

*John A. Rosholt
Albert P. Barker
John K. Simpson
Travis L. Thompson
Shelley M. Davis
Paul L. Arrington
Scott A. Magnuson*



195 River Vista Pl., Suite 204
Twin Falls, ID 83301-3029
(208) 733-0700 telephone
(208) 735-2444 facsimile

1010 W. Jefferson St., Suite 102
P.O. Box 2139
Boise, ID 83701-2139
(208) 336-0700 telephone
(208) 344-6034 facsimile
brs@idahowaters.com

Travis L. Thompson
tlt@idahowaters.com

January 21, 2016

RECEIVED

JAN 21 2016

DEPT OF WATER RESOURCES
SOUTHERN REGION

VIA HAND DELIVERY

Mr. Allen Merritt
Idaho Dept. of Water Resources
Southern Regional Office
650 Addison Ave. W., Suite 500
Twin Falls, Idaho 83301-5858

**Re: Notice of Change of Ownership Water Rights 37-444, 37-2541, and 37-7636A
(H. Philip Cash) / Request for Hearing Pursuant to I.C. § 42-1701A(3)**

Dear Allen:

My client H. Philip Cash received correspondence from the state office (Jean Hersley letter January 7, 2016) concerning an attempted change in ownership of his water rights. Mr. Cash's former wife, Judy Cash, apparently filed the form with the southern regional office on December 28, 2015, claiming ownership of part of the water rights based upon an alleged Quitclaim Deed from 2002. The processing of the application was in error and Mr. Cash requests that the Department immediately withdraw the proposed "split" of the water rights and return the application and filing fee to Ms. Cash.

First, Mr. Cash disputes the authenticity of the Quitclaim Deed. I have not had time to research the matter with the Camas County Recorder's office, but plan to do so. At a minimum, the evidentiary dispute concerning this deed is sufficient to warrant withdrawal of the notice of change of ownership that was processed by the Department.

Second, even assuming for argument's sake that the deed is valid (which Mr. Cash does not concede), it is undisputed that Ms. Cash failed to timely notify the Department in 2002 as required by Idaho law. *See* Idaho Code § 42-1409(6) ("All claimants and purchasers shall provide the director written notice of any change in ownership . . . during the pendency of a general adjudication") (emphasis added).

Further, Ms. Cash failed to timely claim her alleged ownership in the Snake River Basin Adjudication (SRBA). Ms. Cash had an obligation to raise any alleged claims to the water rights in the adjudication, which constitutes a quiet title proceeding regarding the rightful ownership of the water rights. She did not. The Court decreed the water rights solely to Mr. Cash in 2010. *See Ex. A.* The partial decrees represent final judgments issued pursuant to I.R.C.P. 54(b).

The SRBA Court's partial decrees are "conclusive" as to nature and extent of the water rights' ownership. *See* Idaho Code § 42-1420(1). Since Ms. Cash failed to file her own claims or object to Mr. Cash's, she is barred from claiming any ownership now, including before the Department through a notice of change of ownership application. *See Markin v. Grohmann*, 153 Idaho 223, 227 (2012) ("When a cause of action is merged into the judgment, the cause of action is extinguished"); *Taylor v. Riley*, 157 Idaho 323, 331 (2014) ("The prior adjudication 'extinguishes all claims arising out of the same transaction or series of transactions out of which the cause of action arose.'"). If Ms. Cash disagrees with the final judgments regarding the water rights owned by my client, she must file the appropriate motions with the SRBA District Court. Until further order from the Court, the Department must recognize the decrees as issued.

In sum, IDWR has no authority to split the water rights as requested by Ms. Cash. As such, please withdraw the water right "splits" identified in the January 7, 2016 letter and return the application and filing fee to Ms. Cash. Further, I would request confirmation that Department recognizes the water rights are still held in my client's name only as decreed by the SRBA Court.

If the Department refuses this request, my client, through this letter, exercises his right pursuant to Idaho Code § 42-1701A(3) to request a hearing before the Director to contest the Department's actions. However, since there is no basis for the notice of change of ownership filed by Ms. Cash, I presume the Department will comply with my client's request and there will be no need for the hearing.

Given the related issues regarding these water rights (recent water bank application, request for extension of time to avoid forfeiture) we request IDWR to resolve this pending matter as soon as possible, including well in advance of the 2016 irrigation season.

If you have any questions please call me at 733-0700.

Sincerely,

BARKER ROSHOLT & SIMPSON LLP



Travis L. Thompson

Enc.

