

**Department of Water Resources
Adjudication Bureau**

OFFICE OF THE
ATTORNEY GENERAL

1997 DEC 11 PM 4: 12

DISTRICT COURT - 222-A
OF THE U.S. COURT
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 No. 36-07092A

Case No. 39576

ORDER ADOPTING SPECIAL MASTER'S REPORT AND RECOMMENDATION

Challenge to Special Masters Report and Recommendation. Report and Recommendation Adopted. Partial Decree of Disallowance Ordered.

Attorney:

Ronald H. Adams, Francis Adams, pro se, Challengers

I.

FACTS AND PROCEDURAL HISTORY

This is a challenge to the *Report and Recommendation* issued by the Special Master to this water right claim No. 36-07092A which was filed by Norwood Subdivision, Ruby Springs Water Co. The right was recommended in the Director's Report for Reporting Area 3 (Basin 36).

Ronald and Francis Adams, the Challengers, filed a late objection to the claim contesting several elements. Norwood Subdivision, Ruby Springs Water Company, filed a *Response* to Adames' objection. IDWR also lodged a *Response to Objection*, supporting its recommendation.

In response to a motion by the Adamses, the Special Master ordered IDWR to file an I.R.E. 706 Report disclosing the expert opinions underlying the Director's Report. IDWR filed the I.R.E. 706 Report and a Supplemental I.R.E. 706 Report "to clarify IDWR's recommendation of this water right based upon the previously filed 706 Report and the evidence presented at trial."



Trial was held before the Special Master. The Adamses appeared and presented evidence. Norwood Subdivision, Ruby Springs Water Co. chose not to appear, relying on the Director's Recommendation and Supplemental Reports.

The Special Master recommended that water right no. 36-07092A be decreed in conformity with the Director's Recommendation as modified by the two Supplemental Reports. The Adamses challenge the Special Master's Report and Recommendation.

Ruby Springs Water Company bases its claim on License no. 36-07092A issued to the Norwood Subdivision, August 16, 1976 for a quantity of 1.1 cfs for irrigation of 55 acres with a November 6, 1969 priority date.

Ruby Springs Water Company was incorporated on November 2, 1977 and was assigned all water rights under License 36-07092A which was previously held by Norwood Subdivision and its predecessors. Membership in the Ruby Springs Water Company was limited to those proving ownership of land in the Norwood Subdivision or who were in the process of acquiring land in the Norwood Subdivision.

The Director's Report originally recommended this right with a quantity of .36 cfs for the irrigation of 18 acres. The recommendation was based on development plans for the Norwood Subdivision. IDWR took the original 55 acres covered by the License and subtracted the land for the housing development. The difference constitutes open space on which no water had been used or was requested.

To determine the quantity of water to be recommended for irrigation in the housing development, IDWR took the total acreage in the housing development and subtracted twenty percent of the land dedicated to houses, roads and non-productive areas. The 18 acres recommended is equal to eighty percent of the area of the housing development.

Adamses' objection to the Ruby Springs Water Co. right was originally based on the exclusion of four lots they own which, they argue, were part of the 55 acres covered by the License no. 36-07092A. IDWR's ammended recommendation, which has been accepted by the Special Master, now includes two of Adamses' lots, therefore, Challengers' objection relates only to the claimed exclusion of their two remaining lots.

IDWR found that Ruby Springs Water Company is a municipal provider of water because it supplies water for municipal purposes through a public water supply. IDWR's recommendation

was based on its policy of allowing irrigation water rights for all lots "stubbed in" to a municipal distribution system, whether or not water had previously been put to beneficial use on those lots. Adamses maintain that their two lots which were excluded from IDWR's recommendation were "stubbed in" to Ruby Springs Water Company. The President of Ruby Springs Water Company disputed this claim, characterizing the two lots as having nothing more than "taps" which were drains for the system. The Special Master found against the Adamses on this issue.

The Adamses are not claimants in the Snake River Basin Adjudication. They have not filed a claim in the SRBA for any of their lots. The Adamses have never held a license, permit or decree for the two lots, nor have the Adamses put water to beneficial use on their property.

