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NOV 03 2009

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
NOV - 2 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; FINDINGS OF
Case No. 39576	)	FACT AND CONCLUSIONS OF LAW
	)	
	)	WATER RIGHT NOS.: 22-218, 22-2005,
	)	and 22-13331
_____	)	(Digital Boundary - Cherry Grove Canal Co.)

I. FINDINGS OF FACT

Claims were filed for these water rights pursuant to I.C. § 42-1409. The Director of the State of Idaho Department of Water Resources examined the water system for this reporting area. The *Director's Report* contained recommendations for the elements of these water rights.

Objections were filed by Cherry Grove Canal Co. on July 25, 2007. The *Objections* were resolved with the filing of *Standard Forms 5* on August 14, 2008. All parties to the subcase and IDWR are signatories to the *Standard Forms 5*.

II. ANALYSIS

A. Place of Use/Digital Boundary

The place of use element for this water right is described by a digital boundary rather than by legal description with legal subdivisions such as Township, Range, Section, and Quarter- Quarter designations. The place of use element was changed during the litigation process and differs from the digital boundary on file with IDWR at the time the *Director's Report* was filed.

B. Recommendation for Place of Use Description Using Digital Boundary.

On July 1, 2002, the Idaho Legislature approved the use of digital boundaries for describing the place of use for water rights meeting certain criteria. I.C. § 42-219(2) (licenses) and I.C. § 42-

1411 (2) (h) (*Director's Reports*) Digital boundary descriptions of the place of use rely on Geographic Information System (GIS) mapping technology. This technology provides a description of the place of use for a water right to be identified and visually displayed in a map overlay format through the aid of computer technology.

Digital boundary descriptions of the place of use are permitted for water rights that are for irrigation purposes of use and meet one of the following criteria: (1) used in conjunction with an irrigation project where the canals constructed cover an area of twenty-five thousand (25,000) acres or more; (2) the place of use for the water rights is located within an irrigation district organized pursuant to the laws of the State of Idaho; or (3) the water rights are for an irrigation project developed by an association, company, corporation or the United States to divert and deliver or distribute surface water under any annual charge or rental for beneficial use by more than five (5) water users in an area less than twenty-five thousand (25,000) acres. I.C. § 42-219(2)(5)(6); I.C. § 42-1411 (2) (h)

This water right meets the statutory criteria and may be described by a digital boundary.¹ Therefore, this water right is recommended using a digital boundary and with the following additional language as set forth in the attached *Recommendation for Partial Decree*:

The boundary encompassing the place of use for this water right is described with a digital boundary as defined by I.C. § 42-202B(2) and authorized pursuant to I.C. § 42-1411(2)(h). The data comprising the digital boundary are incorporated herein by reference and are stored on a CD-ROM disk issued in duplicate originals on file with the SRBA District Court and the Idaho Department of Water Resources. A map depicting the place of use is attached hereto to illustrate the place of use described by the digital boundary.

¹ In incorporating a digital boundary into a partial decree, the electronic or digital data is what is actually decreed as opposed to the map generated from the data. The map generated from the data is for illustrative purposes. The digital data is stored on a CD-ROM and is incorporated by reference into the *Special Master's Report and Recommendation* and recommendation for partial decree. Duplicate originals of the CD-ROM will be issued. The SRBA District Court retains one original together with the original partial decree, and the Idaho Department of Water Resources (IDWR) retains the other original. Upon request, the claimant can obtain a copy of the CD-ROM from IDWR at no cost, although GIS software will still be required to access the data. Subsequent administrative changes, if any, to the place of use will also be stored in a digital format and kept on file and maintained by IDWR. IDWR will maintain all computer software and/or hardware necessary for reducing the data to a usable format that is accessible to the general public, including access through the IDWR Internet website (www.idwr.state.id.us) or its successor Uniform Resource Locator (URL).

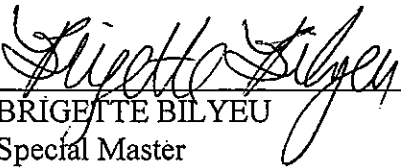
C. Digital Boundary on CD-Rom Filed August 14, 2008

The place of use agreed on by the parties and IDWR is illustrated by the map overlay attached to the *Recommendation for Partial Decree*. The digital boundary for the place of use is described on the CD-Rom filed August 14, 2008.

III. CONCLUSIONS OF LAW

Therefore, based on the file and record herein, IT IS RECOMMENDED that these water rights be decreed with the elements set forth in the attached *Special Master's Recommendations for Partial Decree*.

DATED: November 2, 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)
Case No. 39576)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 22-00218

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

NOV - 2 2009

By _____ Clerk
Deputy Clerk

NAME AND ADDRESS: CHERRY GROVE CANAL CO
C/O PAT O CONNOR
127 W 400 S
VICTOR, ID 83455

SOURCE: DARBY CREEK TRIBUTARY: TETON RIVER

QUANTITY: 0.40 CFS

PRIORITY DATE: 06/01/1897

POINT OF DIVERSION: T04N R46E S17 LOT 1 (SWNWNE) Within Teton County
S18 NESENE

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 10-31	0.40 CFS

PLACE OF USE:

992.3 acres total

Place of use is within the area served by Cherry Grove Canal Company.