Mr. Allen Merritt
January 21, 2016
Page - 3

cc: Phil Cash, **via email only**
Director Gary Spackman, State Office, **via email only**
Garrick Baxter, Deputy AG, **via email only**
Ms. Judy Cash

Exhibit A

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 37-00444

NAME AND ADDRESS: H PHILLIP CASH
RT 1 BOX 1092
FAIRFIELD, ID 83327

SOURCE: CAMAS CREEK TRIBUTARY: BIG WOOD RIVER

QUANTITY: 4.00 CFS

The quantity of water under this right for stockwater use shall
not exceed 13,000 gallons per day.

PRIORITY DATE: 07/15/1887

POINT OF DIVERSION: T01S R1SE S28 SENWSE Within Camas County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 10-31	4.00 CFS
	Stockwater	01-01 TO 12-31	0.02 CFS

PLACE OF USE:	Irrigation	Within Camas County
T01S R1SE S27	NENW 20.0	NWNW 31.0
	SWNW 24.0	SENW 33.0
	NESW 40.0	NWSW 35.0
S28	NENE 39.0	NWNE 40.0
	SWNE 31.0	SENE 22.0
	NESE 33.0	NWSE 25.0
	SWSE 35.0	SESE 37.0
445.0 Acres Total		
Stockwater		Within Camas County
T01S R1SE S27	NENW	NWNW
	SWNW	SENW
	NESW	NWSW
S28	NENE	NWNE
	SWNE	SENE
	NESE	NWSE
	SWSE	SESE

This right is limited to the irrigation of 314 acres within the
place of use described above in a single irrigation season.
The rights listed below are limited to the irrigation of a
combined total of 445 acres in a single irrigation season.
Combined Right Nos.: 37-444, 37-2541, and 37-7636A.

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

THIS WATER RIGHT SHALL BE ADMINISTERED AS BEING FROM A SEPARATE
SOURCE PURSUANT TO BASIN 37 PART 2 GENERAL PROVISION NO. 1A. IF
THE HOLDER OF THIS RIGHT SEEKS TO CHANGE THE RIGHT PURSUANT TO
IDAHO CODE SEC. 42-222 OR SUCCESSOR STATUTE, NOTHING IN THIS
GENERAL PROVISION SHALL PRECLUDE ANY OTHER PERSON OR ENTITY FROM
DEMONSTRATING THAT SUCH A CHANGE IN USE WOULD CAUSE INJURY TO ITS
WATER RIGHT OR FROM RECEIVING ANY RELIEF PROVIDED BY LAW IN THE
EVENT OF INJURY

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

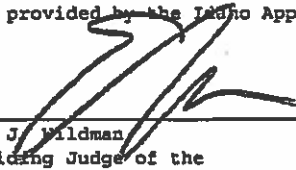
SRBA Partial Decree Pursuant to I.R.C.P. 54(b) (continued)

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.



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

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 37-02541

NAME AND ADDRESS: H PHILLIP CASH
RT 1 BOX 1092
FAIRFIELD, ID 83327

SOURCE: GROUND WATER

QUANTITY: 0.20 CFS
35.00 AFY

The quantity of water under this right for domestic use shall
not exceed 13,000 gallons per day.

PRIORITY DATE: 08/06/1953

POINT OF DIVERSION: T01S R15E S27 NWNENW Within Camas County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 10-31	0.20 CFS
			35.00 AFY
	Domestic	01-01 TO 12-31	0.04 CFS
			1.20 AFY

PLACE OF USE:	Irrigation		Within Camas County
	T01S R15E S27	NENW 20.0	NWNW 31.0
		SNNW 24.0	SENW 33.0
		NESW 40.0	NWSW 35.0
	S28	NENE 39.0	NWNE 40.0
		SWNE 31.0	SENE 22.0
		NESE 33.0	NWSE 25.0
		SWSE 35.0	SESE 37.0
	445.0 Acres Total		
	Domestic		Within Camas County
	T01S R15E S27	NENW	NWNW

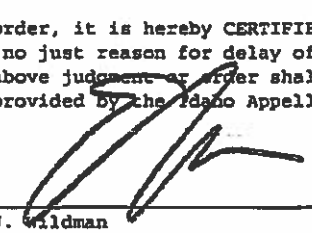
This right is limited to the irrigation of 10 acres within the
place of use described above in a single irrigation season.
The rights listed below are limited to the irrigation of a
combined total of 445 acres in a single irrigation season.
Combined Right Nos.: 37-444, 37-2541, and 37-7636A.

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.



Eric J. Wildman
Presiding Judge of the
Snake River Basin Adjudication

NAME AND ADDRESS: H PHILLIP CASH
RT 1 BOX 1092
FAIRFIELD, ID 83327

PAGE 1
Jul-06-2010