

ORIGINAL IN RED

James P. Speck, Esq. ISB #2067

SPECK & AANESTAD

A Professional Corporation

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Attorneys for Joel S. Andersen and Jason Joel Andersen

RECEIVED

JAN 27 2015

Department of Water Resources
Eastern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)	PETITION FOR RECONSIDERATION
FOR TRANSFER NO. 79006 IN THE)	OF ORDER GRANTING PETITION
MARSHALL AND NORMA PERKES)	FOR RECONSIDERATION
_____)	

Joel S. Andersen and Jason Joel Andersen, by and through their attorney of record, James P. Speck, of the law firm of Speck & Aanestad, A professional Corporation, hereby petitions the Idaho Department of Water Resources (the "Department") to reconsider the amended approval of the Transfer of Water Right herein pursuant to the Order Granting Petition for Reconsideration issued by Hearing Officer James Cefalo on January 13, 2015 (the "Order") as follows:

1. Water Rights Nos. 34-7096A, 34-7097A and 34-7223 each include a Condition of Approval that states, "Water is delivered through the Timberdome Canal." Copies of the Orders of Partial Decree for each of these water rights, as issued by the SRBA District Court on September 15, 2002 are attached hereto as Exhibits A, B and C, respectively. No such condition is included in any of these Partial Decrees.

2. Water Rights Nos. 34-7096A and 34-7097A are, pursuant to an exchange agreement, diverted from a well on land owned by Jason Joel Andersen and used to irrigate a portion of that same land. No water from this well is now or ever has been delivered into and carried by the Timberdome Canal.

3. Water Right No. 34-7223 is, pursuant to an exchange agreement, diverted from a well on land owned by Joel S. Andersen and used to irrigate a portion of that land. No water from this well is now or ever has been delivered into and carried by the Timberdome Canal.

4. Counsel for Perkes, in their Perkes Response to Petitions for Reconsideration filed

herein, properly cited the recent Idaho Supreme Court decision in *Telford Lands LLC v. Cain*, 158 Idaho 981 (2013), for the proposition that non-mandatory conditions of approval may be included in a water right transfer that inform the Watermaster of conditions that actually exist as of the date of transfer approval. In that case, the condition stated "Water delivered through the Moore Diversion and Timberdome Canal" and described the actual means of delivery of the water right in question at the time of the transfer approval. In stark contrast, that is simply NOT the case in this matter for Water Rights Nos. 34-7096A, 34-7097A and 34-7223.

5. Perkes other ground water rights that are part of this Transfer (34-7122A and 34-7035A) include the same Condition of Approval No. 10. Unlike 34-7096A, 34-7097A and 34-7223, these two ground water rights ARE, IN FACT, delivered through the Timberdome Canal. The Condition is appropriate for those rights, but NOT for 34-7096A, 34-7097A and 34-7223. This inconsistent use of Condition of Approval No. 10 results in even more ambiguity and confusion when it is made part of the approval for 34-7096A, 34-7097A and 34-7223.

6. Condition of Approval No. 10 for each of Water Rights Nos. 34-7096A, 34-7097A and 34-7223, which states, "Water is delivered through the Timberdome Canal.", must therefore be deleted.

SPECK & AANESTAD,
A Professional Corporation

DATED: 1-27-15


James P. Speck

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of January, 2015, I served a true and correct copy of the foregoing PETITION FOR RECONSIDERATION on the following persons in the manner designated below:

Idaho Dept. of Water Resources
900 North Skyline Drive, Suite A
Idaho Falls, ID 83402-1718

☒ United States Mail, Postage Prepaid
☐ Hand Delivery
☒ Facsimile

Robert L. Harris
Holden Kidwell Hahn & Crapo
P.O. Box 50130
Idaho Falls, ID 83405-0130

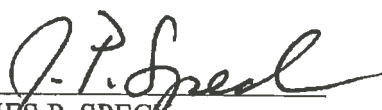
☒ United States Mail, Postage Prepaid
☐ Hand Delivery
☒ Facsimile

Kirby A. Jensen
2781 N 3375 W
Moore, ID 83255

☒ United States Mail, Postage Prepaid
☐ Hand Delivery
☐ Facsimile

Don Cain Sr.
P.O. Box 927
Moore, ID 83255

☒ United States Mail, Postage Prepaid
☐ Hand Delivery
☐ Facsimile


JAMES P. SPECK

202 FEB 15 PM 12: 23

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

**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

)
)
)
)
ORDER OF PARTIAL DECREE

For Water Right 34-07096A

On December 3, 2001, the Idaho Department of Water Resources (IDWR) filed a *Notice of Completed Administrative Proceeding* and an attached *Amended Director's Report* for the above water right. No objections to this recommendation were filed and the time period for filing objections has now expired. On February 11, 2002, IDWR filed a clarification of the December 3, 2001, *Amended Director's Report*. Based on the nature and content of the clarification the Court finds no reason to delay entry of partial decree.

