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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
AUG 31 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	)	SPECIAL MASTER'S REPORT AND
	)	RECOMMENDATION ON MOTION TO
	)	SET ASIDE PARTIAL DECREE
Case No. 39576	)	
	)	WATER RIGHT NOS.: 22-2184, 22-2230,
	)	22-7075, 22-11147, and 22-11149

I. PROCEDURAL BACKGROUND

The SRBA District Court issued a *Partial Decree* for these water rights on November 24, 2008. On March 11, 2009, this court received correspondence from the Idaho Department of Water Resources requesting that each of these *Partial Decrees* be set aside, as these rights have been identified as overlapping with water right 22-7507.

Water right 22-7507 was not licensed at the time the *Director's Report* was filed. Therefore, IDWR requested that the uncontested overlaps be set aside and partially decreed with conditions consistent with the license for 22-7507. IDWR reported that consistent conditions are required to assist in administration of these rights.

Presiding Judge John Melanson issued an *Order of Reference Appointing Special Master Brigitte Bilyeu* on March 11, 2009. A hearing on the *Motion to Set Aside Partial Decree* was held August 12, 2009. The claimant Richard Smith did not attend the hearing. However, the Idaho Department of Water Resources did attend and reported to the court.

II. FINDINGS OF FACT

At the hearing, IDWR reported that these uncontested water rights overlap with water right 22-7507, which was not yet licensed at the time the *Director's Report* was filed. However, 22-7507 was recently licensed, and the license affects the uncontested overlapping rights. The conditions of the

overlapping water rights should be modified to accurately reflect the conditions contained in the license for water right 22-7507.

III. CONCLUSIONS AND RECOMMENDATIONS

Therefore, based on the file and record herein, IT IS RECOMMENDED that the *Motion to Set Aside Partial Decree* be **granted** and that these water rights be **decreed** with the elements set forth in the attached *Special Master's Recommendation for Amended Partial Decrees*.

Dated: August 31, 2009.



BRIGETTE BILYEU
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)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 22-02184

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

AUG 31 2009

By _____ Clerk
Deputy Clerk

NAME AND ADDRESS: RICHARD F SMITH
PO BOX 8
REXBURG, ID 83440

SOURCE: GROUND WATER

QUANTITY: 3.55 CFS
1085.00 AFY

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DEPARTMENT OF
WATER RESOURCES

The rights listed below are limited to a total combined diversion rate of 10.17 cfs and to a total combined annual diversion volume of 3899 AF. Combined Right Nos.: 22-2184, 22-2230, 22-7075, 22-11147, 22-11149.
The rights listed below are limited to a total combined diversion rate of 10.85 cfs. Combined Right Nos.: 22-2184, 22-2230, 22-7075, 22-7507, 22-11147, 22-11149.

PRIORITY DATE: 10/03/1960

POINT OF DIVERSION: T06N R40E S28 SWSESW Within Madison County
S33 SWNESW
SENESW

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	3.55 CFS 1085.00 AFY

PLACE OF USE:	Irrigation	Within Madison County
T06N R40E S28	NESW 40.0	NWSW 40.0
	SWSW 40.0	SESW 40.0
	NESE 25.0	NWSE 40.0
	SWSE 35.0	SESE 31.0
S29	SWSE 37.0	SESE 37.0
S32	NWNE 40.0	SWNE 39.0
	NESW 31.0	NWSE 40.0
S33	NENE 23.0	NWNE 40.0
	SWNE 37.0	SENE 37.0
	NENW 40.0	NWNW 40.0
	SWNW 37.0	SENE 40.0
	NESW 33.0	NWSW 39.0
	SWSW 39.0	SESW 37.0
	NESE 40.0	NWSE 40.0
	SWSE 38.0	SESE 39.0
1114.0 Acres Total		

The rights listed below are limited to the irrigation of a combined total of 1114 acres in a single irrigation season. Combined Right Nos.: 22-2184, 22-2230, 22-7075, 22-11147, 22-11149.

