

In Re SRBA) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 36-15264B

BRUCE HUNSAKER
DEON COOK
REBECCA HUNSAKER
501 RIVERSIDE DR
BURLEY, ID 83318

QUANTITY: 0.71 CFS
216.00 AFY

PRIORITY DATE: 08/04/1979

POINT OF DIVERSION:	T07S R25E S27	SWSENE	Within Minidoka County
	R26E S21	SWSENE	Within Blaine County
		NWNWSE	
	S28	SWNWSE	
	S29	SWNWSE	
	S32	SENESE	
T08S R25E S01	LOT 4	(SESWSW)	Within Minidoka County
	R26E S07	NENENW	Within Blaine County
		NESESW	
	S08	NESWNW	
		NESWSE	
	S09	NENENW	
	S11	NENWNE	
		NWNESW	
	S12	NESWNW	
		NENESE	
	S13	NENENE	
	S14	NWNWNE	
	R27E S07	LOT 1	(SENWNW)

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Oct-26-2005

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

POINT OF DIVERSION (continued)

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-15 TO 11-15	0.71 CFS
			216.00 AFY

PLACE OF USE:	Irrigation		Within Blaine County
	T07S R25E S27	NENE 33.0	NWNE 33.0
		SWNE 33.0	SENE 33.0
		NESE 33.0	NWSE 33.0
		SWSE 33.0	SESE 33.0
	R26E S21	NENW 29.0	NWNW 29.0
		SWNW 29.0	SENE 29.0
		NESW 33.0	NWSW 33.0
		SWSW 33.0	SESW 33.0
		NESE 34.0	NWSE 34.0
		SWSE 34.0	SESE 34.0
	S22	NENE 34.0	NWNE 34.0
		SWNE 34.0	SENE 34.0
		NENW 34.0	NWNW 34.0
		SWNW 34.0	SENE 34.0
	S28	NENE 34.0	NWNE 34.0
		SWNE 34.0	SENE 34.0
		SWNW 34.0	SENE 34.0
		NESW 34.0	NWSW 34.0
		NESE 34.0	NWSE 34.0
		SWSE 34.0	SESE 34.0
	S29	SWNW 33.0	SENE 33.0
		NESW 33.0	NWSW 33.0
		SWSW 34.0	SESW 34.0
	S32	NENE 34.0	NWNE 34.0
		SWNE 34.0	SENE 34.0
		NENW 34.0	NWNW 34.0
		NESE 33.0	NWSE 33.0
		SWSE 33.0	SESE 33.0
	S33	NENE 34.0	NWNE 34.0
		SWNE 34.0	SENE 34.0
		NENW 33.0	NWNW 33.0
		SWNW 33.0	SENE 33.0
		NESW 33.0	NWSW 33.0
		SWSW 33.0	SESW 33.0
	T08S R25E S01	NESW 2.0	SWSW 32.0
		SESW 35.0	NWSE 1.0
		SWSE 32.0	SESE 18.0
	R26E S01	SWSW 39.0	
	S02	SESW 35.0	SWSE 35.0
		SESE 35.0	
	S04 LOT 3	(NENW) 34.0	LOT 4 (NWNW) 34.0
		SWNW 34.0	SENE 34.0
		NESW 34.0	NWSW 34.0
		SWSW 34.0	SESW 34.0
	S06 LOT 7	(SWSW) 7.0	SESW 12.0
	S07	NENE 27.0	NWNE 29.0
		SWNE 28.0	SENE 33.0
		NENW 40.0	LOT 1 (NWNW) 38.0
	LOT 2	(SWNW) 30.0	SENE 37.0
		NESW 31.0	LOT 3 (NWSW) 31.0
	LOT 4	(SWSW) 31.0	SESW 31.0
		NESE 36.0	NWSE 36.0
		SWSE 36.0	SESE 36.0
	S08	SWNE 11.0	SENE 12.0
		NENW 3.0	NWNW 4.0
		SWNW 37.0	SENE 37.0

PLACE OF USE (continued)

