

2004 JAN 21 PM 3: 48
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 85-11920, 85-11924, 85-11928,
) 85-11930, 85-11932, 85-11934, 85-11936,
) 85-11938, 85-11940, 85-11942, 85-11944,
) 85-11946, 85-12172, 85-12173, 85-12174,
) 85-15211, 85-15241 and 85-15242
) (USDI/BLM)
)
) SPECIAL MASTER REPORT

Findings of Fact

The Director of the Idaho Department of Water Resources filed his *Director's Report for Domestic and Stockwater, Reporting Area 22 (IDWR Basin 85)* on March 19, 1999. The Director recommended the above 18 claims to the United States of America, Department of Interior, Bureau of Land Management, Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho, 83709-1657, for .02 cfs from springs for year-'round stockwater use in Idaho, Lewis and Nez Perce Counties with priority dates of January 1, 1868, January 1, 1878, or November 18, 1895, based on beneficial use. For each claim, the Director also noted: "This water right is also claimed based on federal law with an April 17, 1926, date of priority pursuant to an Executive Order signed the same date and known as Public Water Reserve 107."

On June 2, 1999, the State of Idaho filed *Objections* to priority date ("If this water right exists, the State Law based portion of this right should have a priority date no earlier than June 28, 1934.") and alleging that the water right should not exist. On September 17, 1999, the Pickett Ranch & Sheep Company, the Western Stockgrowers Association, Joe Tugaw, Michael and Gary Poulton, Karl, Jared, Scott and Bruce Bedke, Jerry Hoagland and Joyce Livestock Company ("private parties") filed *Objections* alleging the water rights should not exist.

On August 29, 2002, the United States and the private parties filed a *Stipulation to Resolve Objections* in multiple subcases, including the above 18 subcases, and an *Order*

Granting Withdrawal of Objections and Responses was entered on September 5, 2002. On April 21, 2003, an *Order Dismissing State of Idaho Objections* was entered based on the *Stipulation*.

On June 10, 2003, the United States filed a *Notice Regarding Priority Date* stating the claimed priority date should be April 17, 1926, and requesting an evidentiary hearing. An I.C. §42-1411A hearing was held on September 25, 2003, for the United States to demonstrate a *prima facie* case of the existence of the water rights established under federal law (even though objections to the claims were filed). On the date of the hearing, the United States submitted an affidavit by Frederic W. Price (a BLM water rights specialist) who said the land surrounding each claim was unreserved federal public land as of April 17, 1926, the water sources were confirmed by field investigation and there is sufficient surface water at the sites for consumption by livestock.

On September 29, 2003, the United States, with IDWR's concurrence, filed an *Amended Claim Standard Form 5* in subcase 85-15241 to change the spelling of the tributary from "Six Mile Canyon" to "Sixmile Canyon." The priority date noted in the *SF-5* was June 28, 1934, because IDWR's concurrence was limited to the state based elements only: "Since by law IDWR neither investigates nor recommends federal reserved water rights it has no knowledge of, nor opinion regarding, the validity of the federal basis of the right." The United States intended to pursue its federal law basis for each claim, despite its use of the *SF-5* to document the corrected spelling.

Conclusions of Law

The United States of America is entitled to partial decrees adjudicating federal reserved water rights for the above 18 claims as described in the attached *Special Master Recommendations for Partial Decrees for Water Rights 85-11920, 85-11924, 85-11928, 85-11930, 85-11932, 85-11934, 85-11936, 85-11938, 85-11940, 85-11942, 85-11944, 85-11946, 85-12172, 85-12173, 85-12174, 85-15211, 85-15241 and 85-15242*.

DATED January 21, 2004.



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

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In Re SRBA)
Case No. 39576)
_____)

CERTIFICATE OF MAILING

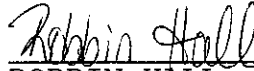
Water Right(s): 85-11920
(SEE ATTACHED EXHIBIT A)

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 January 21, 2004, with sufficient first-class postage prepaid to the following:

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

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



ROBBIN HALL
Deputy Clerk

CERTIFICATE OF MAILING

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01/21/04

Exhibit A

Subcase Nos:

85-11920
85-11924
85-11928
85-11930
85-11932
85-11934
85-11936
85-11938
85-11940
85-11942
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In Re SRBA)
Case No. 39576)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

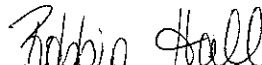
Water Right(s): 85-11920
(SEE ATTACHED EXHIBIT A)

On January 21, 2004, 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 January 21, 2004.



ROBBIN HALL
Deputy Clerk

Exhibit A

Subcase Nos:

85-11920
85-11924
85-11928
85-11930
85-11932
85-11934
85-11936
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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

DISTRICT COURT-SRBA

Fifth Judicial District

County of Twin Falls - State of Idaho

JAN 21 2004

In Re SRBA)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Case No. 39576)
Water Right 85-11920

By _____ Clerk
Deputy Clerk

NAME AND ADDRESS: USDI BLM
IDAHO STATE OFFICE
1387 S VINNELL WAY
BOISE, ID 83709-1657

SOURCE: SPRING TRIBUTARY: BIG CANYON CREEK

QUANTITY: 0.02 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

PRIORITY DATE: 04/17/1926

THIS WATER RIGHT IS DECREED BASED ON FEDERAL LAW WITH AN
APRIL 17, 1926, DATE OF PRIORITY PURSUANT TO AN EXECUTIVE ORDER
SIGNED THE SAME DATE AND KNOWN AS PUBLIC WATER RESERVE 107.

POINT OF DIVERSION: T35N R01W S27 NESWN Within Nez Perce County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Stockwater	01-01 TO 12-31	0.02 CFS

PLACE OF USE: Stockwater Within Nez Perce County
T35N R01W S27 SWNW

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.

John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

RECOMMENDATION

JAN 21 2004