

SEP 30 2009

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

PETITION FOR RECONSIDERATION

PETITION FOR RECONSIDERATION - Page 1

Memorandum

I. Statement of facts.

On or about September 6, 2005, Petitioners submitted Transfer Application Nos. 73775 and 73776 for the use of two surface water rights (2-202A and 57-7100) in pivots. Although there is also a separate ground water right associated with their property (57-7051A), it was not intended that this ground water right be used in the pivots. Water Right No. 57-7051A is in the Water Supply Bank.

The subject Transfer Approvals include as Condition No. 3 a combined use limitation with Water Right No. 2-10201, owned by another party and recently decreed in the SRBA on this other party's land. A copy of the SRBA Decree for Water Right No. 2-10201 is attached hereto as Exhibit A. Because there is no overlap between the decreed place of use for 2-10201 with the old or new places of use for Water Right Nos. 2-202A and 57-7100, this condition should be deleted from the Transfer Approvals.

The Transfer Approvals' Condition No. 4 includes combined use limitations for Water Right No. 57-7051A with Water Right Nos. 2-202A/57-7100, apparently based on the presumption that when withdrawn from the Water Supply Bank ground Water Right No. 57-7051A would also be used in the pivots. However, that is not the intention as this water right was excluded in these Transfer Applications. Accordingly, any combined use limitations with this ground water right should be based on the pre-Transfer SRBA Partial Decrees for the respective water rights (copies of which are attached hereto as Exhibits B, C and D). Overlap

with 57-7051A could be appropriately revised when (and if) a subsequent Transfer Application is filed to change the place of use of this ground water right to the pivot ground.

II. Condition No. 3 in Both Transfer Approvals Regarding Combined Use with Decreed Water Right No. 2-10201 Should Be Deleted as there is No Overlap and that Water Right is Associated with Other Property and Owned by Another Party.

The record in this matter includes information from the County indicating that the ground associated with decreed Water Right No. 2-10201 is owned by another party, not the Cantrells. Further, when the SRBA Partial Decree for Water Right No. 2-10201 is compared with the Transfer Approvals' permissible place of use, there appears to be at most a 0.5 acre overlap in the places of use in Lot 2 (NWNW) of Section 31, Township 5 South, Range 4 East. This minimal overlap could be addressed by reducing the Transfer Approvals' permissible place of use by 0.5 acres at this location. This revision would remove any possibility of overlap with Water Right No. 2-10201 as decreed. This revision also would reflect the different ownership of this water right and the fact that this water right is not used on the Cantrells' property, but is associated with adjacent property. This revision would also mean that Condition No. 3 could be deleted in its entirety.

III. Condition No. 4 on Both Transfer Approvals is Based on the Incorrect Supposition that Ground Water Right No. 57-7051A Will Be Used in the Pivots Which is not Intended and Would Require a Separate Transfer Approval in Any Event.

Condition No. 4 apparently is based on the post-Transfer overlaps with the decreed place of use for Water Right no. 57-7051A. However, the water rights have never actually been used in combination in this fashion, nor is such combined use intended. Thus, it is improper to deem Water Right No. 57-7051A to be supplementary to the two surface water rights on this basis. If Petitioners had intended to use Water Right No. 57-7051A in the pivots, they also would have included this water right in the Transfer Applications. In any event, if they were to do this in the

future a new transfer application would need to be filed. At that time a condition like Condition 4 could be imposed. However, it is inappropriate to impose a condition prospectively based on a speculative and unintended outcome.

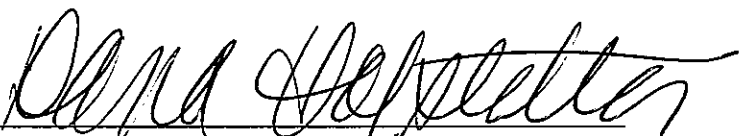
On the other hand, Petitioners recognize that there may be some historic overlap with Water Right No. 57-7051A based on the respective SRBA Partial Decrees. Thus, Petitioners believe that any combined use limitations with Water Right No. 57-7051A in the Transfer Approvals should be based on historic overlap, as reflected in the respective SRBA Partial Decrees. Alternatively, the general condition limiting the water rights to combined use of 0.02 cfs per acre with all other rights (Condition No. 7) is sufficient.

IV. Conclusion.

For the foregoing reasons, the Transfers should be amended by the deletion of Condition Nos. 3 and 4.

DATED this 30th day of September, 2009.

HOFSTETTER LAW OFFICE, LLC

By 
Dana L. Hofstetter, for the firm
Attorney for Ted and Sandy Cantrell

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of September, 2009, I caused a true copy of the foregoing **PETITION FOR RECONSIDERATION** to be served by the method(s) indicated on the following:

Original to:

Director
Idaho Department of Water Resources
The Idaho Water Center
322 East Front Street
Boise, Idaho 83702
☐ U.S. Mail ☐ Fed Ex ☒ Hand ☐ Fax

Copy to:

John Westra
Western Region
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☒ Fax


DANA L. HOFSTETTER

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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 02-10201

NAME AND ADDRESS: TRIANGLE DAIRY INC
PO BOX 7526
BOISE, ID 83707

SOURCE: SNAKE RIVER TRIBUTARY: COLUMBIA RIVER

QUANTITY: 0.83 CFS
189.00 AFY

PRIORITY DATE: 07/23/1974

POINT OF DIVERSION: T05S R04E S34 LOT 9 (SESW) Within Owyhee County

PURPOSE AND
PERIOD OF USE: PURPOSE OF USE PERIOD OF USE QUANTITY
Irrigation 03-15 TO 11-15 0.83 CFS
189.00 AFY

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

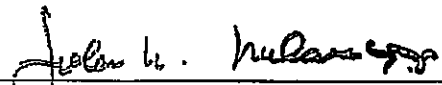
PLACE OF USE: Irrigation Within Owyhee County
T05S R03E S36 NWSW 4.0
R04E S31 NWNW 0.5 SWNW 8.0
SESW 3.5 NESW 2.0
NWSW 24.0
42.0 Acres Total