A boundary encompassing the place of use for this water right is described with a digital boundary as defined by I.C. Section 42-202B(2) and authorized pursuant to I.C. Section 42-1411(2)(h). The data comprising the digital boundary are incorporated herein by reference and are stored on a CD-ROM disk issued in duplicate originals on file with the SRBA District Court and the Idaho Department of Water Resources. A map depicting the place of use is attached hereto to illustrate the place of use described by the digital boundary.

The rights listed below are limited to the irrigation of a combined total of 992.3 acres in a single irrigation season. Combined Right Nos: 22-96, 22-218, 22-2005, and 22-13331.

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.

RECOMMENDATION

NOV 02 2009

Brietta Silvey
SPECIAL MASTER

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

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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)
)
Case No. 39576)
_____)

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

Water Right 22-02005

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho
NOV - 2 2009
By _____ Clerk Deputy Clerk

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DEPARTMENT OF
WATER RESOURCES

NAME AND ADDRESS: CHERRY GROVE CANAL CO
C/O PAT O CONNOR
127 W 400 S
VICTOR, ID 83455

SOURCE: DARBY CREEK TRIBUTARY: TETON RIVER

QUANTITY: 1.02 CFS

PRIORITY DATE: 12/03/1904

POINT OF DIVERSION: T04N R46E S17 LOT 1 (SWNWNE) Within Teton County
S18 NESENE

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 10-31	1.02 CFS

PLACE OF USE:

992.3 ACRES TOTAL

Place of use is within the area served by Cherry Grove Canal Company.

The boundary encompassing the place of use for this water right is described with a digital boundary as defined by I.C. Section 42-202B(2) and authorized pursuant to I.C. Section 42-1411(2)(h). The data comprising the digital boundary are incorporated herein by reference and are stored on a CD-ROM disk issued in duplicate originals on file with the SRBA District Court and the Idaho Department of Water Resources. A map depicting the place of use is attached hereto to illustrate the place of use described by the digital boundary.

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RECOMMENDATION
NOV 02 2009
<i>Digetha Lilley</i> SPECIAL MASTER

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

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
NOV - 2 2009	
By _____	Clerk Deputy Clerk

In Re SRBA)
Case No. 39576)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 22-13331

NAME AND ADDRESS: CHERRY GROVE CANAL CO
C/O PAT O CONNOR
127 W 400 S
VICTOR, ID 83455

SOURCE: DARBY CREEK TRIBUTARY: TETON RIVER

QUANTITY: 4.40 CFS

PRIORITY DATE: 06/01/1896

POINT OF DIVERSION: T04N R46E S17 LOT 1 (SWNWNE) Within Teton County
S18 NESENE

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DEPARTMENT OF
WATER RESOURCES

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 10-31	4.40 CFS

PLACE OF USE:

992.3 acres total

Place of use is within the area served by Cherry Grove Canal Company.

The boundary encompassing the place of use for this water right is described with a digital boundary as defined by I.C. Section 42-202B(2) and authorized pursuant to I.C. Section 42-1411(2)(h). The data comprising the digital boundary are incorporated herein by reference and are stored on a CD-ROM disk issued in duplicate originals on file with the SRBA District Court and the Idaho Department of Water Resources. A map depicting the place of use is attached hereto to illustrate the place of use described by the digital boundary.

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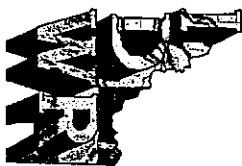
THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

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RECOMMENDATION
NOV 02 2009
<i>Brigette Lilley</i>
SPECIAL MASTER

