

2004 JAN 28 AM 11: 22

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	) Subcases 36-10033, <i>et al</i>
	) (see list of 14 subcases attached)
Case No. 39576	)
	) ORDER GRANTING MOTIONS TO
	) ALTER OR AMEND & AMENDED
	) SPECIAL MASTER REPORT AND
	) RECOMMENDATION

Findings of Fact

On November 2, 1992, the Director of the Idaho Department of Water Resources filed his *Director's Report, Part I, for Reporting Area 3 (Basin 36)*. The Director recommended the original groundwater claims for irrigation use and noted that the claims were expansions pursuant to I.C. § 42-1416(2). When that statute was repealed in 1994, the claims were re-recommended as enlargements under the new statute, I.C. § 42-1426, sometimes referred to as the "amnesty statute." However, this time IDWR included in its recommendation for all enlargement claims the following subordination language:

This water right is subordinate to all water rights with a priority date earlier than April 12, 1994, that are not decreed as enlargements pursuant to Section 42-1426, Idaho Code. As between water rights decreed as enlargements pursuant to Section 42-1426, Idaho Code, the earlier priority right is the superior right. This right is based on an enlargement of (base rights) pursuant to Section 42-1426, Idaho Code.

The claimants,¹ along with other claimants who have since settled their claims, filed *Objections* to the recommended priority dates. Each claimant requested as their priority date the

¹(Salmon Falls Land & Livestock Company, Inc., Margaret and Sam Large, Owyhee Ranches, Inc., W.H. and Velva Moller, Vernon and Marilyn Phillips, Roost Potato Company, Inc., Blaine and Deon Cook and Bruce and Rebecca Hunsaker, Deon Cook and Rebecca Hunsaker, and Jack and Kent Harman)

date of the base licensed right or the date of enlargement – between 1966 and 1984. The respondents² filed *Joint Responses* in support of IDWR's recommendations.

Opposing *Motions for Summary Judgment* were heard on July 8, 1998, and on September 11, 1998, the Special Master entered an *Order on Motions for Summary Judgment* holding as a matter of law that the Director of IDWR had the lawful authority and duty to recommend inclusion of subordination language in the claimants' enlargement claims.

On October 31, 2002, the Special Master entered an *Order Setting Deadline* requiring the parties to file no later than December 31, 2002, either *Standard Forms 5* or stipulations resolving all remaining contested issues so a Special Master report and recommendation could be issued while reserving the claimants' right to challenge the *Order on Motions for Summary Judgment*. On November 12, 2002, counsel for the claimants wrote to the Court suggesting that IDWR submit its recommendations followed by the Special Master entering a report and recommendation:

Then, if any of our clients are aggrieved with the Special Master's Final Report and Recommendations, they could exercise their rights in accordance with the procedures set forth by Administrative Order One. This would allow the case to move forward and prevent us from entering into a stipulation contrary to the authority given to us by our clients.

The Special Master entered a *Report and Recommendation* on January 10, 2003. On January 27, 2003, the claimants filed a *Motion to Alter or Amend* asking that the recommendations for 36-10090 (Large), 36-14807 (Phillips) and 36-15152 (Roost Potato Co., Inc.) be amended to correct errors, other than inclusion of the subordination language. The respondents filed a *Motion to Alter or Amend* on February 26, 2003, because the *Recommendations* failed to include the subordination language.

On December 3, 2003, IDWR filed an *Amended Director's Report* in subcases 36-10033, 36-10035, 36-10037, 36-10090, 36-10863A, 36-11643, 36-14807, 36-15152, 36-15264A, 36-15264B, 36-15356 and 36-15356A. All of the claims were recommended for adjudication, as corrected, except 36-14807 (split into 36-16123 and 36-16124) and 36-15356 (split into 36-15356A and 36-15356B).

² (Magic Valley Ground Water District, Aberdeen-American Falls Ground Water District, Bingham Ground Water District, Tim Deeg, Mack Neibaur and Ralph Breeding)

The Special Master entered an *Order Setting Deadline to File Objections* requiring the parties to file objections to the *Amended Director's Report*, other than the Director's recommendation that the enlargement claims be decreed with the subordination language, no later than January 23, 2004. No one filed such an objection, while the claimants preserved their right to challenge the Special Master's *Order on Motions for Summary Judgment*, dated September 11, 1998, concerning inclusion of the subordination language.

Order

THEREFORE, IT IS ORDERED that the *Motions to Alter or Amend* are **granted**.

