16 PM 1:30
DISTRICT COURT-SRBA

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	)	**Subcase 35-07173**
	)	**(Hinckley and Spear)**
Case No. 39576	)	
	)	**ORDER GRANTING UNITED STATES**
	)	**MOTION and SPECIAL MASTER REPORT**

Findings of Fact

The Director of the Idaho Department of Water Resources filed his *Director's Report for Irrigation and Other Uses, Reporting Area 5, Part III, Volume One (IDWR Basin 35)* on January 29, 1999. The Director recommended 35-07173 to Clarence and William Schroeder for 7.2 cfs from groundwater to irrigate 447.3 acres from April 1 to October 30 with a priority date of April 16, 1971, based on a license.

The Twin Falls and North Side Canal Companies filed *Objections* on June 2, 1999, objecting to source, quantity, other provisions and alleging the water right should not exist. The same date, the United States of America, Department of Interior, Bureau of Land Management filed an *Objection* to place of use.

IDWR filed a *Notice of Completed Administrative Proceeding* on December 2, 1999, for a substitution of party from the Schroeders to David O. Hinckley and Rulan Spear, dba S&H Farms, 3500 North, 2200 West, Salt Lake City, Utah, 84116. On August 27, 2001, the Special Master entered an ***Order Granting Respondents' Motions for Partial Summary Judgment*** in consolidated subcases 35-07200 and 41-02016 dismissing the Canal Company *Objections*.

A status conference was held by telephone on April 12, 2002. Larry A. Brown appeared for the United States and Candice M. McHugh appeared for IDWR. Neither claimant appeared. Counsel for the United States advised he would soon file a motion to grant the United States *Objection* because the claimants failed to prosecute their claim. Counsel would then ask that the place of use be reduced from 447.3 acres to 446.4 acres (removing .9 acre of BLM land) with a

proportionate reduction in the quantity from 1789.2 afy to 1785.6 afy. Counsel for IDWR agreed with those figures.

On April 16, 2002, the United States filed its *Motion to Grant the United States' Objection for Failure to Prosecute* along with the attached *Affidavit of Larry A. Brown.* The *Motion* was in accordance with representations made during the status conference except for a change in the mailing address for one of the claimants: S&H Farms, Rulon Spears, 2057 East, 358 South, Declo, Idaho 83323. There are no other parties or objections.

Order

THEREFORE, IT IS ORDERED that the United States *Motion to Grant the United States' Objection for Failure to Prosecute* is **granted.**

Conclusions of Law

David O. Hinckley and Rulon Spears are entitled to a partial decree adjudicating a water right under claim 35-07173 as described in the *Affidavit of Larry A. Brown* and the attached ***Special Master Recommendation for Partial Decree for Water Right 35-07173.***

DATED April 16, 2002.

TERRENCE A. DOLAN
Special Master
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 35-07173

2002 APR 16 PM 1:31
DISTRICT COURT-SRBA
TWIN FALLS COUNTY, IDAHO
FILED

NAME AND ADDRESS: S & H FARMS
RULON SPEARS
2057 EAST 358 SOUTH
DECLO, ID 83323

DAVE HINKLEY
3500 N 220 W
SALT LAKE CITY, UT 84116

SOURCE: GROUNDWATER

QUANTITY: 7.20 CFS
1785.60 AFY

PRIORITY DATE: 04/16/1971

POINT OF DIVERSION: T07S R29E S31 NWNWSE Within Power County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Irrigation	04-01 TO 10-30	7.20 CFS
		1785.60 AFY

PLACE OF USE: Irrigation Within Power County

T07S R29E S30	SESE 3.4			
S31	NENE 39.0		NWNE 27.0	
	SWNE 39.0		SENE 39.0	
	NESW 40.0		LOT 03 (NWSW)	30.0
	LOT 04 (SWSW)	30.0	SESW 40.0	
	NESE 39.0		NWSE 40.0	
	SWSE 40.0		SESE 40.0	

446.4 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.

RECOMMENDATION
APR 16 2002
SPECIAL MASTER

Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

02 APR 16 PM 1:31

DISTRICT COURT-SRBA
TWIN FALLS, 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 Case No. 39576	NOTICE OF ISSUANCE OF SPECIAL MASTER'S RECOMMENDATION Water Right(s): 35-07173

On April 16, 2002, Special Master TERRENCE A. DOLAN issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s) pursuant to SRBA Administrative Order 1 (AO1), Section 13a.

Pursuant to SRBA Administrative Order 1, Section 13a, any party to the adjudication including parties to the subcase, may file a Motion to Alter or Amend on or before the 28th day of the next month.

Failure of any party in the adjudication to pursue or participate in a Motion to Alter or Amend the SPECIAL MASTER'S RECOMMENDATION shall constitute a waiver of the right to challenge it before the Presiding Judge.

DATED April 16, 2002.

Lettie Messick

LETTIE MESSICK
Deputy Clerk

2002 APR 16 PM 1:31

DISTRICT COURT-SRBA
TWIN FALLS COUNTY 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	CERTIFICATE OF MAILING
Case No. 39576	Water Right(s): 35-07173

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT, SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on April 16, 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:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
PO BOX 44449
BOISE, ID 83711-4449

USDI BLM
Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724
Phone: 208-387-0835

S & H FARMS
RULON SPEARS
2057 EAST 358 SOUTH
DECLO, ID 83323

DAVE HINKLEY
3500 N 220 W
SALT LAKE CITY, UT 84116

LETTIE MESSICK
Deputy Clerk