	NESW 38.0	NWSW 36.0
	SWSW 33.0	SESW 38.0
	NESE 39.0	NWSE 38.0
	SWSE 29.0	SESE 29.0
S09	NWNE 36.0	NENW 36.0
	NWNW 36.0	NWSW 35.0
	SWSW 35.0	
S11	NENE 34.0	NWNE 34.0
	SWNE 34.0	SENE 34.0
	NENW 34.0	SWNW 34.0
	SENE 34.0	NESW 34.0
	NWSW 34.0	SWSW 34.0
	SESW 34.0	NESE 34.0
	NWSE 34.0	SWSE 38.0
	SESE 36.0	
S12	NENE 34.0	NWNE 34.0
	SWNE 34.0	SENE 34.0
	NENW 34.0	NWNW 34.0
	SWNW 34.0	SENE 34.0
	NESW 34.0	NWSW 34.0
	SWSW 34.0	SESW 34.0
	NESE 33.0	NWSE 33.0
	SWSE 33.0	SESE 33.0
S13	NENE 34.0	NWNE 35.0
	SWNE 21.0	SENE 34.0
	NENW 32.0	NWNW 30.0
	SWNW 4.0	SENE 15.0
S14	NENE 30.0	NWNE 11.0
R27E S07	NENW 34.0	LOT 1 (NWNW) 17.0
LOT 2	(SWNW) 25.0	SENE 34.0
LOT 3	(NWSW) 31.0	LOT 4 (SWSW) 31.0
S18 LOT 1	(NWNW) 31.0	LOT 2 (SWNW) 31.0
5447.0 Acres Total		

USE OF RIGHT NOS. 36-2090A, 36-2090B, 36-2092, 36-2097, 36-2259, 36-2433, 36-2434, 36-2435, 36-2582A, 36-2582B, 36-2618, 36-7209, 36-7246A, 36-7246B, 36-7627, 36-8227, 36-10515, 36-10850A, 36-16041, 36-16042, 36-10863A, 36-10863B, 36-15264A AND 36-15264B IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 5,185.0 ACRES IN A SINGE IRRIGATION SEASON. THIS RIGHT IS LIMITED TO THE IRRIGATION OF 54.0 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

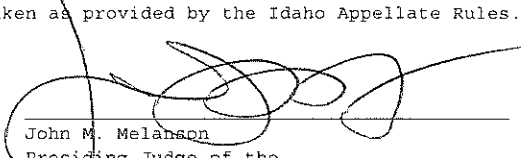
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

USE OF WATER UNDER THIS WATER RIGHT WILL BE REGULATED BY THE WATERMASTER OF STATE WATER DISTRICT NO. 130, THOUSAND SPRINGS AREA.

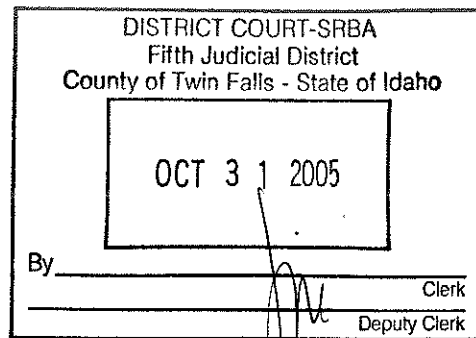
THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

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	)	ORDER OF PARTIAL DECREES
	)	For water rights: 36-10033 et al.
Case No. 39576	)	(see attached list).
	)	
	)	ORDER OF PARTIAL DECREE, <i>NUNC PRO</i>
	)	<i>TUNC</i>
	)	For water right: 36-16298
	)	
	)	ORDER DISALLOWING WATER RIGHT
	)	CLAIM
	)	For Water right: 36-16218

