

2004 JUN 8 PM 2 59

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	)	Subcases 35-07000B, 35-07368B,
	)	35-07493 and 35-13305
Case No. 39576	)	(Stolworthy)
	)	
	)	ORDER GRANTING MOTION TO
	)	ALTER OR AMEND AND AMENDED
	)	SPECIAL MASTER REPORT AND
	)	RECOMMENDATION

Findings of Fact

Brenda K. Stolworthy, 1320 N., 375 E., Shelley, Idaho, 83274, filed a *Motion to File Late Notice of Claim* on March 30, 2001, in subcase 35-13305 claiming 10.25 cfs from groundwater to irrigate 527.1 acres in Bingham County from April 1 to October 31 with a priority date September 8, 1960, based on beneficial use. On May 17, 2001, former-Presiding Judge Roger S. Burdick entered an *Order Granting Motion to File Late Notice of Claim*.

The Director of the Idaho Department of Water Resources filed his *Director's Report for Late Claims, Domestic and Stockwater and Irrigation and Other Water Rights, Reporting Areas 1, 2, 3, 5, 6, 7, 8, & 15, IDWR Basins 31, 34, 35, 36, 41, 43, 57, 61, 65* on February 18, 2003. The Director recommended that claim 35-13305 be disallowed: "Recommended as right no. 35-7493."¹

Ms. Stolworthy filed an *Objection* on March 28, 2003, objecting to name and address, priority date and the claim not being recommended as claimed. A series of hearings on the *Objection* have been held with the expected resolution that the claimant would file motions to set aside and modify *Partial Decrees* in three related water rights (35-07000B, 35-07368B and 35-07493).

¹ Water right 35-07493 was partially decreed to David Stolworthy on February 19, 2002.

On February 26, 2004, the claimant filed a *Motion for an Order to Amend Partial Decree and Confirming the Parameters of Water Right No. 35-13305*. When the claimant learned that no partial decree has been entered in subcase 35-13305, the *Motion* was withdrawn by *Notice* filed on February 27, 2004. The *Notice* also stated that the claimant would “refile an appropriate motion in the above-captioned matter on or before March 12, 2004.”

On March 30, 2004, the Special Master entered a *Draft Special Master Report and Recommendation* for the purpose of receiving suggestions from counsel for the claimant and IDWR. The *Draft* stated that if no suggestions were received by April 16, 2004, the Special Master would enter a report and recommendation that claim 35-13305 **not** be adjudicated as a water right. When no suggestions were filed, on April 19, 2004, the Special Master entered a *Special Master Report and Recommendation* recommending that late claim 35-13305 not be adjudicated as a water right.

Brenda and David Stolworthy filed a *Motion to Alter or Amend Special Master’s Report and Recommendation* on April 28, 2004. The next day, they filed a *Motion to Consolidate Subcases Numbered 35-7493, 35-13305, 35-7000B and 35-7368B*. A hearing on the *Motions* was held by telephone on May 20, 2004. Counsel for the Stolworthys and counsel for IDWR agreed with the Special Master that the subcases should be treated as a “package” rather than as formally consolidated. Counsel for IDWR also agreed that a *Standard Form 5* would soon be filed stating that claim 35-13305 should be decreed to Ms. Stolworthy for 8.65 cfs to irrigate 523 acres. The *SF-5* in subcase 35-13305 was filed on June 4, 2004.

Because use of water under 35-13305 is combined with 35-07000B, 35-07368B and 35-07493, the *Partial Decrees* in subcases 35-07000B, 35-07368B and 35-07493, all entered on February 19, 2002, must be set aside and modified to include combined use remarks.

Conclusions of Law

1. The Stolworthys have shown good cause to alter or amend the April 28, 2004 *Special Master Report and Recommendation* in subcase 35-13305;
2. The Stolworthys have also shown good cause to have the February 19, 2002 *Partial Decrees* in subcases 35-07000B, 35-07368B and 35-07493 set aside and modified to include combined use remarks; and

3. Brenda K. Stolworthy is entitled to a partial decree adjudicating a water right under late claim 35-13305 as described in the *SF-5* and the attached *Amended Special Master Recommendation for Partial Decree for Water Right 35-13305*.

