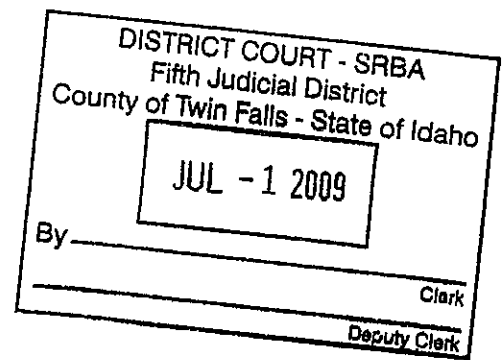


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JUL 02 2009
DEPARTMENT OF
WATER RESOURCES



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 35-2314, 35-2441, 35-13601
	)	and 35-13639 (Ward)
Case No. 39576	)	
_____	)	SPECIAL MASTER REPORT
	)	AND RECOMMENDATION

Findings of Fact

35-2314 and 35-2441

On February 25, 2002, former Presiding SRBA Judge Roger S. Burdick entered an *Order of Partial Decree* in subcase 35-2314 awarding to Deloy, Neal, Shelley and *Viola Ward, 1305 S. 2nd E., Rexburg, Idaho, 83440, 6.56 cfs from groundwater to irrigate 607 acres in Bingham County from April 1 to October 31 with a priority date of March 26, 1953. The same date, in subcase 35-2441, Judge Burdick decreed to the Wards 3.94 cfs from groundwater to irrigate the same 607 acres with a priority date of October 21, 1955. The subcases were among 1,720 claims recommended in the November 6, 2001 *Special Master Report*.

On March 22, 2007, Neal D. Ward and 4W Farms filed a *Motion to Set Aside Partial Decree* in both subcases 35-2314 and 35-2441 because "certain acres were not covered under this right that should have been." The claimants wrote that since they filed 35-13601 as a late enlargement claim of both 35-2441 and 35-2314, the *Partial Decree* in subcase 35-2314 "must be amended to include those additional acres to accurately represent the historical use of the water." The same date, Judge Melanson entered an *Order of Reference Appointing Special Master Terrence A. Dolan* in subcases 35-2314 and 35-2441 "to issue a recommendation . . . 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.”

35-13601

The Wards filed their *Motion to File Late Notice of Claim* in subcase 35-13601 on March 22, 2007, and on June 22, 2007, SRBA Presiding Judge John M. Melanson entered an *Order Granting Motion to File Late Notice of Claim*. On April 18, 2008, Judge Melanson entered a *Partial Decree* in subcase 35-13601 awarding to the Wards .4 cfs from groundwater to irrigate 630 acres with a priority date of April 1, 1984.

35-13639

The Wards filed their *Motion to File Late Notice of Claim* in subcase 35-13639 on September 13, 2007, and on December 20, 2007, Judge Melanson entered an *Order Granting Motion to File Late Notice of Claim*. IDWR filed its *Director's Report for Late Claims* on March 21, 2008, recommending claim 35-13639 be disallowed: “No beneficial use found.” On June 27, 2008, the Wards filed an *Objection* in subcase 35-13639.

The Wards were granted leave to amend their claim 35-13639 on November 20, 2008, and on January 28, 2009, IDWR filed an *Amended Director's Report, Subcase No. 35-13639* recommending the claim for .68 cfs from groundwater to irrigate 34 acres within a 664 acre place of use with an April 1, 1987 priority date. No one objected to the recommendation.

Hearings

Hearings on the Wards' *Motions to Set Aside Partial Decrees* in subcases 35-2314 and 35-2441 were held on April 9 and August 30, 2007, and June 12, 2008. During a status conference on April 9, 2009, the Wards moved to set aside the *Partial Decree* in subcase 35-13601 as well.

Draft Partial Decrees

On May 27, 2009, IDWR wrote to the Court with “draft proposed partial decrees” attached (35-2314, 35-2441 and 35-13601) “to illustrate how the partial decrees for these water

rights should appear if they are set aside.” IDWR said no one objected to the water rights being decreed as described.

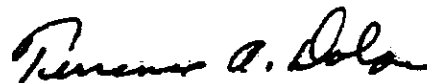
Conclusions of Law

1. To accurately describe the historical use of the Wards’ combined water rights, including enlargements, the Wards have shown good cause to have the *Partial Decrees* in subcases 35-2314, 35-2441 and 35-13601 set aside and amended as described in IDWR’s May 27, 2009 letter to the Court; and
2. The Wards are entitled to a partial decree adjudicating a water right as described in IDWR’s January 28, 2009, *Amended Director’s Report* and the attached *Special Master Recommendation for Partial Decree for Water Right 35-13639*.

