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Department of Water Resources

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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) Subcase 43-00228 (43-13264 & 43-13265)
Case No. 39576) (Ottley and USDI/BLM)
)
) 2nd SPECIAL MASTER REPORT
) AND RECOMMENDATION

Findings of Fact

Merlin and Yvonne Ottley, 904 E. Ottley Road 1370, Elba, Idaho 83342-8658, filed a *Notice of Claim to a Water Right* under 43-00228 on July 6, 1989, claiming .8 cfs from Stinson Creek to irrigate 48.7 acres in Cassia County from March 15 to November 15 with a priority date of April 10, 1883, based on a decree. The Director of the Idaho Department of Water Resources filed his *Director's Reports for Irrigation and Other, Reporting Area 7, IDWR Basin 43* on September 28, 2001. The Director recommended the claim as filed, but from Cassia Creek and from April 1 to October 31.

The United States of America, Department of Interior, Bureau of Land Management, 1387 S. Vinnell Way, Boise, Idaho 83709-1657, filed an *Objection* on February 8, 2002, objecting to place of use. On August 14, 2002, the parties and IDWR filed a *Standard Form 5* agreeing that claim 43-00228 be decreed to the Ottleys but for irrigation of 47.5 acres.

A *Special Master Report and Recommendation* was entered on August 20, 2002, and on October 10, 2002, the Presiding Judge entered an *Order of Partial Decree*. However, on November 19, 2002, Mr. Ottley wrote to the SRBA Court requesting that the *Partial Decrees* in subcases 43-00228 and 43-00229 be set aside because the Ottleys and the BLM negotiated a settlement "contrary to the way that the rights have been decreed. The agreement will place 1.2 acres in the BLMs name."

On March 10, 2003, the Ottleys, the BLM and IDWR filed an *Amended Standard Form 5* agreeing to split 43-00228 into 43-13264 (Ottley) and 43-13265 (USDI/BLM). On March 17,

2003, the parties filed an *Amended Stipulation to Resolve United States' Objections* spelling out the parties' agreement.

Conclusions of Law

1. The Ottleys have shown good cause to have the *Partial Decree* entered in subcase 43-00228 set aside and amended partial decrees entered in accordance with the parties' agreement;
2. The Ottleys and the United States are entitled to partial decrees adjudicating water rights as described in the attached *Special Master Recommendations for Partial Decrees for Water Rights 43-13264 and 43-13265*; and
3. The parties are **not** entitled to a water right under claim 43-00228, the claim having been split into 43-13264 and 43-13265.

Recommendations

THEREFORE, IT IS RECOMMENDED that:

1. The *Partial Decree* entered in subcase 43-00228 be set aside and amended partial decrees entered in accordance with the *Amended Standard Form 5* and the attached *Special Master Recommendations for Partial Decrees for Water Rights 43-13264 and 43-13265*, and
2. Claim 43-00228 **n**ot be decreed as a water right, the claim having been split into 43-13264 and 43-13265.

DATED May 5, 2003.



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)
)
Case No. 39576)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 43-13264

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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

NAME AND ADDRESS: MERLIN W OTTLEY
YVONNE F OTTLEY
904 E OTTLEY RD 1370
ELBA, ID 83342-8658

SOURCE: CASSIA CREEK TRIBUTARY: RAFT RIVER

QUANTITY: 0.78 CFS

PRIORITY DATE: 04/10/1883

POINT OF DIVERSION: T14S R24E S02 NENESW Within Cassia County
S03 SWNWSE
SWNENE

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	0.78 CFS

PLACE OF USE:	Irrigation	Within Cassia County
	T14S R24E S02	SWNW 14.0 SENW 2.7 NESW 16.8 NWSW 4.0 NWSE 10.0
	47.5 Acres Total	

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A
COMBINED TOTAL OF 47.5 ACRES IN A SINGLE IRRIGATION SEASON.
COMBINED RIGHT NOS. 43-13264 AND 43-13266.

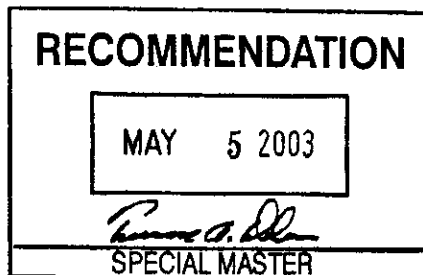
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE USE OF WATER UNDER THIS RIGHT IS LIMITED TO HOMESTEAD ENTRY
SURVY 206.

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.



Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

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DISTRICT COURT-SRBA
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In Re SRBA)
Case No. 39576)
_____)

CERTIFICATE OF MAILING

Water Right(s): 43-00228
43-13264 43-13265

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 May 05, 2003, with sufficient first-class postage prepaid to the following:

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

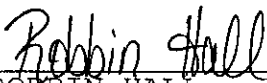
UNITED STATES OF AMERICA
UNITED STATES OF AMERICA BLM
Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

MERLIN W OTTLEY
YVONNE F OTTLEY
904 E OTTLEY RD 1370
ELBA, ID 83342-8658

CERTIFICATE OF MAILING

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MERLIN W OTTLEY
YVONNE F OTTLEY
904 OTTLEY RD
BOX 1370
ELBA, ID 83342-8658
Phone: 208-638-5585



ROBBIN HALL
Deputy Clerk

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STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
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Case No. 39576)
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_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

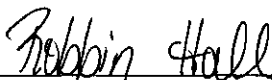
Water Right(s): 43-00228
43-13264 43-13265

On May 05, 2003, 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 May 05, 2003.



ROBBIN HALL
Deputy Clerk