I. PROCEDURAL BACKGROUND.

- A. An *Order Granting Motions to Alter or Amend and Amended Special Master's Report and Recommendation*, was filed in the above-captioned subcases on January 28, 2004.
- B. On February 11, 2004, North Ridge LLC, *et al.* ("North Ridge"), through counsel, filed a *Notice of Challenge* in subcases 36-10090, 36-10863A, 36-15264A and 36-15264B.
- C. On February 12, 2004, Roost Potato Co., Inc., *et al.* ("Roost Potato"), also through counsel, filed a *Notice of Challenge or, in the Alternative, Motion to Alter or Amend the Special Master's Report and Recommendation*. Apparently there was some uncertainty over the scope of the *Special Master's Recommendation*.
- D. On February 12, 2004, this Court entered a *Challenge Scheduling Order* in subcases 36-10090, 36-10863A, 36-15264A and 36-15264B.
- F. On March 4, 2004, the Special Master heard arguments on the *Motions to Alter or Amend* that was filed in the alternative. Also, on March 4, 2004, the Special Master issued an *Order Denying Motions to Alter or Amend Amended Special Master's Report and Recommendation* in all of the above-captioned subcases.

**ORDER OF PARTIAL DECREES; ORDER OF PARTIAL DECREE, *NUNC PRO TUNC*; ORDER
DISALLOWING WATER RIGHT CLAIM**

G. On March 10, 2004, Roost Potato filed a *Notice of Challenge* to the March 4, 2004, *Special Master's Report and Recommendation*.

H. On March 10, 2004, North Ridge filed a *Motion to Vacate the Challenge Scheduling Order Dated February 12, 2004, and to Consolidate Subcases 36-10090, 36-10863A, 36-15264A and 36-15264B*. On March 11, 2004, North Ridge filed a *Renewed Notice Challenge* on the same subcases.

I. On March 16, 2004, pursuant to notice of hearing previously issued by this Court, a hearing was held on the motions and to clarify the procedural status of the subcases. At the hearing, the parties explained that all of the above-captioned subcases involved the same common issues. The parties represented that the only remaining issues in the matter were the same issues raised in the subcases involving A&B Irrigation District, subcases 36-02080 *et al.* (A&B), which at the time were on appeal before the Idaho Supreme Court. The issues related to the application of the enlargement statute, I.C. § 42-1426, to reclaimed waste water. The parties motioned the Court to stay the challenge proceedings pending the outcome of the appeal.

J. On March 23, 2004, the Court issued an *Order Consolidating Subcases for Challenge and Order Conditionally Staying Challenge*. As part of the *Order Staying Challenges*, the Court ordered that the parties were to identify in a written statement any issues involved in the above subcases other than the issues on appeal in the A&B subcases. Any issues not disclosed by the parties would be deemed waived.

K. On April 9, 2004, the Court issued an *Order Staying Challenge on Consolidated Subcases Until Further Order of the Court*. On November 16, 2004, the Court issued an *Order Consolidating Cases With 36-10033 et al. and Order Staying Challenge on Consolidated Subcases Until Further Order of Court*. The November *Orders* resulted from an administrative split of water right claim 36-16123 into water right claims 36-16218 and 36-16219. Water right claim 36-16123 was eventually ordered disallowed, and water right claims 36-16218 and 36-16219 were consolidated into the original consolidated subcase. Water right claim 36-16218 was also administratively split into two claims, 36-16297 and 36-16298. *Notice of Completed Administrative Proceedings/Amended Director's Reports* were filed with respect to those claims on March 24, 2005. No objections were filed to the *Amended Director's Reports* 36-16297 or 36-16298. To date, claim 36-16218 has not yet been decreed disallowed. On March 24, 2005, a *Notice of Administrative Proceeding/Transfer* was filed for water right claim 36-16298.

ORDER OF PARTIAL DECREES; ORDER OF PARTIAL DECREE, NUNC PRO TUNC; ORDER DISALLOWING WATER RIGHT CLAIM

L. On April 23, 2005, the Supreme Court issued a *Remittitur* in *A&B Irrigation District v. Aberdeen-American Falls Ground Water District et al.* This Court held status conferences on September 20, 2005, and October 17, 2005. At the September 20, status conference, the parties represented that some of the *Special Master's Recommendations* may need to be modified to reflect clerical errors and/or intervening transfers. At the October 17, status conference, the parties stated that no such errors needed to be corrected. On October 18, 2005, North Ridge filed a *Withdrawal of Challenge* in the four subcases in which it had filed challenges.

