

2001 MAR -3 AM 9: 49

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 85-15211
	) (USDI/BLM)
Case No. 39576	)
	) ORDER GRANTING MOTION TO
	) ALTER OR AMEND and 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 85)* on March 19, 1999. The Director recommended the above claim 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 Nez Perce County with a priority date of November 18, 1895, 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 *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 85-15211, 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 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.

On January 21, 2004, the Special Master entered a *Special Master Report and Recommendation* in 85-15211, plus 17 other claims. On February 11, 2004, the United States filed a *Motion to Alter or Amend the Special Master's Report* pointing out a clerical error in the *Recommendation* because the point of diversion suggests an instream stockwater right when it should describe a single point of diversion, a spring or water hole.

A hearing on the United States' *Motion* was held on February 27, 2004. Larry A. Brown appeared by telephone for the United States.

Order

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

Conclusions of Law

The United States of America is entitled to a partial decree adjudicating a federal reserved water right for claim 85-15211 as described in the attached *Amended Special Master Recommendation for Partial Decree for Water Right 85-15211*.

DATED March 3, 2004.


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 85-15211

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

SOURCE: SPRING TRIBUTARY: ROCK 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: T34N R02W S33 SWSENE 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
T34N R02W S33 SENE

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

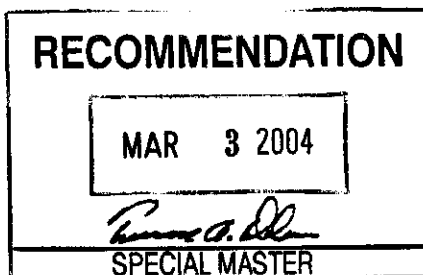
THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

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



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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): 85-15211

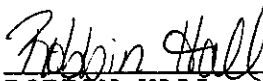
CERTIFICATE OF MAILING

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 March 03, 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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_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

Water Right(s): 85-15211

On March 03, 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 March 03, 2004.



ROBBIN HALL
Deputy Clerk