

2004 JAN 26 PM 3:01

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

) Subcase 83-10654  
) (USDI/BLM)  
)  
) 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 83-10654 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 83-10654, 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 point of diversion. 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 83-10654, 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 point of diversion. 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.

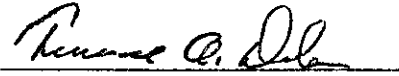
#### **Order**

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 83-10654 as described in the attached *Amended Special Master Recommendation for Partial Decree for Water Right 83-10654*.

DATED January 26, 2004.

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

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 83-10654

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DISTRICT COURT-SRBA  
TWIN FALLS CO., IDAHO  
FILED \_\_\_\_\_

NAME AND ADDRESS: UNITED STATES OF AMERICA  
USDI BUREAU OF LAND MANAGEMENT  
IDAHO STATE OFFICE  
1387 S VINNELL WAY  
BOISE, ID 83709-1657

SOURCE: SPRING TRIBUTARY: LUND 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: T43N R04E S23 NESESW Within Shoshone County

| PURPOSE AND<br>PERIOD OF USE: | PURPOSE OF USE | PERIOD OF USE  | QUANTITY |
|-------------------------------|----------------|----------------|----------|
|                               | Stockwater     | 01-01 TO 12-31 | 0.02 CFS |

PLACE OF USE: Stockwater Within Shoshone County  
T43N R04E S23 SESW

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.

**AMENDED**

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

JAN 26 2004

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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): 83-10654

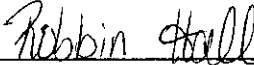
CERTIFICATE OF MAILING

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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01/26/04

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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

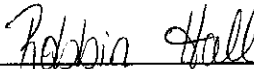
Water Right(s) : 83-10654

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