This right is limited to the irrigation of 310 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

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Biggie Lilley
SPECIAL MASTER

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

OTHER PROVISIONS (continued)

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

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

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AUG 31 2009

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 22-02230

By _____ Clerk
Deputy Clerk

NAME AND ADDRESS: RICHARD F SMITH
PO BOX 8
REXBURG, ID 83440

SOURCE: GROUND WATER

QUANTITY: 1.68 CFS
518.00 AFY

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DEPARTMENT OF
WATER RESOURCES

The rights listed below are limited to a total combined
diversion rate of 10.17 cfs and to a total combined annual
diversion volume of 3899.0 AF. Combined Right Nos.: 22-2184,
22-2230, 22-7075, 22-11147, 22-11149.
The rights listed below are limited to a total combined diversion
rate of 10.85 cfs. Combined Right Nos.: 22-2184, 22-2230,
22-7075, 22-7507, 22-11147, 22-11149.

PRIORITY DATE: 09/18/1963

POINT OF DIVERSION: T06N R40E S28 S33
SWSESW Within Madison County
SENESE
SWNESE

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	1.68 CFS 518.00 AFY

PLACE OF USE:	Irrigation	Within Madison County
T06N R40E S28	NESW 40.0	NWSW 40.0
	SWSW 40.0	SESW 40.0
	NESE 25.0	NWSE 40.0
	SWSE 35.0	SESE 31.0
S29	SWSE 37.0	SESE 37.0
S32	NWNE 40.0	SWNE 39.0
	NESW 31.0	NWSE 40.0
S33	NENE 23.0	NWNE 40.0
	SWNE 37.0	SENE 37.0
	NENW 40.0	NWNW 40.0
	SWNW 37.0	SENE 40.0
	NESW 33.0	NWSW 39.0
	SWSW 39.0	SESW 37.0
	NESE 40.0	NWSE 40.0
	SWSE 38.0	SESE 39.0
1114.0 Acres Total		

The rights listed below are limited to the irrigation of a
combined total of 1114.0 acres in a single irrigation season.
Combined Right Nos.: 22-2184, 22-2230, 22-7075, 22-11147,
22-11149.
This right is limited to the irrigation of 148.0 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

RECOMMENDATION

AUG 31 2009

Dianna Lilley
SPECIAL MASTER

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

OTHER PROVISIONS (continued)

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

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

AUG 31 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)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 22-07075

NAME AND ADDRESS: RICHARD F SMITH
PO BOX 8
REXBURG, ID 83440

SOURCE: GROUND WATER

QUANTITY: 4.94 CFS
1953.00 AFY

The rights listed below are limited to a total combined diversion rate of 10.17 cfs and to a total combined annual diversion volume of 3899.0 AF. Combined Right Nos.: 22-2184, 22-2230, 22-7075, 22-11147, 22-11149.
The rights listed below are limited to a total combined diversion rate of 10.85 cfs. Combined Right Nos.: 22-2184, 22-2230, 22-7075, 22-7507, 22-11147, 22-11149.

PRIORITY DATE: 07/05/1973

POINT OF DIVERSION: T06N R40E S28 S33 SWSESW Within Madison County
SESESW
SWNESEW

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
Irrigation		05-01 TO 11-01	4.94 CFS 1953.00 AFY

The use of water for irrigation under this right may begin as early as April 1, provided other elements of the right are not exceeded. The use of water before May 15 under this remark is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than the date a partial decree is entered for this right.

PLACE OF USE:	Irrigation	Within Madison County
T06N R40E S28	NESW 40.0	NWSW 40.0
	SWSW 40.0	SESW 40.0
	NESE 25.0	NWSE 40.0
	SWSE 35.0	SESE 31.0
S29	SWSE 37.0	SESE 37.0
S32	NWNE 40.0	SWNE 39.0
	NESW 31.0	NWSE 40.0
S33	NENE 23.0	NWNE 40.0
	SWNE 37.0	SENE 37.0
	NENW 40.0	NWNW 40.0
	SWNW 37.0	SENW 40.0
	NESW 33.0	NWSW 39.0
	SWSW 39.0	SESW 37.0
	NESE 40.0	NWSE 40.0
	SWSE 38.0	SESE 39.0
1114.0 Acres Total		

The rights listed below are limited to the irrigation of a combined total of 1114.0 acres in a single irrigation season. Combined Right Nos.: 22-2184, 22-2230, 22-7075, 22-11147, 22-11149.
This right is limited to the irrigation of 558.0 acres within

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Brigitte Silvey
SPECIAL MASTER

PLACE OF USE (continued)

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
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

AUG 31 2009

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)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 22-11147

By _____ Clerk

Deputy Clerk

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DEPARTMENT OF
WATER RESOURCES

NAME AND ADDRESS: RICHARD F SMITH
PO BOX 8
REXBURG, ID 83440

SOURCE: GROUND WATER

QUANTITY: 0.54 CFS
168.00 AFY

The rights listed below are limited to a total combined
diversion rate of 10.17 cfs and to a total combined annual
diversion volume of 3899.0 AF. Combined Right Nos.: 22-2184,
22-2230, 22-7075, 22-11147, 22-11149.
The rights listed below are limited to a total combined diversion
rate of 10.85 cfs. Combined Right Nos.: 22-2184, 22-2230,
22-7075, 22-7507, 22-11147, 22-11149.