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



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 02-00202A

NAME AND ADDRESS: SANDRA K CANTRELL
THEODORE E CANTRELL
28294 RIVER RD
BRUNEAU, ID 83604-5106

SOURCE: SNAKE RIVER TRIBUTARY: COLUMBIA RIVER

QUANTITY: 1.10 CFS

PRIORITY DATE: 06/01/1912

POINT OF DIVERSION: T05S R04E S34 LOT 10 (NWSW) Within Owyhee County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-15 TO 10-31	1.10 CFS

PLACE OF USE:	Irrigation	Within Owyhee County
	T05S R04E S31	SWNE 8.0 LOT 2 (NWNW) 2.0
	LOT 3 (SWNW) 15.0	SENE 18.0
	NESW 3.0	NWSE 14.0
	60.0 Acres Total	

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

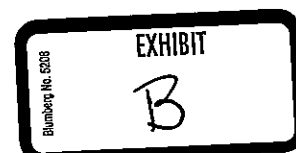
THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

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

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

In Re SRBA
Case No. 39576

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 57-07100

1997 DEC 15 PM 3:10

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

FILED _____

NAME & ADDRESS: TRACY SILVER
TERESA SILVER
3954 TRACK RD
MELBA ID 83641

SOURCE: SHOOFLY CREEK

TRIBUTARY: SNAKE RIVER

QUANTITY: 1.06 CFS

USE OF THIS RIGHT WITH RIGHT NO. 57-07051A IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 2.55 CFS AND TO A TOTAL
COMBINED ANNUAL DIVERSION VOLUME OF 508.5 AF.

PRIORITY DATE: 03/29/1973

POINT OF DIVERSION: T05S R03E S25

SWSW

Within OMYHEE County

PURPOSE AND
PERIOD OF USE: PURPOSE OF USE
IRRIGATION

PERIOD OF USE
Irrigation Season

QUANTITY
1.06 CFS

PLACE OF USE: IRRIGATION Within OMYHEE County
T05S R04E S30 Lot 9 (SWSW) 5
S31 Lot 2 (NNWW) 48
53 ACRES TOTAL

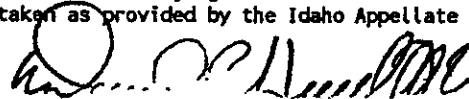
USE OF THIS RIGHT WITH RIGHT NO. 57-07051A IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 113 ACRES IN A SINGLE
IRRIGATION SEASON.

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

RIGHTS HAVE ALSO BEEN CLAIMED TO WATER FROM BASIN 02 FOR THE
SAME PURPOSE OF USE AT THE SAME PLACE OF USE DESCRIBED ABOVE,
WHICH WILL BE INCLUDED IN A DIRECTOR'S REPORT TO BE FILED AT A
LATER DATE. ANY WATER RIGHTS RECOMMENDED IN THE BASIN 02 REPORT
FOR THE SAME PURPOSE OF USE AT THE SAME PLACE OF USE DESCRIBED
ABOVE WILL CONTAIN COMBINED USE LIMITATIONS FOR THIS RIGHT AND
THE BASIN 02 RIGHTS.

RULE 54(b) CERTIFICATE

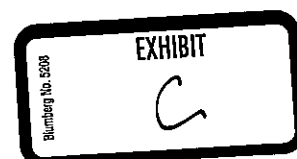
With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance
with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a
final judgment and that the court has and does hereby direct that the above judgment 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.



DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 57-07100

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DEC-4-1997



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 57-07051A

1997 DEC 15 PM 3:10

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

FILED _____

NAME & ADDRESS: TRACY SILVER
TERESA SILVER
3954 TRACK RD
MELBA ID 83641

SOURCE: GROUNDWATER

QUANTITY: 1.49 CFS

USE OF THIS RIGHT WITH RIGHT NO. 57-07100 IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 2.55 CFS AND TO A TOTAL
COMBINED ANNUAL DIVERSION VOLUME OF 508.5 AF.

PRIORITY DATE: 10/23/1967

POINT OF DIVERSION: T05S R04E S31 SWNE Within Owyhee County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	IRRIGATION	Irrigation Season	1.49 CFS

PLACE OF USE:	IRRIGATION	Within Owyhee County
	T05S R04E S31	SWNE 25 MNW 18 SENW 17
	60 ACRES TOTAL	

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

RIGHTS HAVE ALSO BEEN CLAIMED TO WATER FROM BASIN 02 FOR THE
SAME PURPOSE OF USE AT THE SAME PLACE OF USE DESCRIBED ABOVE,
WHICH WILL BE INCLUDED IN A DIRECTOR'S REPORT TO BE FILED AT A
LATER DATE. ANY WATER RIGHTS RECOMMENDED IN THE BASIN 02 REPORT
FOR THE SAME PURPOSE OF USE AT THE SAME PLACE OF USE DESCRIBED
ABOVE WILL CONTAIN COMBINED USE LIMITATIONS FOR THIS RIGHT AND
THE BASIN 02 RIGHTS.

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DANIEL C. HURLBUTT, JR.
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