

2004 JUL 6 AM 11 37

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 47-16082
	) (USDI / BLM)
Case No. 39576	)
	) ORDER DENYING STATE OF
	) IDAHO'S OBJECTION and
	) SPECIAL MASTER REPORT

Findings of Fact

The Director of the Idaho Department of Water Resources filed his *Director's Report for Domestic and Stockwater, Reporting Area 12 (IDWR Basin 47)* on August 14, 1998. The Director recommended claim 47-16082 to the United States of America, Department of Interior, Bureau of Land Management, Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho, 83709-1657, for .02 cfs from a spring in Twin Falls County for year-'round stockwater use with a priority date of January 1, 1875, based on beneficial use. The Director also noted under priority date: "4/17/1926 Claimed under federal reserved water right. This water right is also claimed based on federal law with an April 17, 1926, date of priority pursuant to an Executive Order signed the same date and known as Public Reserve 107."

On February 10, 1999, the State of Idaho filed an *Objection* to priority date: "If this water right exists, the State Law based portion of this right should have a priority date no earlier than June 28, 1934." The State also alleged that the water right should not exist.

On May 12, 2003, the United States and the State filed a *Joint Motion to Vacate Hearing on Dispositive Motions and to Proceed with Hearing Under I.C. § 42-1411(A)* in multiple subcases, including 47-16082. On February 24, 2004, the State filed its *Report on Status of Idaho's Objections for Selected Subcases in Basins 35 and 47*. For subcase 47-16082, the *Report* noted: "This water right needs to be decreed as a state water right with a priority date of 6/28/1934. The United States reacquired this land on or about November 24, 1989."

On March 12, 2004, the United States filed an *Affidavit of Eric V. Mayes* in 34 subcases, including subcase 47-16082. Mr. Mayes, a natural resource specialist with the USDI / BLM in its Burley field office, stated the following for subcase 47-16082, 47-16084 and 47-16086:

United States Cash Entry Patent, number 278, was issued to Dick Tisdale on December 16, 1895, pursuant to the Act of April 24, 1820. Subsequently, the United States reacquired this land pursuant to Warranty Deed, number 964333, from Ralph F. and Hazel A. Schnell on November 30, 1989. The United States assigned Serial Case File Number IDI-27298 to this action. . . . [T]hese subcases should be decreed with a state basis and a December 16, 1895 priority date.

An I.C. § 42-1411A hearing was held by telephone on July 1, 2004. R. Lee Leininger appeared for the United States, along with Frederic W. Price; David J. Barber appeared for the State of Idaho; and Nicholas B. Spencer appeared for IDWR.

Conclusions of Law

1. The United States of America is entitled to a partial decree adjudicating a water right for subcase 47-16082 as described in the attached *Special Master Recommendation for Partial Decree for Water Right 47-16082*, and
2. The State of Idaho's *Objection* has no basis in law.

Order

THEREFORE, IT IS ORDERED that the State of Idaho's *Objection* is **denied**.

DATED July 6, 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

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In Re SRBA)
)
Case No. 39576)
)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 47-16082

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

SOURCE: SPRING TRIBUTARY: SHOSHONE CREEK

QUANTITY: 0.02 CFS

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

PRIORITY DATE: 12/16/1895

POINT OF DIVERSION: T16S R17E S22 SWNWNE Within Twin Falls County

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 Twin Falls County
T16S R17E S22 NWNE

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

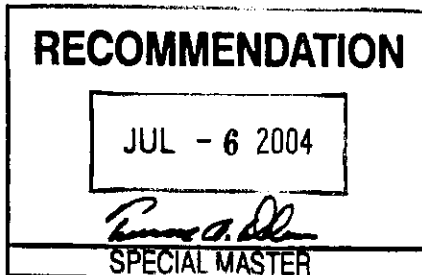
THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

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.

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



DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
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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): 47-16082

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 July 06, 2004, with sufficient first-class postage prepaid to the following:

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

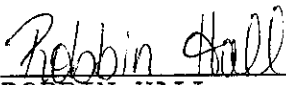
STATE OF IDAHO

Represented by:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
PO BOX 44449
BOISE, ID 83711-4449

USDI BLM

Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

CERTIFICATE OF MAILING



ROBBIN HALL
Deputy Clerk

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07/06/04

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_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

Water Right(s): 47-16082

On July 06, 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 July 06, 2004.



ROBBIN HALL
Deputy Clerk