

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
APR - 8 2004	
By _____	Clerk
_____	Deputy Clerk

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 85-11728
	)	(Hart)
Case No. 39576	)	SPECIAL MASTER REPORT
_____	)	AND RECOMMENDATION

Findings of Fact

Rugner and Elaine Anderson filed a *Notice of Claim to a Water Right* in subcase 85-11728 claiming .04 cfs from groundwater for year-'round domestic use in Nez Perce county with a priority date of April 1, 1973, based on beneficial use. 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 claim as filed. No one objected to the Director's recommendation and on December 27, 2000, the Presiding Judge of the SRBA entered a ***Partial Decree***.

When the current owner, Marland P. Hart, 21779 Cottonwood Creek Road, Culdesac, Idaho, 83524, filed a *Notice of Change in Water Right Ownership* with IDWR, he discovered there were errors in the point of diversion and place of use in both the *Notice of Claim* and the ***Partial Decree***. Mr. Hart wrote to the SRBA Court on March 12, 2004, describing the errors and requesting an amended water right decree.

The Special Master heard Mr. Hart's motion to set aside and modify the ***Partial Decree*** by telephone on April 8, 2004. Mr. Hart appeared *pro se* and Roxanne Brown represented IDWR. IDWR agreed with Mr. Hart that the ***Partial Decree*** contains errors in the legal descriptions of the point of diversion and place of use and should be modified to conform with Mr. Hart's Warranty Deed, dated June 20, 1989.

Conclusions of Law

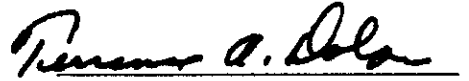
Mr. Hart has shown good cause to have the *Partial Decree* set aside and modified as he requested.

Recommendation

THEREFORE, IT IS RECOMMENDED that:

1. The *Partial Decree*, dated December 27, 2000, be set aside; and
2. An amended partial decree be entered to correct the errors in the legal descriptions of the point of diversion and place of use as described in the attached *Special Master Recommendation for Amended Partial Decree for Water Right 85-11728*.

DATED April 8, 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

AMENDED

In Re SRBA)
)
Case No. 39576)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 85-11728

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

APR - 8 2004

By _____

Clerk

Deputy Clerk

NAME AND ADDRESS: MARLAND P HART
21779 COTTONWOOD CREEK RD
CULDESAC, ID 83524

SOURCE: GROUNDWATER

QUANTITY: 0.04 CFS

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

PRIORITY DATE: 04/01/1973

POINT OF DIVERSION: T36N R03W S11 SWSW Within Nez Perce County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Domestic 1 HOME	01-01 TO 12-31	0.04 CFS

PLACE OF USE: Domestic Within Nez Perce County
T36N R03W S11 SWSW

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.

John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

RECOMMENDATION

APR 8 2004

James A. Allen
SPECIAL MASTER

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

APR - 8 2004

By _____ Clerk

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

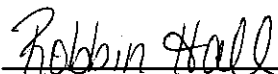
Water Right(s): 85-11728

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 April 08, 2004, with sufficient first-class postage prepaid to the following:

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

MARLAND P HART
21779 COTTONWOOD CREEK RD
CULDESAC, ID 83524
Phone: 208-836-5789


ROBBIN HALL
Deputy Clerk

CERTIFICATE OF MAILING

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04/08/04

APR - 8 2004

By _____ Clerk
Deputy Clerk

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

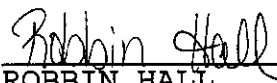
Water Right(s) : 85-11728

On April 08, 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 April 08, 2004.


ROBBIN HALL
Deputy Clerk