

2004 MAY 13 PM 2 13

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 35-02384
	) (Olsen)
Case No. 39576	)
	) SPECIAL MASTER REPORT
_____	)

Findings of Fact

J. Henry Olsen, 1005 W. Highway 26, Blackfoot, Idaho, 83221, filed a *Notice of Claim to a Water Right* on January 16, 1989, claiming 4.5 cfs from groundwater to irrigate 340 acres in Bingham County from April 1 to November 1 with a priority date of August 6, 1954, based on a license. The Director of the Idaho Department of Water Resources filed his *Director's Report for Irrigation & Other Uses, Reporting Area 5, Part 2 (IDWR Basin 35)* on September 15, 1998. The Director recommended the claim as filed, but for irrigation of 320 acres from April 1 to October 31.

Mr. Olsen filed an *Objection* on October 22, 1998, objecting to place of use alleging it should be "340 acres (enlargement claim)." The Twin Falls and North Side Canal Companies filed *Objections* on November 20, 1998, objecting to source, quantity, other provisions and alleging the water right should not exist.

On August 27, 2001, the Special Master entered an *Order Granting Respondents' Motions for Partial Summary Judgment* in consolidated subcases 35-07200 and 41-02016 dismissing the Canal Company *Objections*.

Mr. Olsen failed to appear at a status conference held on April 23, 2002, but he appeared *pro se* at a telephone scheduling conference on May 16, 2002. Mr. Olsen and counsel for IDWR agreed that he would file a motion to file a late claim for an enlargement within a week to claim

1.6 cfs and 20 more acres than recommended by IDWR. He also agreed to withdraw his *Objection* in the above subcase after his motion is granted.¹

Status conferences were held on February 27 and May 6, 2004, but Mr. Olsen failed to appear. The record and Mr. Olsen's conduct indicates that he intends to abandon his *Objection* in subcase 35-02384 and pursue his claim for an enlargement through his *Motion to File Amended Notice of Claim* in subcase 35-13395.

Conclusions of Law

Mr. Olsen's *Objection* in subcase 35-02384 has effectively been abandoned. Therefore, he is entitled to and should be granted a partial decree adjudicating a water right in subcase 35-02384 as recommended by the Director of IDWR and as described in the attached *Special Master Recommendation for Partial Decree for Water 35-02384*.

DATED May 13, 2004.



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

¹ Mr. Olsen filed *Motion to File a Late Notice of Claim* in subcase 35-13395 on August 21, 2002, stating: "I am filing for .16 cfs based on license # 35-7095A appurtenant to the 20 acres in the southeast of the southeast of section 26, T 01S, R 33E." The *Motion* was granted on November 21, 2002. On February 18, 2003, the Director filed his *Director's Report for Late Claims* and recommended that claim 35-13395 be disallowed: "Recommended as right nos. 35-7095D, 35-7095E, 35-13333 and 35-13334." When no one objected to the Director's recommendation, on July 24, 2003, the Presiding Judge entered a *Final Order Disallowing Water Right Claims* disallowing claim 35-13395 with prejudice. On November 4, 2003, Mr. Olsen filed a *Motion to File Amended Notice of Claim* in subcase 35-13395 stating: "I am amending my claim to reflect an enlargement from 320 acres to 333 acres." The Presiding Judge set the *Motion* for hearing on April 20, 2004, with the warning: "Notice is hereby given that failure of Claimant to appear in person, by telephone or through counsel could result in dismissal of *Motion*." When Mr. Olsen failed to appear at that hearing, a final hearing on the *Motion* was set for July 20, 2004, with another warning: "Failure of Mr. Olsen or his counsel to appear at this hearing will result in dismissal of the motion to amend claim."

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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

In Re SRBA)
)
Case No. 39576)
)

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

Water Right 35-02384

2004 MAY 13 PM 2 13

NAME AND ADDRESS: J HENRY OLSEN
1005 W HWY 26
BLACKFOOT, ID 83221

SOURCE: GROUNDWATER

QUANTITY: 4.50 CFS

USE OF THIS RIGHT WITH RIGHT NO. 35-07092 IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 5.57 CFS, A TOTAL COMBINED
ANNUAL DIVERSION VOLUME OF 1280 AF.

PRIORITY DATE: 08/06/1954

POINT OF DIVERSION: T01S R33E S35 NWNSE Within Bingham County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	4.50 CFS

PLACE OF USE:	Irrigation	Within Bingham County
	T01S R33E S26	SESE 7.0
	S35	NENE 39.0
		SWNE 40.0
		NESE 39.0
		SWSE 39.0
		NWNE 40.0
		SENE 38.0
		NWSE 40.0
		SESE 38.0
	320.0 Acres Total	

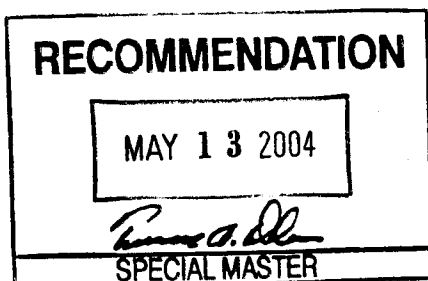
USE OF THIS RIGHT WITH RIGHT NO. 35-07092 IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 320 ACRES IN A SINGLE
IRRIGATION SEASON.

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

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 _____

2004 MAY 13 PM 2 13

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)
_____)

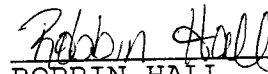
Water Right(s): 35-02384

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 13, 2004, with sufficient first-class postage prepaid to
the following:

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

J HENRY OLSEN
1005 W HWY 26
BLACKFOOT, ID 83221
Phone: 208-684-5584


ROBBIN HALL
Deputy Clerk

CERTIFICATE OF MAILING

PAGE 1
05/13/04

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

2004 MAY 13 PM 2 13

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_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

Water Right(s): 35-02384

On May 13, 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 13, 2004.



ROBBIN HALL
Deputy Clerk