Therefore, IT IS ORDERED that water right 34-07096A is hereby **decreed** as set forth in the attached *Partial Decree Pursuant to I.R.C.P. 54(b)*.

DATED: 2-14-02



ROGER S. BURDICK
Presiding Judge
Snake River Basin Adjudication

In Re SRBA

Case No. 39576

200 FEB 15 PM 12: 23
DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED _____

PAGE 1
Feb-15-2002

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.



Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

2002 FEB 15 PM 02:00
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

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): 34-07096A

CERTIFICATE OF MAILING

I certify that a true and correct copy of the PARTIAL DECREE
PURSUANT TO I.R.C.P. 54(b) for WATER RIGHT 34-07096A was mailed
on February 15, 2002, with sufficient first-class postage prepaid
to the following:

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

TODD M PERKES
Represented by:
KENT W FOSTER
PO BOX 50130
IDAHO FALLS, ID 83405
Phone: 208-523-0620

ROBBIN GLATZ
Chief Deputy Clerk

CERTIFICATE OF MAILING

PAGE 1
02/15/02

RECEIVED

FEB 19 2002

Department of Water Resources

2002 FEB 15 PM 12: 22

DISTRICT COURT-SRBA
TWIN FALLS, IDAHO
FILED

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

)
)
)
)
ORDER OF PARTIAL DECREE

For Water Right 34-07097A

On December 3, 2001, the Idaho Department of Water Resources (IDWR) filed a *Notice of Completed Administrative Proceeding* and an attached *Amended Director's Report* for the above water right. No objections to this recommendation were filed and the time period for filing objections has now expired. On February 11, 2002, IDWR filed a clarification of the December 3, 2001, *Amended Director's Report*. Based on the nature and content of the clarification the Court finds no reason to delay entry of partial decree.

Therefore, IT IS ORDERED that water right 34-07097A is hereby decreed as set forth in the attached *Partial Decree Pursuant to I.R.C.P. 54(b)*.

DATED: 2-14-02

R. S. Burdick
ROGER S. BURDICK
Presiding Judge
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 34-07097A

2002 FEB 15 PM 12:22

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

NAME AND ADDRESS: TODD M PERKES
RT 1 BOX 69
MOORE, ID 83255

SOURCE: GROUNDWATER

QUANTITY: 1.58 CFS
276.50 AFY

USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 5.0 CFS AND TO A TOTAL
COMBINED ANNUAL DIVERSION VOLUME OF 878.5 AF.
COMBINED RIGHT NOS.: 34-07096A, 34-7097A, 34-7223

PRIORITY DATE: 01/31/1975

POINT OF DIVERSION: T04N R26E S08 NESWSE Within Butte County
S17 NWSENW

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	1.58 CFS 276.50 AFY

PLACE OF USE:	Irrigation	Within Butte County
	T03N R25E S01 LOT 01 (NENE) 33.0	LOT 02 (NWNE) 33.0
	SWNE 33.0	SENE 33.0
	T04N R25E S25	NENW 33.0
	SWNW 33.0	NWNW 33.0
	NESW 40.0	SENE 40.0
	SWSW 33.0	NWSW 33.0
	NESE 33.0	SESE 39.0
	SWSE 39.0	NWSE 40.0
		SESE 33.0
	561.0 Acres Total	

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 79 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.



Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

2002 FEB 15 PM 02:00
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

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): 34-07097A

CERTIFICATE OF MAILING

I certify that a true and correct copy of the PARTIAL DECREE
PURSUANT TO I.R.C.P. 54(b) for WATER RIGHT 34-07097A was mailed
on February 15, 2002, with sufficient first-class postage prepaid
to the following:

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

TODD M PERKES
Represented by:
KENT W FOSTER
PO BOX 50130
IDAHO FALLS, ID 83405
Phone: 208-523-0620

ROBBIN GLATZ
Chief Deputy Clerk

CERTIFICATE OF MAILING

PAGE 1
02/15/02

RECEIVED

FEB 19 2002

Department of Water Resources

2002 FEB 15 PM 12:23

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

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

ORDER OF PARTIAL DECREE

For Water Right(s) 34-07223

On October 15, 2001, the Idaho Department of Water Resources (IDWR) filed a *Notice of Completed Administrative Proceeding* and an attached *Amended Director's Report* for the above water right. No objections to this recommendation were filed and the time period for filing objections has now expired. On February 11, 2002, IDWR filed a clarification of the October 15, 2001, *Amended Director's Report*. Based on the nature and content of the clarification the Court finds no reason to delay entry of partial decree.

