

RECEIVED

JUN 29 2009

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
JUN 26 2009	
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	)	Subcase 35-2389
	)	(Albertson)
Case No. 39576	)	
	)	ORDER SETTING DEADLINE TO FILE 706
	)	REPORT AND DRAFT AMENDED PARTIAL
	)	DECREE

Former SRBA Presiding Judge Roger Burdick entered a *Partial Decree* on January 31, 2002, awarding to Kortny Albertson, 632 North, 2872 East, Roberts, Idaho, 83444, 4.44 cfs from groundwater to irrigate 346 acres in Jefferson County from April 1 to October 31 with a priority date of December 2, 1954, based on a license. The *Partial Decree* was among a total of 1,720 subcases recommended by the Special Master on November 6, 2001. See *Special Master Report*, subcase 35-54, *et al.*. Mr. Albertson filed a *Motion to Set Aside Partial Decree* on May 7, 2009, asking that his *Partial Decree* be set aside and the acreage corrected.

The water right was licensed for 4.44 cfs to irrigate 360 acres on July 10, 1957, and a claim for that quantity and acreage was filed in the SRBA on October 29, 1992. IDWR filed a *Notice of Completed Administrative Proceeding* for a substitution of party and again recommended 4.44 cfs, but for 346 acres. When no one objected to the lower recommended acreage, the SRBA Court decreed the water right as described in the *NCAP*.

A hearing on the *Motion to Set Aside Partial Decree* was held on June 25, 2009. Robert L. Harris appeared for Mr. Albertson; David J. Barber appeared for the State of Idaho; and Garrick L. Baxter appeared for IDWR. Mr. Baxter said the lower amount was intentionally recommended by IDWR based on aerial photographs and was not a typographical error.

Mr. Harris said the discrepancy was only recently discovered during an administrative proceeding before IDWR. Mr. Albertson thought that since the quantity was unchanged from the license and SRBA claim, the acreage remained the same. Mr. Harris said he and his client have discussed the matter with Ernie Carlsen at IDWR's Eastern Regional Office and expect to resolve the acreage question shortly.

It appears that Mr. Albertson has met the requirements of I.R.C.P. 60(b)(6) to set aside the *Partial Decree* and now it would be helpful for IDWR to file an I.R.E. 706 report with a draft amended partial decree if its recommendation changes. With that additional information, the Special Master will be able to either file a report and recommendation or set the matter for further hearing.

THEREFORE, IT IS ORDERED that IDWR shall file a 706 report with a draft amended partial decree if its recommendation changes no later than **Monday, August 31, 2009**.

DATED June 25, 2009.



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER SETTING DEADLINE TO FILE 706 REPORT AND DRAFT AMENDED PARTIAL DECREE was mailed on June 26, 2009, with sufficient first-class postage to the following:

ABERDEEN AMERICAN FALLS GROUND
BINGHAM GROUND WATER DIST
BINGHAM GROUND WATER DISTRICT
UPPER VALLEY IRRIGATORS ASSOC

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

FREMONT-MADISON IRR DIST

Represented by:
JERRY R. RIGBY
25 N 2ND E
PO BOX 250
REXBURG, ID 83440-0250
Phone: 208-356-3633

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

STATE OF IDAHO

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

KORTNY ALBERTSON

Represented by:
ROBERT L HARRIS
1000 RIVERWALK DR, STE 200
PO BOX 50130
IDAHO FALLS, ID 83405
Phone: 208-523-0620

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

ORDER SETTING DEADLINE

Page 1 6/26/09 FILE COPY FOR 00246 Deputy Clerk

