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Department of Water Resources

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

2004 MAY 11 AM 10 49

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 85-12131
Case No. 39576) (USDI/BLM)
)
) 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 85)* on March 19, 1999. The Director recommended 212 claims, including 85-12131, to the United States of America, Department of Interior, Bureau of Land Management ("USDI/BLM"), 1387 S. Vinnell Way, Boise, Idaho, 83709-1657, for a *de minimis* amount (.02 cfs) from various rivers, streams, creeks and a gulch for year-'round stockwater use in Clearwater, Idaho, Lewis and Nez Perce Counties with priority dates of either January 1, 1868, or November 18, 1895, based on beneficial use.

The State of Idaho filed *Objections* on June 2, 1999, objecting to priority date and alleging the water rights should not exist. On September 17, 1999, the Western Stockgrowers Association, Joyce Livestock Company, Jerry Hoagland, Pickett Ranch & Sheep Company, Michael and Gary Poulton, Bruce, Jared, Karl and Scott Bedke and Joe Tugaw ("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 and Joint Motion for Order Approving Stipulation* in multiple related subcases, including the 212 subcases. 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 related subcases objected to by the private parties. On April 21 and June 11, 2003, the Special Master entered *Orders 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 USDI/BLM filed a *Notice Regarding Priority Date* stating the priority date for all of the subcases should be June 28, 1934.

The Special Master entered a *Special Master Report* on July 16, 2003, in subcase 85-12131, along with the other 211 claims, and on November 18, 2003, the Presiding Judge entered an *Order of Partial Decree*. The USDI/BLM filed a *Motion to Set Aside Partial Decrees and Refer Subcases to the Special Master* on February 17, 2004, in subcases 82-10557, 82-10640, 82-10659 and 85-12131.

A hearing on the *Motion* was held by telephone on March 25, 2004. Larry A. Brown appeared for the USDI/BLM and Roxanne represented IDWR. IDWR agreed with the requested changes in source and remarks and prepared an *Amended Claim Standard Form 5* filed by the USDI/BLM on March 30, 2004.

Conclusions of Law

The USDI/BLM has shown good cause to have the *Partial Decree* in subcase 85-12131 set aside and have an amended partial decree entered adjudicating a water right as described in the *Amended Claim SF-5* and the attached *Amended Special Master Recommendation for Partial Decree for Water Right 85-12131*.

DATED May 11, 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

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

AMENDED

In Re SRBA)
)
Case No. 39576)
)

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

Water Right 85-12131

2004 MAY 11 AM 10 49

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

SOURCE: UNNAMED STREAM TRIBUTARY: BIG COUGAR CREEK

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: T30N R04W S05 LOT 2 (NWNWNE) (Instream Beginning Point) Within Nez Perce County
LOT 2 (NWNWNE) (Instream Ending Point)

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
T30N R04W S05 LOT 2 (NWNE)

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.

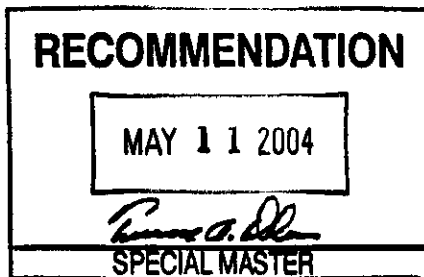
THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

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



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STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
Case No. 39576)
_____)

CERTIFICATE OF MAILING

Water Right(s): 85-12131

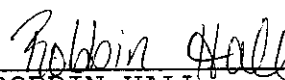
CERTIFICATE OF MAILING

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 May 11, 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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In Re SRBA)
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_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

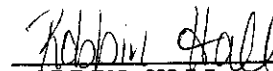
Water Right(s): 85-12131

On May 11, 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 May 11, 2004.



ROBBIN HALL
Deputy Clerk