

2004 FEB 12 PM 2: 57
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 85-10706
) (Simler)
)
) ORDER FOR CONTACT & ORDER
) SETTING HEARING ON O'CONNOR'S
) MOTION TO SET ASIDE PARTIAL
) DECREE
)

On December 29, 2000, a *Partial Decree* was entered in subcase 85-10706 adjudicating a water right to Dean and Evelyn Simler, Route 1, Box 120, Kamiah, Idaho, 83356, for .03 cfs from groundwater for year-'round domestic use in Lewis County with a priority date of January 1, 1948. The place of use was described as: T 33N, R 3E, § 2, NE¼NE¼SE¼.

On October 14, 2003, Timothy and Shirley O'Connor, 3358 Hwy 12, Kamiah, Idaho, 83536, wrote to the SRBA Court stating that they filed with the Idaho Department of Water Resources (IDWR) a notice of change of ownership for water right 85-10706. The O'Connors then requested that the *Partial Decree* for water right 85-10706 be set aside because:

[The SRBA Court] issued a partial decree describing the water right with a place of use different than our property described in our deed and in the legal description of the property provided by Lewis County. We believe that the legal description and our deed to the property have the correct legal description of the property and that the legal description on Water Right 85-10706 is incorrect.

The Presiding Judge of the SRBA referred the matter to the Special Master and a hearing on the O'Connors' motion to set aside the *Partial Decree* was held on November 13, 2003. Neither the O'Connors nor the Simlers appeared. Another hearing was held on January 15,

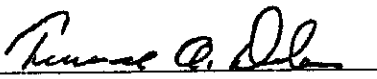
2004, with the same result. A third hearing was held on February 12, 2004, and as before, neither the O'Connors nor the Simlers appeared.

At the third hearing, IDWR agent Roxanne Brown reported that the legal description of the land in the deed filed with the O'Connors' notice of change of ownership does not include the place of use described in the *Partial Decree* for water right 85-10706. That leaves open the possibility that the O'Connors' deed is in error or that they acquired land not related to water right 85-10706. But without further contact with the O'Connors, neither the SRBA Court nor IDWR can determine the facts and proceed with their motion to set aside.

THEREFORE IT IS ORDERED that:

1. The O'Connors shall contact IDWR agent Roxanne Brown by letter or by telephone (800-451-4129) no later than **Friday, March 5, 2004**, to review the facts concerning their deed and water right 85-10706.
2. A hearing before the Special Master concerning the O'Connors' motion to set aside the *Partial Decree* shall be held **Thursday, March 18, 2004, at 11:00 a.m.** The parties may "appear" at the hearing by telephone by calling 1-225-383-1099 and entering participant code 654400.
3. If the O'Connors fail to contact IDWR Agent Roxanne Brown by the time specified or fail to appear at the hearing on their motion to set aside the *Partial Decree*, the Special Master will recommend to the Presiding Judge that the O'Connors' motion be dismissed.

DATED February 12, 2004.


TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

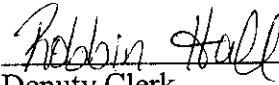
CERTIFICATE OF MAILING

I certify that a true and correct copy of the **ORDER FOR CONTACT & ORDER SETTING HEARING ON O'CONNOR'S MOTION TO SET ASIDE PARTIAL DECREE** was mailed on February 12, 2004, with sufficient first-class postage to the following:

Director of IDWR
PO Box 83720
Boise, ID 83720-0098

Dean Simler
Evelyn Simler
Route 2, Box 120
Kamiah, ID 83536

Timothy J. O'Connor
Shirley F. O'Connor
3358 Highway 12
Kamiah, ID 83536


Deputy Clerk