Conclusions of Law

1. The claimants are entitled to partial decrees adjudicating water rights under claims 36-10033, 36-10035, 36-10037, 36-10090, 36-10863A, 36-11643, 36-15152, 36-15264A, 36-15264B, 36-15356A, 36-16123 and 36-16124 as described in the *Amended Director's Report* and the attached *Amended Special Master Recommendations for Partial Decrees for Water Rights 36-10033, 36-10035, 36-10037, 36-10090, 36-10863A, 36-11643, 36-15152, 36-15264A, 36-15264B, 36-15356A, 36-16123 and 36-16124*;
2. Vernon and Marilyn Phillips are **not** entitled to a water right under claim 36-14807, the claim having been split into 36-16123 (Phillips) and 36-16124 (Willie); and
3. Jack and Kent Harman are **not** entitled to a water right under claim 36-15356, the claim having been split into 36-15356A (Harman) and 36-15356B (USDI/BLM).

Recommendations

THEREFORE, IT IS RECOMMENDED that claims 36-14807 and 36-15356 **not** be adjudicated as water rights.

DATED January 28, 2004.


TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

ATTACHMENT

36-10033, 36-10035 & 36-10037 – Salmon Falls Land & Livestock Co., Inc.

36-10090 – Margaret and Sam Large

36-10863A – Owyhee Ranches, Inc.¹

36-11643 – W.H. and Velva Moller

36-14807 (disallow)

36-16123 – Vernon and Marilyn Phillips

36-16124 – Daniel L. Willie

36-15152 – Roost Potato Co., Inc.

36-15264A – Blaine and Deon Cook and Bruce and Rebecca Hunsaker

36-15264B – Deon Cook and Rebecca Hunsaker

36-15356 (disallow)

36-15356A – Jack and Kent Harman²

¹ On December 16, 1997, a *Special Master's Report* was entered recommending 36-10863 be decreed disallowed because the claim was split into 36-10863A and 36-10863B. Another *Special Master's Report*, entered the same date, recommended 36-10863A and 36-10863B be decreed as agreed to by the parties. However, on February 25, 1998, the Special Master entered an *Order Granting Motion to Alter or Amend* in subcase 36-10863A vacating that portion of the *Special Master's Report* because of the pending issue of subordination language. A *Partial Decree* disallowing 36-10863 was entered on January 1, 2003. The *Special Master's Report* for 36-10863B was not vacated. On July 26, 2002, IDWR filed *Notices of Completed Administrative Proceeding* in subcases 36-10863A and 36-10863B for changes in ownership (36-10863A, from Ross Hunsaker to Owyhee Ranches, Inc. and 36-10863B, from the USDI/BLM to Owyhee Ranches, Inc.), point of diversion and place of use. A *Motion to Alter or Amend the Special Master Report and Recommendation* in subcase 36-10863B was dismissed on June 30, 2003 [a *Partial Decree* had been entered on January 10, 2003].

² On May 24, 2002, IDWR filed a *Notice of Completed Administrative Proceeding* in subcase 36-15356 for changes in the point of diversion and place of use and a split of the claim into 36-15356A and 36-15356B. On June 27, 2002, the United States of America, Department of Interior, Bureau of Land Management filed an *Amended Objection* in subcase 36-15356B objecting to place of use. A *Partial Decree* in 36-15356B was entered on November 19, 2003.

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 36-15356A

2004 JAN 28 AM 11:22

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

NAME AND ADDRESS: JACK HARMAN
KENT HARMAN
461A E 1500 N
RUPERT, ID 83350

SOURCE: GROUNDWATER

QUANTITY: 0.22 CFS
66.00 AFY

USE OF THIS RIGHT WITH RIGHT NO. 36-02415A IS LIMITED TO A TOTAL
COMBINED DIVERSION RATE OF 3.77 CFS AND A TOTAL COMBINED ANNUAL
DIVERSION VOLUME OF 1140 AF.

PRIORITY DATE: 06/30/1973

THIS WATER RIGHT IS SUBORDINATE TO ALL WATER RIGHTS WITH A
PRIORITY DATE EARLIER THAN APRIL 12, 1994, THAT ARE NOT DECREED
AS ENLARGEMENTS PURSUANT TO SECTION 42-1426, IDAHO CODE. AS
BETWEEN WATER RIGHTS DECREED AS ENLARGEMENTS PURSUANT TO SECTION
42-1426, IDAHO CODE, THE EARLIER PRIORITY RIGHT IS THE SUPERIOR
RIGHT.

