGHT NOS. 36-07387A AND 36-07641 IS LIMITED
TO A TOTAL COMBINED DIVERSION RATE OF 1.19 CFS AND A TOTAL
ANNUAL DIVERSION VOLUME OF 520 AF

Deleted: 264

Use of right nos. 36-2312A and 36-7387A is limited to a total combined
diversion volume of 264 AF

Formatted: Indent: Left: 1.28"

PRIORITY DATE: 11/26/1956
POINT OF
DIVERSION: T08S R14E S25 SESENE Within GOODING County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	3/15 11/15	0.750 CFS

PLACE OF USE: IRRIGATION in GOODING County

T08S R14E S25	SWNE 33.00	T08S R14E S25	SENE 33.00
---------------	------------	---------------	------------

66 ACRES TOTAL

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

Deleted: AND 36-07641

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. SECTION
42-1412(6), IDAHO CODE.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

RIGHTS LISTED BELOW ARE ALSO DIVERTED THROUGH POINT OF
DIVERSION DESCRIBED ABOVE. OTHER RIGHT NOS.: 36-02312B,
36-07387A, 36-07387B AND 36-07641.

USE OF THIS RIGHT IS COMBINED WITH WATER FROM NORTH SIDE CANAL
CO. LTD.

02/10/2009

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 36-7387A
NAME AND ADDRESS: YNES V DURFEE
3443 S 1700 E
WENDELL ID 83355
DEWEY D DURFEE
3443 S 1700 E
WENDELL ID 83355

SOURCE: GROUND WATER TRIBUTARY:
QUANTITY: 0.440 CFS
264.00 AFY

USE OF THIS RIGHT WITH RIGHT NOS. 36-02312A AND 36-07641 IS LIMITED
TO A TOTAL COMBINED DIVERSION RATE OF 1.19 CFS AND A TOTAL
ANNUAL DIVERSION VOLUME OF 520 AF.

Deleted: 264

Use of right nos. 36-2312A and 36-7387A is limited to a total combined
diversion volume of 264 AF

PRIORITY DATE: 10/27/1973
POINT OF
DIVERSION: T08S R14E S25 SESENE Within GOODING County
PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	3/15 11/15	0.440 CFS

PLACE OF USE: IRRIGATION in GOODING County

T08S R14E S25	SWNE	33.00	T08S R14E S25	SENE	33.00
66 ACRES TOTAL					

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

Deleted: AND 36-07641

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. SECTION
42-1412(6), IDAHO CODE.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

USE OF THIS RIGHT IS COMBINED WITH WATER FROM NORTH SIDE CANAL
CO. LTD.

RIGHTS LISTED BELOW ARE ALSO DIVERTED THROUGH POINT OF
DIVERSION DESCRIBED ABOVE. OTHER RIGHT NOS.: 36-02312A,
36-02312B, 36-07387B AND 36-07641.