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



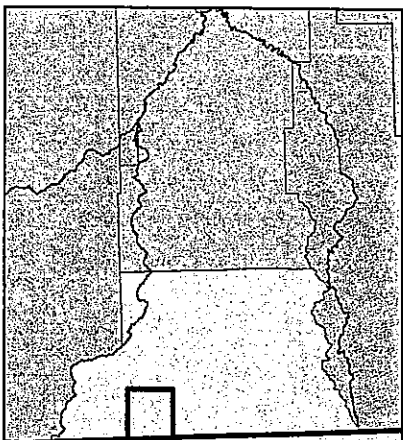
Cherry Grove Canal Co

SRBA Recommendations: 22-96, 22-218, 22-2005, 22-13331

Service Area Boundary
GIS Place of Use Illustration

Legend

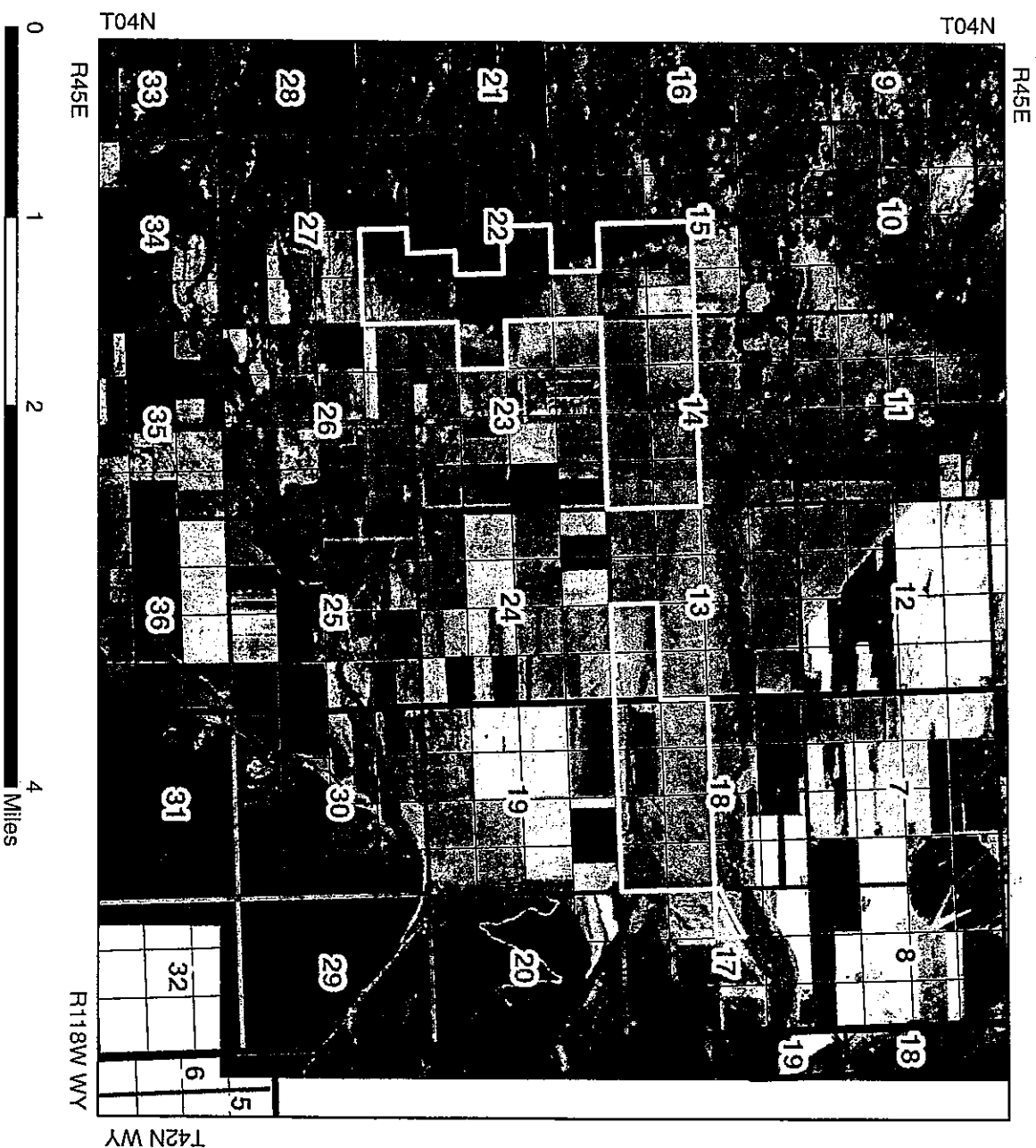
-  Service Area
-  State Outline
-  Townships
-  P.L.S. Sections
-  Quarter Quarters



Teton County

IDWR Basin 22

Prepared by Danielle Favreau
On Thursday, July 17, 2008
1987/88 Aerial Photography



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

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

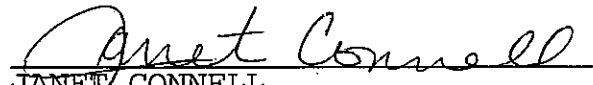
Water Right(s): 22-00218
22-02005 22-13331

On November 02, 2009, Special Master BRIGETTE BILYEU 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 November 02, 2009.


JANET CONNELL
Deputy Clerk

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NOV - 2 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)
Case No. 39576)
_____)

CERTIFICATE OF MAILING

Water Right(s): 22-00218
22-02005 22-13331

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 November 02, 2009, with sufficient first-class postage prepaid to the following:

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

CHERRY GROVE CANAL CO
Represented by:
RAY W. RIGBY
25 N 2ND E
PO BOX 250
REXBURG, ID 83440-0250
Phone: 208-356-3633

CHERRY GROVE CANAL CO
C/O PAT O CONNOR
127 W 400 S
VICTOR, ID 83455
Phone: 208-354-2564

CERTIFICATE OF MAILING


JANET CONNELL
Deputy Clerk

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11/02/09