Recommendation

THEREFORE, IT IS RECOMMENDED that the *Partial Decrees* in subcases 35-2314, 35-2441 and 35-13601 be set aside and amended as described in IDWR’s May 27, 2009 letter to the Court.

DATED July 1, 2009.



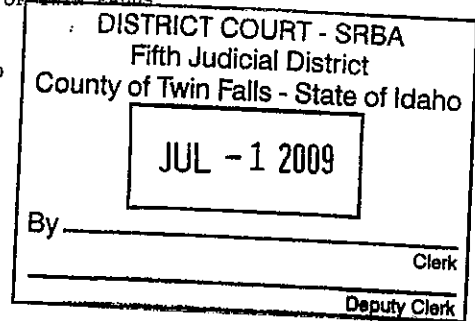
TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

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 35-02314



NAME AND ADDRESS: DE LOY Z WARD
NEAL D WARD
SHELLY WARD
VIOLA J WARD
1305 S 2 E
REXBURG, ID 83440

SOURCE: GROUNDWATER

QUANTITY: 6.56 CFS
1640.00 AFY

Right Nos. 35-2314, 35-2441, 35-13601 and 35-13639 are limited to
a total combined diversion rate of 10.5 cfs and to a total
combined annual diversion volume of 2656 AF.

PRIORITY DATE: 03/26/1953

POINT OF DIVERSION: T01S R34E S26 NESWNW Within Bingham County
S35 SWSWNE
SWNW

The following rights are also diverted through point(s) of
diversion described above: 35-2441, 35-13601 and 35-13639.

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	6.56 CFS 1640.00 AFY

PLACE OF USE:	Irrigation	Within Bingham County
T01S R34E S26	SWNE 3.0 SWNW 40.0 NESW 38.0 SWSW 39.0 NWSE 6.0	NWNW 40.0 SENW 34.0 NWSW 40.0 SESW 20.0
S34	NENE 40.0 NESE 18.0	SENE 20.0 SESE 4.0
S35	NWNE 12.0 NENW 36.0 SWNW 37.0 NESW 40.0 SWSW 25.0 NWSE 20.0	SWNE 22.0 NWNW 40.0 SENW 40.0 NWSW 40.0 SESW 10.0
664.0 Acres Total		

The rights listed below are limited to the irrigation of a
combined total of 664 acres in a single irrigation season.
Combined Right Nos.: 35-2314, 35-2441, 35-13601 and 35-13639.
This right is limited to the irrigation of 410 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

SRBA Partial Decree Pursuant to I.R.C.P. 54(b) (continued)

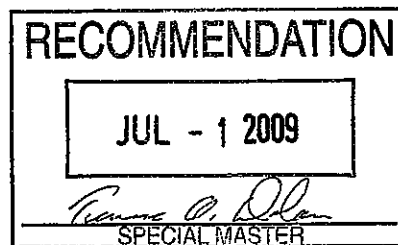
OTHER PROVISIONS (continued)

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.

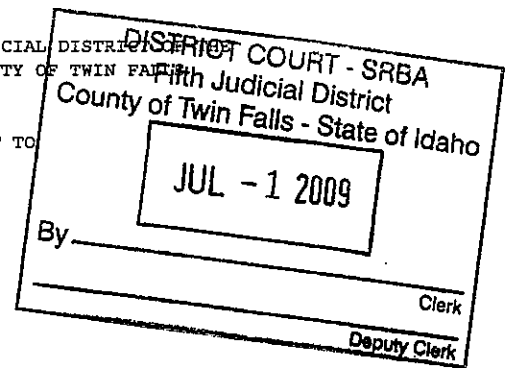
John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication



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)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 35-02441



NAME AND ADDRESS: DE LOY Z WARD
NEAL D WARD
SHELLY WARD
VIOLA J WARD
1305 S 2 E
REXBURG, ID 83440

SOURCE: GROUNDWATER

QUANTITY: 3.94 CFS
788.00 AFY

Right Nos. 35-2314, 35-2441, 35-13601 and 35-13639 are limited to a total combined diversion rate of 10.5 cfs and to a total combined annual diversion volume of 2656 AF.

PRIORITY DATE: 10/21/1955

POINT OF DIVERSION: T01S R34E S26 NESWNW Within Bingham County
S35 SWSWNE
SNNW

The following rights are also diverted through point(s) of diversion described above: 35-2314, 35-13601 and 35-13639.

