

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 36-11643

DISTRICT COURT-SRBA	
Fifth Judicial District	
County of Twin Falls - State of Idaho	
OCT 31 2005	
By _____	Clerk
_____	Deputy Clerk

NAME AND ADDRESS: W H & VELVA MOLLER
824 6TH ST
RUPERT, ID 83350

SOURCE: GROUNDWATER

QUANTITY: 1.00 CFS

USE OF THIS RIGHT WITH RIGHT NOS.: 36-02118 AND 36-15186 IS
LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 5.01 CFS AND A
TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 1792 AF.

PRIORITY DATE: 04/01/1981

THIS WATER RIGHT IS SUBORDINATE TO ALL WATER RIGHTS WITH A
PRIORITY DATE EARLIER THAN APRIL 12, 1994, THAT ARE NOT DECREED
AS ENLARGEMENTS PURSUANT TO SECTION 42-1426, IDAHO CODE. AS
BETWEEN WATER RIGHTS DECREED AS ENLARGEMENTS PURSUANT TO SECTION
42-1426, IDAHO CODE, THE EARLIER PRIORITY RIGHT IS THE SUPERIOR
RIGHT.

POINT OF DIVERSION: T07S R24E S29 NENWNE Within Minidoka County

PURPOSE AND

PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-15 TO 11-15	1.00 CFS

PLACE OF USE:	Irrigation	Within Minidoka County
T07S R24E S20	NESW 1.0 SWSW 38.0 SWSE 3.0	NWSW 6.0 SESW 37.0
S21	SWSW 2.0	
S28	NENW 30.0 SWNW 39.0	NWNW 39.0 SENW 38.0
S29	NENE 37.0 SWNE 25.0 NENW 39.0	NWNE 38.0 SENE 38.0 NWNW 38.0
448.0 Acres Total		

USE OF THIS RIGHT WITH RIGHT NOS.: 36-02118 AND 36-15186 IS
LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 448 ACRES IN A
SINGLE IRRIGATION SEASON.

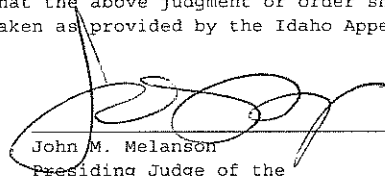
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS RIGHT IS BASED UPON AN ENLARGEMENT OF RIGHT NOS. 36-02118
AND 36-15186 PURSUANT TO SECTION 42-1426, IDAHO CODE.

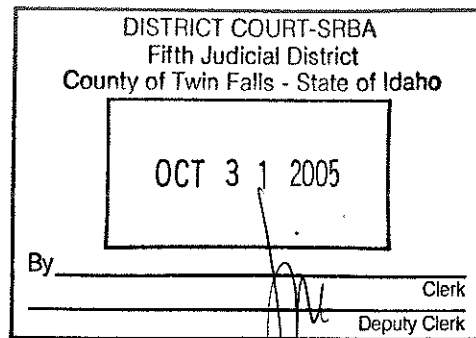
THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

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

DEP AG OFFICE OF ATTY GEN

STATEHOUSE MAIL

BOISE, ID 83720-0010

Phone: 208-334-2400

DALE H. KLINGLER

NORTH RIDGE LLC

ROSS HUNSAKER

SAM C. LARGE

SAMUEL & MARGARET LARGE

Represented by:

DAVID F. SHIRLEY

137 W 13TH ST

PO BOX 910

BURLEY, ID 83318

Phone: 208-678-8382

ABERDEEN-AMERICAN FALLS GROUND

BINGAHM GROUND WATER DISTRICT

BINGHAM GROUND WATER DISTRICT

JOINT RESPONSE

MACK NEIBAUR

MACK NEIBUAR

MAGIC VALLEY GROUND WATER DIST

RALPH E BREDDING

TIM DEEG

Represented by:

JEFFREY C. FEREDAY

601 W BANNOCK ST

PO BOX 2720

BOISE, ID 83701-2720

Phone: 208-388-1200

DALE H. KLINGLER

KENT HARMAN

ROOST POTATO CO.

SALMON FALLS LAND & LIVESTOCK

W.H. AND VELVA MOLLER

Represented by:

ROGER D LING

615 H ST

PO BOX 396

RUPERT, ID 83350-0396

Phone: 208-436-4717

BLAINE COOK

OWYHEE RANCHES INC

C/O STEVE YOUNG

PO BOX 707

RUPERT, ID 83350

ROOST POTATO CO. INC.

CALVIN JONES, PRESIDENT

952 SOUTH 1400 EAST

EDEN, ID 83325

Phone: 208-420-2921

DIRECTOR OF IDWR

PO BOX 83720

BOISE, ID 83720-0098

DANIEL L WILLIE

1017 S 1150 E

EDEN, ID 83325

GLANBIA FOODS

1373 FILLMORE ST

TWIN FALLS, ID 83301

MARILYN L PHILLIPS

VERNON C PHILLIPS

282 N 750 W

PAUL, ID 83347

JACK HARMAN

461A E 1500 N

RUPERT, ID 83350

(Certificate of mailing continued)

BRUCE HUNSAKER
DEON COOK
REBECCA HUNSAKER
501 RIVERSIDE DR
BURLEY, ID 83318
Phone: 208-678-0327

W H & VELVA MOLLER
824 6TH ST
RUPERT, ID 83350
Phone: 208-436-3333

ORDER

Page 2 10/31/05

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".