II. ANALYSIS

In the SRBA the Special Master assists the district court in obtaining facts and making recommendations to the Presiding Judge. *Administrative Order 1*, § 9 (Oct. 1997); *Seccombe v. Weeks*, 115 Idaho 433, 767 P.2d 276 (Ct. App. 1989). The appointment of a Special Master does not displace the role of the district court as ultimate trier of fact. *Id.* at 435, 278.

The Presiding Judge accepts the Special Master's factual findings unless clearly erroneous, I.R.C.P. 53(e)(2) (1996), and then independently reviews the evidence to determine whether the findings of fact are supported by substantial evidence. *Seccombe*, 115 Idaho at 435. The Special Master's factual findings may be adopted verbatim where they are not clearly erroneous. *Rodriguez v. Oakley Valley Stone, Inc.*, 120 Idaho 370, 378, 816 P.2d 326, 334 (1991).

Reviewing the evidence, it is found that the Special Master's Findings of Fact are supported by substantial evidence and are not clearly erroneous. The Special Master's Findings of Fact are adopted and incorporated in this opinion as though fully set forth herein.

The Presiding Judge freely reviews the Special Master's proposed Conclusions of Law. I.R.C.P. 53; *Rodriguez*, 120 Idaho at 378. While the Special Master's proposed Conclusions of Law are not binding, they are intended to be persuasive. *Id.* Further, the Presiding Judge may accept the Special Master's Conclusions of Law if they correctly state the law. *Id.*

The resolution of the Adamses' *Challenge* to the Special Master's proposed conclusions of law begins with an analysis of the original claim in the SRBA, claim no. 36-07092A. The

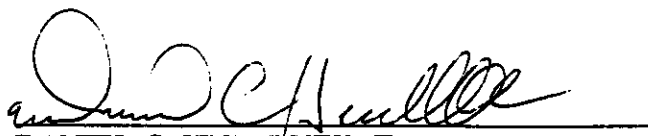
claimant, "Ruby Springs Water Co., Norwood Subdivision," did not object to any element recommended in the Director's Report. The Adamses, as objectors, have the burden of persuasion to overcome the Director's recommendation. I.C. § 14-1411(5). The basis of their objection is that the IDWR recommendation for License No. 36-07092A did not include water to irrigate the Adamses' two lots.

The Special Master entered lengthy findings about License 36-07092A and its several transfers leading up to its issuance to Ruby Springs Water Co. The Adamses' objection is misplaced because it is a collateral challenge to the Director's decision to issue License No. 36-07092A. The Adamses had the opportunity to protest the License transfer at the time of issuance which they failed to do. They have waived any challenge to the issuance of the License. The SRBA is not a case authorized to revive lost challenges to licensing decisions.

The Adamses further challenge the factual determination that these two lots are not part of and stubbed into the Ruby Springs Water Co distribution system. They raise these issues for the first time in the SRBA. The Adamses have never before made any formal claim against either entity, nor have they previously pursued any legal remedy against them. They have provided no proof by deed, articles of incorporation, corporate by-laws or otherwise supporting their claimed inclusion in either. As noted previously, Adamses have not been issued a permit, license or decreed water right for the two lots at issue. They have not filed a claim in the SRBA. The record reflects that no beneficial use of water has ever been made on the two lots.

Therefore, the Special Master's finding that the Adamses failed to overcome the prima facie effect of the Director's Report is adopted. Further, the Special Master's Recommendation that water right no.36-07092A be decreed as recommended is also adopted. The Adamses' challenge is DENIED.

IT IS SO ORDERED
DATED December 10, 1997


DANIEL C. HURLBUTT, JR.
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

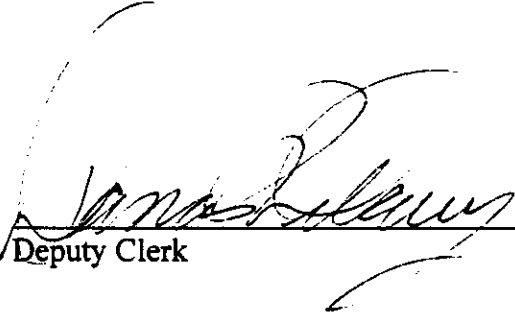
I certify that a true and correct copy of the **ORDER ADOPTING SPECIAL MASTER'S REPORT AND RECOMMENDATION**, was mailed on December 11, 1997, with sufficient first-class postage to the following:

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