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	3.94 CFS 788.00 AFY

PLACE OF USE:	Irrigation	Within Bingham County
T01S R34E S26	SWNE 3.0	NWNW 40.0
	SNNW 40.0	SENN 34.0
	NESW 38.0	NWSW 40.0
	SWSW 39.0	SESW 20.0
	NWSE 6.0	
S34	NENE 40.0	SENE 20.0
	NESE 18.0	SESE 4.0
S35	NWNE 12.0	SWNE 22.0
	NENW 36.0	NWNW 40.0
	SNNW 37.0	SENN 40.0
	NESW 40.0	NWSW 40.0
	SWSW 25.0	SESW 10.0
	NWSE 20.0	
664.0 Acres Total		

The rights listed below are limited to the irrigation of a combined total of 664 acres in a single irrigation season. Combined Right Nos.: 35-2314, 35-2441, 35-13601 and 35-13639. This right is limited to the irrigation of 197 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

SRBA Partial Decree Pursuant to I.R.C.P. 54(b) (continued)

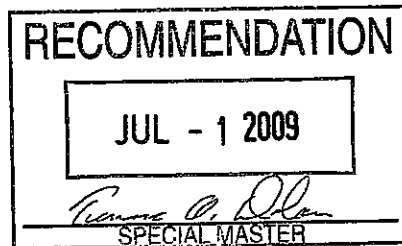
OTHER PROVISIONS (continued).

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



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

JUL - 1 2009

By _____ Clerk

Deputy Clerk

PAGE 1
Jun-30-2009

SRBA Partial Decree Pursuant to I.R.C.P. 54(b) (continued)

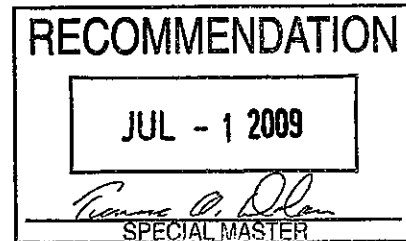
OTHER PROVISIONS (continued)

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
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

DISTRICT COURT - SRBA	
Fifth Judicial District	
County of Twin Falls - State of Idaho	
JUL - 1 2009	
By _____	Clerk
Deputy Clerk	

In Re SRBA)
)
Case No. 39576)
)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 35-13639

NAME AND ADDRESS: DE LOY Z WARD
NEAL D WARD
SHELLY WARD
VIOLA J WARD
1305 S 2 E
REXBURG, ID 83440

SOURCE: GROUND WATER

QUANTITY: 0.68 CFS
136.00 AFY

Right Nos. 35-2314, 35-2441, 35-13601 and 35-13639 are limited to a total combined diversion rate of 10.5 cfs and to a total combined annual diversion volume of 2656 AF.

PRIORITY DATE: 04/01/1987

This water right is subordinate to all water rights with a priority date earlier than April 12, 1994, that are not decreed as enlargements pursuant to Section 42-1426, Idaho Code. As between water rights decreed as enlargements pursuant to Section 42-1426, Idaho Code, the earlier priority right is the superior right.

POINT OF DIVERSION: T01S R34E S26 NESWNW Within Bingham County
S35 SWSWNE
SWNW

The following rights are also diverted through point(s) of diversion described above: 35-2314, 35-2441 and 35-13601.

PURPOSE AND			
PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	0.68 CFS
			136.00 AFY

PLACE OF USE:	Irrigation	Within Bingham County
	T01S R34E S26	SWNE 3.0 NWNW 40.0
		SWNW 40.0 SENW 34.0
		NESW 38.0 NWSW 40.0
		SWSW 39.0 SESW 20.0
		NWSE 6.0
	S34	NENE 40.0 SENE 20.0
		NESE 18.0 SESE 4.0
	S35	NWNE 12.0 SWNE 22.0
		NENW 36.0 NWNW 40.0
		SWNW 37.0 SENW 40.0
		NESW 40.0 NWSW 40.0
		SWSW 25.0 SESW 10.0
		NWSE 20.0
	664.0 Acres Total	

The rights listed below are limited to the irrigation of a combined total of 664 acres in a single irrigation season.
combined Right Nos.: 35-2314, 35-2441, 35-13601 and 35-13639.

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

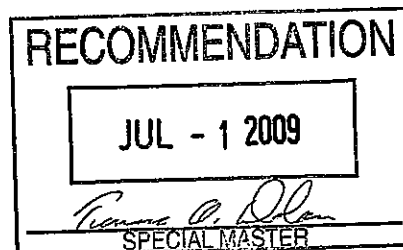
This right is based upon an enlargement of Right nos. 35-2314 and 35-2441 pursuant to Section 42-1426, Idaho Code.

