

2004 APR 15 PM 2 25

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 85-10706
	) (O'Connor)
Case No. 39576	)
	) SPECIAL MASTER REPORT
_____	) AND RECOMMENDATION

Findings of Fact

On December 29, 2000, the Presiding Judge of the SRBA entered a *Partial Decree* in subcase 85-10706 adjudicating a water right to Dean and Evelyn Simler 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 a notice of change of ownership for water right 85-10706 with the Idaho Department of Water Resources (IDWR). The O'Connors then requested that the *Partial Decree* for water right 85-10706 be set aside and modified 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 referred the matter to the Special Master and a hearing on the O'Connors' motion to set aside and modify the *Partial Decree* was held by telephone on April 15, 2004. Timothy J. O'Connor appeared *pro se* and Roxanne Brown represented IDWR. Ms. Brown agreed with Mr. O'Connor that the legal description of the land in a deed submitted by Mr. O'Connor is accurate and the legal descriptions of the point of diversion and place of use in the *Partial Decree* are wrong.

Conclusions of Law

The O'Connors have shown good cause to have the *Partial Decree* set aside and modified as they requested.

Recommendation

THEREFORE, IT IS RECOMMENDED that:

1. The *Partial Decree*, dated December 29, 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 85-10706*.

DATED April 15, 2004.



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

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

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

AMENDED

FILED

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

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

Water Right 85-10706

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NAME AND ADDRESS: SHIRLEY F. O'CONNOR
TIMOTHY J. O'CONNOR
3358 HWY 12
KAMIAH, ID 83536

SOURCE: GROUNDWATER

QUANTITY: 0.03 CFS

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

PRIORITY DATE: 01/01/1948

POINT OF DIVERSION: T33N R03E S02 LOT 4 (SWSENE) Within Lewis County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Domestic	01-01 TO 12-31	0.03 CFS

PLACE OF USE: Domestic Within Lewis County
T33N R03E S02 LOT 4 (SENE)

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

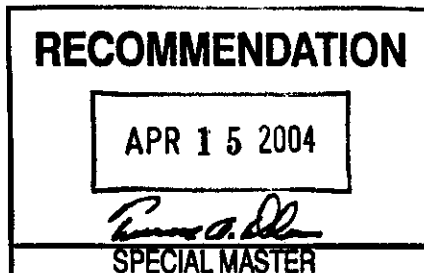
THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

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



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)

CERTIFICATE OF MAILING

Case No. 39576)
_____)

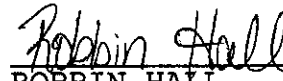
Water Right(s): 85-10706

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 15, 2004, with sufficient first-class postage prepaid to the following:

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

SHIRLEY F. O'CONNOR
TIMOTHY J. O'CONNOR
3358 HWY 12
KAMIAH, ID 83536
Phone: 208-935-2235



ROBBIN HALL
Deputy Clerk

CERTIFICATE OF MAILING

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04/15/04

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

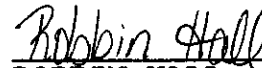
Water Right(s): 85-10706

On April 15, 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 15, 2004.



ROBBIN HALL
Deputy Clerk