

RECEIVED

FEB 01 2010

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
JAN 29 2010	
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.: 22-575A, 22-365,
	)	and 22-2057

I. PROCEDURAL BACKGROUND

The SRBA District Court issued *Partial Decrees* for these water rights on November 24, 2008. On February 26, 2009, this court received correspondence from the Idaho Department of Water Resources requesting that each of these *Partial Decrees* be set aside, since these rights overlap with contested water right 22-180A. Water rights 22-575A, 22-365, 22-2057 and 22-180A are all claimed by Gary and Sherry Zohner.

Water right 22-180A is a contested water right. Unfortunately, water right nos. 22-575A, 22-365, and 22-2057 were decreed before the SRBA Court understood that they overlapped water right 22-180A. The resolution of 22-180A requires changes to elements of water right nos. 22-575A, 22-365, and 22-2057. Thus, IDWR asks that the court set aside the partial decrees for these three rights so that the parties can address the Zohner water rights as a complete package.

Presiding Judge John Melanson issued an *Order of Reference Appointing Special Master Brigitte Bilyeu* on February 26, 2009. A hearing on the *Motion to Set Aside Partial Decree* was held July 29, 2009.

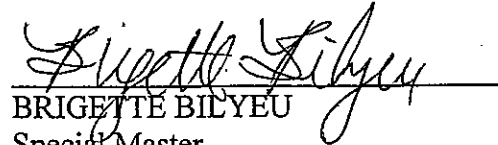
II. FINDINGS OF FACT

At the hearing, IDWR reported that these water rights overlap with water right 22-180A. The resolution of 22-180A will requires changes to these water rights. An Order to Show Cause was issued for water right 22-180A. However, 22-180A was resolved on January 8, 2010 with a letter from Craig Kunz informing the court that he had no objection to 22-180A.

III. CONCLUSIONS AND RECOMMENDATIONS

Therefore, based on the file and record herein, IT IS RECOMMENDED that the *Motion to Set Aside Partial Decrees* 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: January 29, 2010.


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

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

JAN 29 2010

In Re SRBA)
Case No. 39576)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 22-00575A

By _____ Clerk
Deputy Clerk

RECEIVED
FEB 01 2010
DEPARTMENT OF
WATER RESOURCES

NAME AND ADDRESS: GARY ZOHNER
SHERRY ZOHNER
401 W 475 S
VICTOR, ID 83455

SOURCE: PARADISE CREEK TRIBUTARY: TETON RIVER

QUANTITY: 1.00 CFS

This right when combined with all other rights shall provide no
more than 0.02 cfs per acre nor more than 3.5 afa per acre at
the field headgate for irrigation of the lands below.

PRIORITY DATE: 06/01/1892

POINT OF DIVERSION: T04N R45E S20 SWNWSW Within Teton County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 10-31	1.00 CFS

PLACE OF USE:	Irrigation	Within Teton County
	T04N R45E S19	SENE 40.0 NESE 37.0
		NWSE 39.0 SESE 22.0
	S20	SWNW 19.0 NWSW 12.0
	169.0 Acres Total	

The rights listed below are limited to the irrigation of a
combined total of 169 acres in a single irrigation season.
Combined Right Nos.: 22-365, 22-575A, 22-2057.
This right is limited to the irrigation of 80 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
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

JAN 29 2010

Shirley L. Lacey
SPECIAL MASTER

Eric J. Wildman
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
JAN 29 2010
By _____ Clerk Deputy Clerk

In Re SRBA)
Case No. 39576)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 22-00365

RECEIVED

FEB 01 2010

DEPARTMENT OF
WATER RESOURCES

NAME AND ADDRESS: GARY ZOHNER
SHERRY ZOHNER
401 W 475 S
VICTOR, ID 83455

SOURCE: TETON RIVER TRIBUTARY: HENRYS FORK
Point of injection into and point of redirection from Paradise
Creek.

QUANTITY: 2.52 CFS
This right when combined with all other rights shall provide no
more than 0.02 cfs per acre nor more than 3.5 afa per acre at
the field headgate for irrigation of the lands below.

PRIORITY DATE: 07/31/1903

POINT OF DIVERSION: T04N R45E S20 SWNWSW (Rediversion) Within Teton County
SWNWSW (Injection)
NWSESW

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 10-31	2.52 CFS

PLACE OF USE:	Irrigation	Within Teton County
	T04N R45E S19	SENE 40.0 NESE 37.0 SESE 22.0 S20 SWNW 19.0 NWSW 12.0
	169.0 Acres Total	

The rights listed below are limited to the irrigation of a
combined total of 169 acres in a single irrigation season.
Combined Right Nos.: 22-365, 22-575A, 22-2057
This right is limited to the irrigation of 126 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
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RECOMMENDATION
JAN 29 2010
<i>Bridgette Silbey</i> SPECIAL MASTER

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

JAN 29 2010

In Re SRBA)
Case No. 39576)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 22-02057

By _____ Clerk
_____ Deputy Clerk

RECEIVED

FEB 01 2010

DEPARTMENT OF
WATER RESOURCES

NAME AND ADDRESS: GARY ZOHNER
SHERRY ZOHNER
401 W 475 S
VICTOR, ID 83455

SOURCE: TETON RIVER TRIBUTARY: HENRYS FORK

Point of injection into and point of redirection from Paradise
Creek.

QUANTITY: 0.86 CFS

This right when combined with all other rights shall provide no
more than 0.02 cfs per acre nor more than 3.5 afa per acre at the
field headgate for irrigation of the lands below.

PRIORITY DATE: 03/27/1911

POINT OF DIVERSION: T04N R45E S20 SWNWSW (Rediversion) Within Teton County
SWNWSW (Injection)
NWSSEW

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 10-31	0.86 CFS

PLACE OF USE:	Irrigation	Within Teton County
	T04N R45E S19	SENE 40.0 NESE 37.0 SESE 22.0 NWSW 12.0
	S20	SWNW 19.0
	169.0 Acres Total	

The rights listed below are limited to the irrigation of a
combined total of 169 acres in a single irrigation season.
Combined Right Nos.: 22-365, 22-575A, 22-2057
This right is limited to the irrigation of 43 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
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RECOMMENDATION

JAN 29 2010

Bridgette Silvey
SPECIAL MASTER

RECEIVED

FEB 01 2010

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho
JAN 29 2010
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): 22-00365
22-00575A 22-02057

On January 29, 2010, 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 January 29, 2010.


JANET CONNELL
Deputy Clerk

RECEIVED

FEB 01 2010

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho
JAN 29 2010
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): 22-00365
22-00575A 22-02057

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 January 29, 2010, with sufficient first-class postage prepaid to the following:

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

GARY ZOHNER
SHERRY ZOHNER
401 W 475 S
VICTOR, ID 83455
Phone: 208-354-2537


JANET CONNELL
Deputy Clerk

CERTIFICATE OF MAILING

PAGE 1
01/29/10