Therefore, IT IS ORDERED that water right 34-07223 is hereby decreed as set forth in the attached *Partial Decree Pursuant to I.R.C.P. 54(b)*.

DATED: 2-14-02



ROGER S. BURDICK
Presiding Judge
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 34-07223

2002 FEB 15 PM 12:23
DISTRICT COURT-SRBA
TWIN FALLS CO, IDAHO
FILED

NAME AND ADDRESS: TODD M PERKES
RT 1 BOX 69
MOORE, ID 83255

SOURCE: GROUNDWATER

QUANTITY: 1.58 CFS
280.00 AFY

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 5.0 CFS AND TO A TOTAL
COMBINED ANNUAL DIVERSION VOLUME OF 878.5 AF.
COMBINED RIGHT NOS.: 34-07096A, 34-07097A, 34-7223.

PRIORITY DATE: 04/16/1979

POINT OF DIVERSION: T04N R26E S08 NESWSE Within Butte County
S17 NWSNW

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 11-01	1.58 CFS 280.00 AFY

PLACE OF USE:	Irrigation	Within Butte County
	T03N R25E S01 LOT 01 (NENE) 33.0	LOT 02 (NWNE) 33.0
	SWNE 33.0	SENE 33.0
	T04N R25E S25 NENW 33.0	NWNW 33.0
	SWNW 33.0	SENW 40.0
	NESW 40.0	NWSW 33.0
	SWSW 33.0	SESW 39.0
	NESE 33.0	NWSE 40.0
	SWSE 39.0	SESE 33.0
	561.0 Acres Total	

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.



Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

2002 FEB 15 PM 02:00
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

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): 34-07223

CERTIFICATE OF MAILING

I certify that a true and correct copy of the PARTIAL DECREE
PURSUANT TO I.R.C.P. 54(b) for WATER RIGHT 34-07223 was mailed
on February 15, 2002, with sufficient first-class postage prepaid
to the following:

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

STATE OF IDAHO
Represented by:
CLIVE STRONG
NATURAL RESOURCES
DEP AG OFFICE OF ATTY GEN
STATEHOUSE MAIL
BOISE, ID 83720-0010
Phone: 208-334-2400

TODD M PERKES
Represented by:
KENT W FOSTER
PO BOX 50130
IDAHO FALLS, ID 83405
Phone: 208-523-0620

CERTIFICATE OF MAILING

PAGE 1
02/15/02

J DOYLE JENSEN
KIRBY A JENSEN
Represented by:
NORMAN M. SEMANKO
ATTORNEY AT LAW
410 S ORCHARD, STE 144
BOISE, ID 83705
Phone: 208-344-6690

BIG LOST RIVER WTR USERS ASSN
Represented by:
WILLIAM R HOLLIFIELD
249 THIRD AVENUE EAST (83301)
PO BOX 66
TWIN FALLS, ID 83303-0066
Phone: 208-734-5610

ROBBIN GLATZ
Chief Deputy Clerk

SPECK & AANESTAD
A PROFESSIONAL CORPORATION
ATTORNEYS

JAMES P. SPECK
jim@speckandaanestad.com
DOUGLAS J. AANESTAD
doug@speckandaanestad.com

120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340

TELEPHONE
(208) 726-4421
FACSIMILE
(208) 726-0752

January 27, 2015

IDWR
Eastern Regional Office
900 N. Skyline Drive, Suite A
Idaho Falls, Idaho 83402-1718

RECEIVED
JAN 28 2015
Department of Water Resources
Eastern Region

Re: In the Matter of Application for Transfer No. 79006 in The Marshall and Norma Perkes - Petition for Reconsideration of Order Granting Petition for Reconsideration

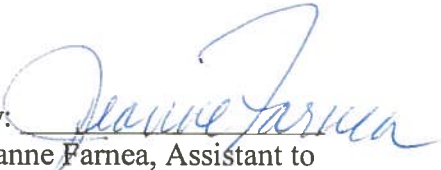
Dear Clerk:

Enclosed is the *original* and one copy of the Petition for Reconsideration of Order Granting Petition for Reconsideration which was faxed to your office today. Please receipt date-stamp the copy and return it to our office in the postage prepaid self-addressed envelope provided for that purpose.

Please call if you have any questions. Thank you.

Sincerely,

SPECK & AANESTAD
A Professional Corporation

By: 
Jeanne Farnea, Assistant to
James P. Speck

Enclosure