PRIORITY DATE: 04/01/1962

POINT OF DIVERSION: T06N R40E S28 S33
SWSESW Within Madison County
SESESW
SWNESEW

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	0.54 CFS 168.00 AFY

PLACE OF USE:	Irrigation	Within Madison County
T06N R40E S28	NESW 40.0	NWSW 40.0
	SWSW 40.0	SESW 40.0
	NESE 25.0	NWSE 40.0
	SWSE 35.0	SESE 31.0
S29	SWSE 37.0	SESE 37.0
S32	NWNE 40.0	SWNE 39.0
	NESW 31.0	NWSE 40.0
S33	NENE 23.0	NWNE 40.0
	SWNE 37.0	SENE 37.0
	NENW 40.0	NWNW 40.0
	SWNW 37.0	SENE 40.0
	NESW 33.0	NWSW 39.0
	SWSW 39.0	SESW 37.0
	NESE 40.0	NWSE 40.0
	SWSE 38.0	SESE 39.0
1114.0 Acres Total		

The rights listed below are limited to the irrigation of a
combined total of 1114.0 acres in a single irrigation season.
Combined Right Nos.: 22-2184, 22-2230, 22-7075, 22-11147,
22-11149.

This right is limited to the irrigation of 48 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

RECOMMENDATION

AUG 31 2009

Bugelle Lilley
SPECIAL MASTER

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

OTHER PROVISIONS (continued)

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

AUG 31 2009

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 22-11149

By _____ Clerk
Deputy Clerk

NAME AND ADDRESS: RICHARD F SMITH
PO BOX 8
REXBURG, ID 83440

SOURCE: GROUND WATER

QUANTITY: 0.57 CFS
175.00 AFY

The rights listed below are limited to a total combined diversion rate of 10.17 cfs and to a total combined annual diversion volume of 3899.0 AF. Combined Right Nos.: 22-2184, 22-2230, 22-7075, 22-11147, 22-11149.
The rights listed below are limited to a total combined diversion rate if 10.85 cfs. Combined Right Nos.: 22-2184, 22-2230, 22-7075, 22-7507, 22-11147, 22-11149.

PRIORITY DATE: 04/15/1981

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: T06N R40E S28 S33
SWSESW Within Madison County
SENESE
SWNESE

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	0.57 CFS 175.00 AFY

PLACE OF USE:	Irrigation	Within Madison County
T06N R40E S28	NESW 40.0	NWSW 40.0
	SWSW 40.0	SESW 40.0
	NESE 25.0	NWSE 40.0
	SWSE 35.0	SESE 31.0
S29	SWSE 37.0	SESE 37.0
S32	NWNE 40.0	SWNE 39.0
	NESW 31.0	NWSE 40.0
S33	NENE 23.0	NWNE 40.0
	SWNE 37.0	SENE 37.0
	NENW 40.0	NWNW 40.0
	SWNW 37.0	SENW 40.0
	NESW 33.0	NWSW 39.0
	SWSW 39.0	SESW 37.0
	NESE 40.0	NWSE 40.0
	SWSE 38.0	SESE 39.0
1114.0 Acres Total		

The rights listed below are limited to the irrigation of a combined total of 1114.0 acres in a single irrigation season. Combined Right Nos.: 22-2184, 22-2230, 22-7075, 22-11147, 22-11149.

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AUG 31 2009

Bigella Lilley
SPECIAL MASTER

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

This right is based upon an enlargement of Right No. 22-2184 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

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT AND RECOMMENDATION ON MOTION TO SET ASIDE PARTIAL DECREE was mailed on August 31, 2009, with sufficient first-class postage to the following:

RICHARD F SMITH
PO BOX 8
REXBURG, ID 83440
Phone: 208-356-4912

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