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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

Case No. 39576

) Subcases 43-10363 and 43-13318 (late
) claims 43-00303 and 43-00304)
) (Lovingfoss)
)
) AMENDED SPECIAL MASTER
) REPORT AND RECOMMENDATION

Findings of Fact

Loa and Lyle Nelson filed a *Notice of Claim to a Water Right* under 43-10363 on June 6, 1989, claiming 1.4 cfs from the Raft River to irrigate 260 acres in Cassia County from March 15 to November 15 with a priority date of April 1, 1882, 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 claim 43-10363 to Walter and Delia Lovingfoss, HC 61, Box 1020, Malta, Idaho 83342 as filed, but for irrigation of 249 acres within a 259 acre place of use with a priority date of April 1, 1886. The Director also noted: "This right is a combination of old right nos. 43-00303, & 43-00304."

The United States of America, Department of Interior, Bureau of Land Management filed an *Objection* on February 8, 2002, objecting to place of use. The Lovingfosses and the United States filed a *Standard Form 5* on August 14, 2002, agreeing to .46 cfs and on August 15, 2002, the Special Master entered a *Special Master Report and Recommendation* recommending that claim 43-10363 be adjudicated as agreed.

However, on August 19, 2002, the Lovingfosses filed a *Motion to Alter or Amend* because they agreed to the wrong amount (cfs) which should have been 1.4 cfs instead of .46 cfs. They also filed *Motions to File Late Notices of Claims* in subcases 43-00303 and 43-00304 which were granted by Presiding Judge Roger Burdick on November 21, 2002.

IDWR filed its *Amended Director's Report, Subcase 43-10363* on May 30, 2003, recommending 43-10363 for 1.4 cfs from the Raft River to irrigate 249 acres from March 15 to November 15 with a priority date of October 19, 1928, based on beneficial use. The same date, IDWR filed its *Director's Report, Subcase Nos. 43-00303 & 43-304 (Recommended as 43-13318)* recommending that late claims 43-00303 and 43-00304 be disallowed and combined into 43-13318 for .46 cfs from Cassia Creek to irrigate 249 acres from March 15 to November 15 with a priority date of October 19, 1928, based on beneficial use.

Conclusions of Law

Walter and Delia Lovingfoss are entitled to partial decrees adjudicating water rights for claims 43-10363 and 43-13318 as recommended by IDWR and as described in the attached *Amended Special Master Recommendation for Partial Decree for Water Right 43-10363* and *Special Master Recommendation for Partial Decree for Water Right 43-13318*.

Recommendation

THEREFORE, IT IS RECOMMENDED that 43-00303 and 43-00304 **not** be decreed as water rights because they were combined and recommended as 43-13318.

DATED August 4, 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 43-13318

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DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
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NAME AND ADDRESS: DELIA L LOVINGFOSS
WALTER JEAN LOVINGFOSS
HC 61 BOX 1020
MALTA, ID 83342

SOURCE: CASSIA CREEK TRIBUTARY: RAFT RIVER

QUANTITY: 0.46 CFS

THE RIGHTS LISTED BELOW SHALL PROVIDE NO MORE THAN .02 CFS PER
ACRE. COMBINED RIGHT NOS.: 43-307, 43-10363, 43-10799, 43-13237,
43-13239, 43-13241, AND 43-13318.

PRIORITY DATE: 10/19/1928

POINT OF DIVERSION: T12S R27E S31 SWSWNW Within Cassia County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-15 TO 11-15	0.46 CFS

PLACE OF USE:	Irrigation	Within Cassia County
	T12S R27E S31	SWNE 33.0 NENW 41.0
	LOT 1 (NWNW) 47.0	LOT 2 (SWNW) 49.0
	SENE 40.0	NWSE 39.0
	249.0 Acres Total	

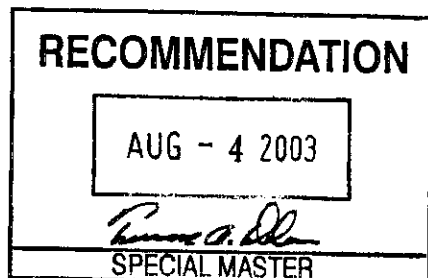
USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A
COMBINED TOTAL OF 249 ACRES IN A SINGLE IRRIGATION SEASON.
COMBINED RIGHT NOS.: 43-307, 43-10363, 43-10799, 43-13237,
43-13239, 43-13241 AND 43-13318.

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.



Roger Burdick
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

AMENDED

In Re SRBA)
)
Case No. 39576)
_____)

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

Water Right 43-10363

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DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

NAME AND ADDRESS: DELIA L LOVINGFOSS
WALTER JEAN LOVINGFOSS
HC 61 BOX 1020
MALTA, ID 83342

SOURCE: RAFT RIVER TRIBUTARY: SNAKE RIVER

QUANTITY: 1.40 CFS

THIS RIGHT WHEN COMBINED WITH RIGHTS LISTED BELOW SHALL
PROVIDE NO MORE THAN .02 CFS PER ACRE. COMBINED RIGHT NOS.:
43-00307, 43-10363, 43-10799, 43-13237, 43-13239, & 43-13241 AND
43-13318.

PRIORITY DATE: 10/19/1928

POINT OF DIVERSION: T12S R27E S31 NWNESW Within Cassia County
NWNWSE

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-15 TO 11-15	1.40 CFS

PLACE OF USE:	Irrigation	Within Cassia County
	T12S R27E S31	SWNE 33.0 NENW 41.0
	LOT 1 (NWNW) 47.0	LOT 2 (SWNW) 49.0
	SENW 40.0	NWSE 39.0
	249.0 Acres Total	

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION
OF A COMBINED TOTAL OF 249 ACRES IN A SINGLE IRRIGATION SEASON.
COMBINED RIGHT NOS.: 43-00307, 43-10363, 43-10799, 43-13237,
43-13239, & 43-13241 AND 43-13318.

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 no further motion may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

RECOMMENDATION

AUG - 4 2003

Roger A. Burdick
SPECIAL MASTER

Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

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

In Re SRBA)

CERTIFICATE OF MAILING

Case No. 39576)
_____)

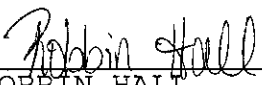
Water Right(s): 43-00303
43-00304 43-10363 43-13318

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 August 04, 2003, with sufficient first-class postage prepaid to the following:

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

DELIA L LOVINGFOSS
WALTER JEAN LOVINGFOSS
HC 61 BOX 1020
MALTA, ID 83342
Phone: 208-645-2421



ROBBIN HALL
Deputy Clerk

CERTIFICATE OF MAILING

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
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In Re SRBA)
Case No. 39576)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

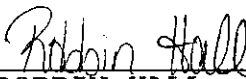
Water Right(s): 43-00303
43-00304 43-10363 43-13318

On August 04, 2003, Special Master TERRENCE A. DOLAN issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s) pursuant to SRBA Administrative Order 1 (A01), 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 August 04, 2003.



ROBBIN HALL
Deputy Clerk