M. *Notice of Completed Administrative Proceedings/ Amended Director's Reports* were filed for claim 36-16123, which was split into water right claims 36-16218 and 36-16219, and for 36-16218 which was split into 36-16297 and 36-16298. A *Notice of Administrative Proceeding/Transfer* was filed on March 24, 2005. The transfer is still pending with respect to 36-16298. Because there are no further issues carried over from the original claim from which 35-16298 was split, the Court intends to issue the partial decree for 35-16298 *nunc pro tunc* as of April 29, 2005. This will avoid any delay in decreeing the right as the claim will not have to come back before the Court once the transfer is completed. The April 29, 2005, date represents twenty-one days after the *Amended Director's Report* appeared on the docket sheet for March 2005. This is the first date the right was ready for partial decree had no challenge been filed.

II. ORDER.

Because the above subcases were stayed pending the A&B decision, and because the A&B decision was decided in accord with the *Special Master's Reports* filed in the above subcases, the Court finds that it is now appropriate to issue the *Partial Decrees* in the above subcases. Pursuant to I.R.C.P. 53(e)(2) and *SRBA Administrative Order 1*, Section 13f, this Court has reviewed the Findings of Fact and Conclusions of Law contained in the *Special Master's Reports* and wholly adopts them as its own.

Therefore, **IT IS ORDERED AND ADJUDGED** that water right 36-16298 is decreed *nunc pro tunc* to April 29, 2005, as set forth in the attached *Partial Decree Pursuant to I.R.C.P. 54(b) nunc pro tunc*. Parties to that subcase may continue the transfer process administratively.

IT IS FURTHER ORDERED AND ADJUDGED that the above-captioned water rights listed on the attachment to this *Order* are hereby **decreed** as set forth in the attached *Partial Decrees Pursuant to I.R.C.P. 54(b)*.

ORDER OF PARTIAL DECREES; ORDER OF PARTIAL DECREE, NUNC PRO TUNC; ORDER DISALLOWING WATER RIGHT CLAIM

IT IS FURTHER ORDERED AND ADJUDGED that water right claim 36-16218, which was split into water rights 36-16297 and 36-16298, is hereby **disallowed with prejudice** and shall not be confirmed in any partial decree or in any final decree entered in the SRBA, Case No. 39576, in whatever form that final decree may take or be styled.

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.

DATED October 31, 2005.



JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

EXHIBIT A (36-10033 ET AL.)

Subcase Nos:

36-10033
36-10035
36-10037
36-10090
36-10863A
36-11643
36-15152
36-15264A
36-15264B
36-15356A
36-16124
36-16219
36-16297

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER OF PARTIAL DECREES AND ORDER DISALLOWING WATER RIGHT CLAIM was mailed on October 31, 2005, with sufficient first-class postage to the following:

STATE OF IDAHO

Represented by:

CLIVE STRONG

NATURAL RESOURCES

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STATEHOUSE MAIL

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ABERDEEN-AMERICAN FALLS GROUND

BINGAHM GROUND WATER DISTRICT

BINGHAM GROUND WATER DISTRICT

JOINT RESPONSE

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MAGIC VALLEY GROUND WATER DIST

RALPH E BREDDING

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KENT HARMAN

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BLAINE COOK

OWYHEE RANCHES INC

C/O STEVE YOUNG

PO BOX 707

RUPERT, ID 83350

ROOST POTATO CO. INC.

CALVIN JONES, PRESIDENT

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EDEN, ID 83325

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(Certificate of mailing continued)

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ORDER

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FILE COPY FOR 00132

Deputy Clerk

A handwritten signature in cursive script, reading "Julie Murphy", is written over a horizontal line. The signature is in dark ink and is positioned to the right of the printed text "Deputy Clerk".