

2004 MAR 31 AM 11 27

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 82-10640
	) (USDI / BLM)
Case No. 39576	)
	) AMENDED SPECIAL MASTER
	) REPORT AND RECOMMENDATION

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 82)* on March 19, 1999. The Director recommended claim 82-10640 to the United States of America, Department of Interior, Bureau of Land Management, 1387 S. Vinnell Way, Boise, Idaho, 83709-1657, for .02 cfs from an unnamed stream for year-'round stockwater use in Idaho County with a priority date of January 1, 1861, based on beneficial use. The State of Idaho filed an *Objection* on June 2, 1999, objecting to priority date and alleging the water right should not exist.

On August 29, 2002, the United States and certain "private parties" filed a *Stipulation and Joint Motion for Order Approving Stipulation* in multiple related subcases, including 82-10640. As part of the *Stipulation*, the private parties agreed to dismiss their objections and responses and "for claims on lands administered by the Bureau of Land Management, the United States shall receive a water right with a priority date which is the later of a) the claimed priority date or b) June 28, 1934."

On September 5, 2002, the Special Master entered an *Order Granting Withdrawal of Objections and Responses* in the same multiple subcases objected to by the private parties. On April 21, 2003, the Special Master entered an *Order Dismissing State of Idaho Objections* based on a *Stipulation to Resolve Objections* filed by the United States and the State. On June 10, 2003, the United States filed a *Notice Regarding Priority Date* stating the priority date should be June 28, 1934.

On July 16, 2003, the Special Master entered a *Report and Recommendation* in 138 subcases, including 82-10640, recommending a state law-based priority date of June 28, 1934, and on November 12, 2003, the Presiding Judge entered an *Order of Partial Decree* based on that *Report and Recommendation*.

On February 17, 2004, the United States filed a *Motion to Set Aside Partial Decrees and Refer Subcases to the Special Master* in four subcases, including 82-10640. The reason for the *Motion* was that “through oversight or omission, the water rights were decreed with valid objections still pending.” A review of the record indicates that the United States did not file an objection in subcase 82-10640; hence, there was no objection pending on the date the *Partial Decree* was entered. However, on March 30, 2004, the United States, with IDWR’s concurrence, filed a *Standard Form 5* in subcase 82-10640 agreeing to a priority date of June 28, 1934, and correcting the source tributary from Buffalo “Creek” to Buffalo “Gulch.”

Conclusions of Law

1. The United States has shown good cause to have the *Partial Decree* entered in subcase 82-10640 set aside and modified; and
2. The United States is entitled to an amended partial decree adjudicating a water right as described in the *SF-5* and the attached *Amended Special Master Recommendation for Partial Decree for Water Right 82-10640*.

Recommendation

THEREFORE, IT IS RECOMMENDED that:

1. The *Partial Decree*, dated November 12, 2003, in subcase 82-10640 be set aside; and
2. An *Amended Partial Decree* be entered as described in the attached *Amended Special Master Recommendation for Partial Decree for Water Right 82-10640*.

DATED March 31, 2004.



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AMENDED

FILED

2004 MAR 31 AM 11 27

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 82-10640

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

SOURCE: UNNAMED STREAM TRIBUTARY: BUFFALO GULCH

QUANTITY: 0.02 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

PRIORITY DATE: 06/28/1934

POINT OF DIVERSION: T29N R08E S21 SENWNW (Instream Ending Point) Within Idaho County
SWNWNW (Instream Beginning Point)

PURPOSE AND	PURPOSE OF USE	PERIOD OF USE	QUANTITY
PERIOD OF USE:	Stockwater	01-01 TO 12-31	0.02 CFS

PLACE OF USE: Stockwater Within Idaho County
T29N R08E S21 NWNW

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

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

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

RECOMMENDATION

MAR 31 2004

Russell A. Olson
SPECIAL MASTER

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED _____

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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)
_____)

CERTIFICATE OF MAILING

Water Right(s): 82-10640

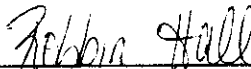
CERTIFICATE OF MAILING

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 31, 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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03/31/04

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED _____

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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

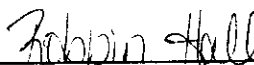
Water Right(s): 82-10640

On March 31, 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 March 31, 2004.



ROBBIN HALL
Deputy Clerk