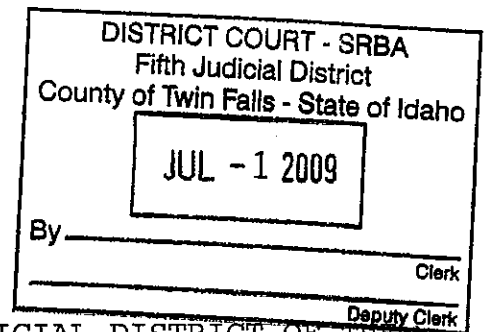
THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

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

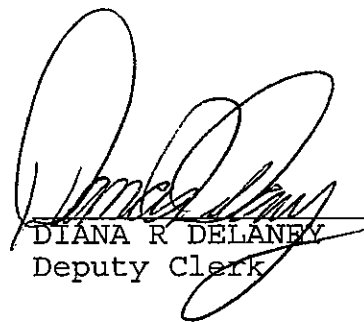
Water Right(s): 35-02314
35-02441 35-13601 35-13639

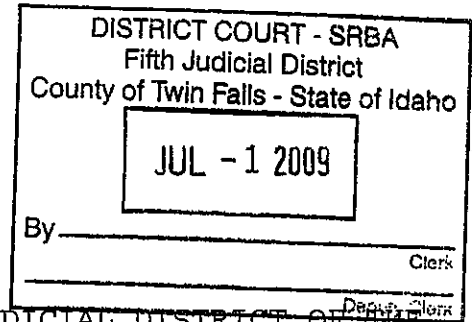
On July 01, 2009, Special Master JOHN M MELANSON issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s) pursuant to SRBA Administrative Order 1 (AO1), Section 13a.

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 July 01, 2009.


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): 35-02314
35-02441 35-13601 35-13639

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 July 01, 2009, with sufficient first-class postage prepaid to the following:

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

C & L FARMS
DEL RAY HOLM
HOLM BROS. PARTNERSHIP, HOLM
R & M FARMS PARTNERSHIP
THEODORE L DEFFINGER
Represented by:
BLAIR J GROVER
392 FARNSWORTH WY
PO BOX 36
RIGBY, ID 83442-0036
Phone: 208-745-6653

CERTIFICATE OF MAILING

PAGE 1
06/30/09

FREMONT MADISON IRRIG. DIST.

Represented by:

JERRY R. RIGBY

25 N 2ND E

PO BOX 250

REXBURG, ID 83440-0250

Phone: 208-356-3633

ALBERT & CHRISTINE WADA

BRENT STOLWORTHY

CLYDE M WILSON

DARWIN BROWN

FRANK S & AGNES H WADA

GERALD J BUTIKOFER

JAY L & MERRI LYNN STOLWORTHY

KENT B CORNELISON

KENT SEARLE

LDS CHURCH

LINDEN J & LOIS J BUTIKOFER

MERLE & ULENE BUTIKOFER

MURDOCH-WILSON FARMS

PAUL & ALICE HEYREND

WAYNE HANSEN

Represented by:

KENT W FOSTER

1000 RIVERWALK DR, STE 200

PO BOX 50130

IDAHO FALLS, ID 83405

Phone: 208-523-0620

STATE OF IDAHO

Represented by:

NATURAL RESOURCES DIV CHIEF

STATE OF IDAHO

ATTORNEY GENERAL'S OFFICE

PO BOX 44449

BOISE, ID 83711-4449

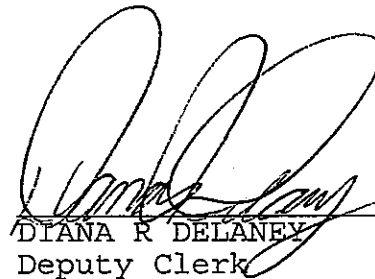
DE LOY Z WARD
DELOY WARD
NEAL D WARD
NEAL WARD
SHELLY WARD
VIOLA J WARD
VIOLA WARD

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

ABERDEEN-AMERICAN FALLS
GROUND WATER DISTRICT
P O BOX 70
AMERICAN FALLS, ID 83211
Phone: 208-226-2562

BINGHAM GROUND WATER DISTRICT
P O BOX 42
PINGREE, ID 83262-0042
Phone: 208-684-5413

UPPER VALLEY IRRIGATORS ASSOC.
P O BOX 8
REXBURG, ID 83440
Phone: 208-356-4912


DIANA R DELANEY
Deputy Clerk