Order

THEREFORE, IT IS ORDERED that the Stolworthys' *Motion to Alter or Amend Special Master's Report and Recommendation* is **granted**.

Recommendation

THEREFORE, IT IS RECOMMENDED that the *Partial Decrees* in subcases 35-07000B, 35-07368B and 35-07493 set aside and modified to include combined use remarks.

DATED June 8, 2004.


TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

James A. Allen

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): 35-07000B
35-07368B 35-07493 35-13305

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

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

ABERDEEN-AMERICAN FALL GROUND
ABERDEEN-AMERICAN FALLS GROUND
BINGHAM GROUND WATER DISTRICT
UPPER VALLEY IRRIGATORS ASSOC
UPPER VALLEY IRRIGATORS ASSOC.

Represented by:
JEFFREY C. FEREDAY
PO BOX 2720
BOISE, ID 83701-2720
Phone: 208-388-1200

CERTIFICATE OF MAILING

PAGE 1
06/08/04

FREMONT-MADISON IRR DIST

Represented by:

JERRY R. RIGBY

PO BOX 250

REXBURG, ID 83440-0250

Phone: 208-356-3633

STATE OF IDAHO

Represented by:

NATURAL RESOURCES DIV CHIEF

STATE OF IDAHO

ATTORNEY GENERAL'S OFFICE

PO BOX 44449

BOISE, ID 83711-4449

BRENDA K STOLWORTHY

BRENDA STOLWORTHY

DAVID STOLWORTHY

Represented by:

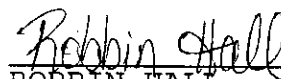
TERESA L. STURM

PO BOX 51219

428 PARK AVENUE

IDAHO FALLS, ID 83405-1219

Phone: 208-523-4445



ROBBIN HALL
Deputy Clerk

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

2004 JUN 8 PM 2 59

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

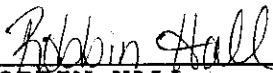
Water Right(s): 35-07000B
35-07368B 35-07493 35-13305

On June 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 June 08, 2004.



ROBBIN HALL
Deputy Clerk

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

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AMENDED

In Re SRBA)
Case No. 39576)
_____)

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

Water Right 35-07368B

NAME AND ADDRESS: BRENDA STOLWORTHY
DAVID STOLWORTHY
1230 N 375 E
SHELLEY, ID 83274

SOURCE: GROUNDWATER

QUANTITY: 1.82 CFS

USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 9.62 CFS AND TO A TOTAL COMBINED
ANNUAL DIVERSION VOLUME OF 2092 AF. COMBINED RIGHT NOS.:
35-7000B, 35-7368B, 35-7493 AND 35-13305

PRIORITY DATE: 01/11/1974

POINT OF DIVERSION: T01N R36E S34 NWSENE Within Bingham County
NENWNW
NWSESW

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	1.82 CFS

PLACE OF USE:	Irrigation		Within Bingham County
	T01N R36E S27	NESW 4.0	NWSW 4.0
		SWSW 36.0	SESW 40.0
		NWSE 3.0	SWSE 37.0
	S33	NENE 1.0	SENE 1.0
	S34	NENE 27.0	NWNE 39.0
		SWNE 35.0	SENE 33.0
		NENW 40.0	NWNW 37.0
		SWNW 32.0	SENW 36.0
		NESW 34.0	NWSW 24.0
		SWSW 28.0	SESW 32.0
	523.0 Acres Total		

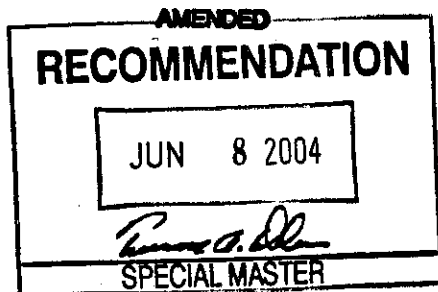
USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO
THE IRRIGATION OF A COMBINED TOTAL OF 523 ACRES IN A SINGLE
IRRIGATION SEASON. COMBINED RIGHT NOS.: 35-07000B, 35-7368B,
35-7493 AND 35-13305

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