POINT OF DIVERSION: T07S R24E S12 SESENE Within Minidoka County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-15 TO 11-15	0.22 CFS
			66.00 AFY

PLACE OF USE:	Irrigation	Within Minidoka County
	T07S R24E S12	NENE 33.0 NWNE 33.0 SWNE 40.0 SENE 33.0 NESE 40.0 NWSE 40.0 SWSE 33.0 SESE 33.0
	285.0 Acres Total	

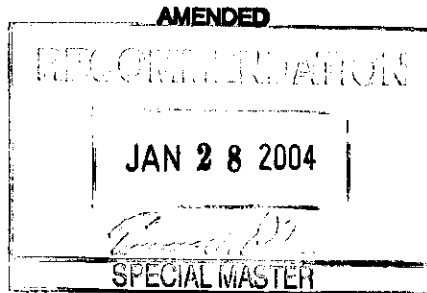
USE OF THIS RIGHT WITH RIGHT NO. 36-02415A IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 285 ACRES IN A SINGLE
IRRIGATION SEASON.
THIS RIGHT IS FOR AN ENLARGEMENT OF 16.5 ACRES WITHIN THE PLACE
OF USE DESCRIBED FOR THIS RIGHT.

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

THIS RIGHT IS BASED UPON AN ENLARGEMENT OF RIGHT NO. 36-02415A
PURSUANT TO SECTION 42-1426, IDAHO CODE.
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

2001 JAN 28 AM 11: 22

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)

CERTIFICATE OF MAILING

Case No. 39576)

Water Right(s) : 36-10033

(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 28, 2004, with sufficient first-class postage prepaid to the following:

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

STATE OF IDAHO

Represented by:

CLIVE STRONG

NATURAL RESOURCES

DEP AG OFFICE OF ATTY GEN

STATEHOUSE MAIL

BOISE, ID 83720-0010

Phone: 208-334-2400

CERTIFICATE OF MAILING

PAGE 1
01/28/04

DALE H. KLINGLER
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ROSS HUNSAKER
SAM C. LARGE
SAMUEL & MARGARET LARGE

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ABERDEEN-AMERICAN FALLS GROUND
BINGAHM GROUND WATER DISTRICT
BINGHAM GROUND WATER DISTRICT
JOINT RESPONSE
MACK NEIBAUER
MACK NEIBUAR
MAGIC VALLEY GROUND WATER DIST
RALPH E BREIDING
TIM DEEG

Represented by:
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DALE H. KLINGLER
JACK AND KENT HARMAN
JACK HARMAN
KENT HARMAN
ROOST POTATO CO.
SALMON FALLS LAND & LIVESTOCK
SALMON FALLS LAND AND LIVESTOC
VERNON & MARILYN PHILLIPS
W.H. AND VELVA MOLLER

Represented by:
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BLAINE COOK
OWYHEE RANCHES INC
C/O STEVE YOUNG
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RUPERT, ID 83350

ROOST POTATO CO. INC.
CALVIN JONES, PRESIDENT
952 SOUTH 1400 EAST
EDEN, ID 83325
Phone: 208-420-2921

VERNON C & MARILYN L PHILLIPS
RT 1 BOX 1222
PAUL, ID 83347
Phone: 208-438-5906

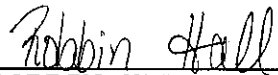
DANIEL L WILLIE
1017 S 1150 E
EDEN, ID 83325

MARILYN L PHILLIPS
VERNON C PHILLIPS
282 N 750 W
PAUL, ID 83347

JACK HARMAN
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Phone: 208-436-3333



ROBBIN HALL
Deputy Clerk

Exhibit A

Subcase Nos:

36-10033
36-10035
36-10037
36-10090
36-10863A
36-11643
36-14807
36-15152
36-15264A
36-15264B
36-15356
36-15356A
36-16123
36-16124

2004 JAN 28 AM 11:23

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

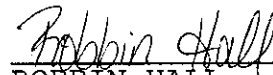
Water Right(s): 36-10033
(SEE ATTACHED EXHIBIT A)

On January 28, 2004, Special Master JOHN M MELANSON 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 28, 2004.



ROBBIN HALL
Deputy Clerk

Exhibit A

Subcase Nos:

36-10033
36-10035
36-10037
36-10090
36-10863A
36-11643
36-14807
36-15152
36-15264A
36-15264B
36-15356
36-15356A
36-16123
36-16124