

2001 JAN 26 PM 2:48

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	) Subcase 83-10636
	) (USDI/BLM)
Case No. 39576	)
	) ORDER GRANTING UNITED STATES'
	) MOTION TO ALTER OR AMEND &
	) AMENDED 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 83)* on March 19, 1999. The Director recommended 83-10636 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 a spring for year-'round stockwater use in Shoshone County with a priority date of January 1, 1907, based on beneficial use. 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 an *Objection* in multiple subcases, including subcase 83-10636, objecting 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 United States filed an *Objection* to place of use. The same date, *Objections* were also filed by Western Stockgrowers Association, Joyce Livestock Company, Jerry Hoagland, Pickett Ranch & Sheep Company, Michael and Gary Poulton, Karl, Bruce, Jared and Scott Bedke and Joe Tugaw alleging the water right should not exist.

On August 29, 2002, the United States and the private parties filed a *Stipulation* in multiple subcases, including 83-10636, and an *Order Granting Withdrawal of Objections and*

Responses was entered on September 5, 2002. On June 11, 2003, an *Order Dismissing State of Idaho Objections* was entered based on the parties' *Stipulation to Resolve Objections*.

The United States filed a *Notice of Priority Date* on June 10, 2003, stating the priority date for the federal reserve basis of the water right claim should be April 17, 1926. On August 14, 2003, the United States, with IDWR's concurrence, filed an *Amended Claim Standard Form 5* to change the place of use. 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."

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 right established under federal law (even though objections to the claim 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 the claim was unreserved federal public land as of April 17, 1926, the water source was confirmed by field investigation and there is sufficient surface water at the site for consumption by livestock.

The Special Master entered a *Special Master Report* on November 20, 2003, recommending that the water right be decreed based on state law with a priority date of June 28, 1934. But on December 19, 2003, the United States filed a *Motion to Alter or Amend* stating that the United States did not waive its claim based on federal law by signing the *SF-5*. That fact was confirmed during a hearing on January 15, 2004.

Order

THEREFORE, IT IS ORDERED that the United States' *Motion to Alter or Amend* is granted.

Conclusions of Law

The United States of America is entitled to a partial decree adjudicating a federal reserved water right for claim 83-10636 as described in the attached *Amended Special Master Recommendation for Partial Decree for Water Right 82-10636*.

DATED January 26, 2004.

A handwritten signature in black ink, appearing to read "Terrence A. Dolan", is positioned above a horizontal line.

TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

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In Re SRBA)

CERTIFICATE OF MAILING

Case No. 39576)

Water Right(s): 83-10636

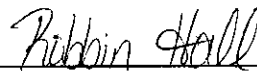
CERTIFICATE OF MAILING

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 26, 2004, with sufficient first-class postage prepaid to the following:

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

UNITED STATES OF AMERICA
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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In Re SRBA)
Case No. 39576)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

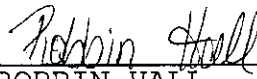
Water Right(s): 83-10636

On January 26, 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 26, 2004.



ROBBIN HALL
Deputy Clerk