

SEP 13 AM 11:36
DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO

**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	)	For Decreed Water Right 34-02323D
	)	(Split administratively into water rights 34-02323E & 34-
	)	02323F.)
Case No. 39576	)	
	)	ORDER AMENDING IRRIGATION PERIOD OF USE
	)	ELEMENT IN PARTIAL DECREE and
	)	INCORPORATING INTO PARTIAL DECREE AN
	)	EXPRESS STATEMENT REGARDING GENERAL
	)	PROVISIONS, <i>NUNC PRO TUNC</i>

A *Partial Decree* was entered for water right 34-02323D (“decreed water right”) on March 30, 1998. The period of use element therein was decreed as “irrigation season.” In *A&B Irrigation Dist. v. Idaho Conservation League*, 131 Idaho 411, 423, 958 P.2d 568, 580 (1998), the Idaho Supreme Court remanded with the directive to include specific dates for the period of use element. On June 24, 1999, the Idaho Department of Water Resources (IDWR) filed a *Supplemental Director’s Report, Reporting Area 1, IDWR Basin 34, Regarding Revision of Period of Use (For Irrigation Water Uses) and Conjunctive Management General Provisions* (“*Supplemental Director’s Report*”), which included irrigation period of use recommendations for the decreed water right. No objections were filed and the time for filing objections has expired. Following the issuance of the *Supplemental Director’s Report*, the decreed water right was split administratively into multiple water rights designated as 34-02323E and 34-02323F (“split water rights”).¹

¹ Some or all of these split water rights may have again been split or affected by subsequent administrative proceedings. However, this *Order* only amends the *Partial Decree* that was issued for the decreed water right and does not affect any administrative changes to the water right occurring subsequent to the entry of the *Partial Decree*.

THEREFORE, IT IS ORDERED that period of use element for the irrigation portion of the above-captioned decreed water right is hereby amended and decreed as:

PERIOD OF USE: 04-15 to 10-15

The use of water for irrigation under this right may begin as early as April 1 and may continue to as late as October 31, provided other elements of the right are not exceeded. The use of water before April 15, and after October 15 under this remark is subordinate to all water rights having no subordinate early or late irrigation use and a priority date earlier than the date a partial decree is entered for this right.

IT IS FURTHER ORDERED that the *Partial Decree* for the above-captioned decreed water right is hereby amended and decreed to contain the following:

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).

IT IS FURTHER ORDERED that this order is being entered *nunc pro tunc* effective as of the date the *Partial Decree* was issued and shall not supercede any subsequent administrative changes to the water right that may have occurred following entry of the *Partial Decree*.

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: 2-11-02



ROGER BURDICK
Presiding Judge
Snake River Basin Adjudication

RECEIVED

APR - 1 1998

Department of Water Resources
Adjudication Bureau

1998 MAR 30 PM 4: 34

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

)

ORDER OF PARTIAL DECREE

)

Case No. 39576

)

For Water Rights 34-02323C and 34-02323D

)

On December 29, 1997, an *Amended Director's Report* was filed for water right 34-02323A recommending that it be split and decreed as water rights 34-02323C and 34-02323D.

Therefore, IT IS ORDERED that water rights 34-02323C and 34-02323D are hereby decreed as set forth in the attached *Partial Decrees Pursuant to I.R.C.P. 54(b)*.

DATED March 30, 1998.



DANIEL C. HURLBUTT, JR.

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 34-02323D

1998 MAR 30 PM 4:34

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

NAME & ADDRESS: MARK SCHLUTER
PO BOX 544
MACKAY ID 83251

SOURCE: GROUNDWATER

QUANTITY: 0.99 CFS
218.75 AFY

USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 1.72 CFS.
COMBINED RIGHT NOS.: 34-00644D AND 34-00780G.

PRIORITY DATE: 02/11/1955

POINT OF DIVERSION: T07N R24E S27 SENWSE Within CUSTER County
S33 NWSWNE (REDIVERSION)

WATER DIVERTED UNDER A PORTION OF THIS RIGHT IS EXCHANGED BY
INJECTING WATER DIVERTED UNDER THIS RIGHT INTO THE SWAUGER DITCH
AND DIVERTING AN EQUAL AMOUNT FROM THE BIG LOST RIVER AT THE
POINT OF REDIVERSION DESCRIBED ABOVE.

WATER MAY BE REDIVERTED FROM THE BIG LOST RIVER ONLY WHEN
THERE IS CURRENT DEMAND FOR THE WATER INJECTED INTO THE SWAUGER
DITCH BY SWAUGER DITCH WATER USERS WITH CURRENTLY DELIVERABLE
PRIORITIES BELOW THE POINT OF INJECTION.

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	IRRIGATION	Irrigation Season	0.99 CFS 218.75 AFY

PLACE OF USE:	IRRIGATION	Within CUSTER County				
	T06N R25E S07 Lot 2	(SNNW)15	SEW 2.5	NESW 30	Lot 3 (NWSW)12.5	
		SEW 2.5				
	62.5 ACRES TOTAL					

USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 62.5 ACRES IN A SINGLE
IRRIGATION SEASON.
COMBINED RIGHT NOS.: 34-00644D AND 34-00780G.

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