

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

2004 JUL 7 AM 11 33

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 47-15408, <i>et al.</i>
	) (see list of 8 subcases attached)
Case No. 39576	) (USDI / BLM)
	)
_____	) 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 the above 8 claims 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 various springs 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 for each claim: "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 rights 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 the above 8 subcases. On February 24, 2004, the State filed its *Report on Status of Idaho's Objections for Selected Subcases in Basins 35 and 47*. The *Report* noted that for each claim, the State's "Objection continues," and various serial register numbers were cited. The numbers indicate that applications for entry under various public land laws were pending

before the General Land Office on April 17, 1926, but in each subcase, the applications were extinguished prior to vesting and the land never left federal ownership. See *Special Master Report*, subcases 35-12996, *et al.*, dated October 28, 2003, for a full discussion of the issue.

On April 8, 2004, the United States filed an *Affidavit of John R. Ash* in 119 subcases (47-15285, *et al.*), including the above 8 subcases. Mr. Ash, a natural resource specialist with the USDI / BLM in the Jarbidge field office located in Twin Falls, stated that: 1) the claims are located on unreserved federal public domain as of April 17, 1926; 2) the lands currently remain under Department of Interior administration; 3) the water sources were verified and confirmed by field investigation; 4) there is sufficient surface water at the sites for consumptive use by livestock; and 5) the sources of water are naturally-occurring free-flowing springs located at the claimed points of diversion and places of use.

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 partial decrees adjudicating water rights for the above 8 subcases as described in the attached *Special Master Recommendations for Partial Decrees for Water Rights*, and
2. The State of Idaho's *Objections* have no basis in law.

Order

THEREFORE, IT IS ORDERED that the State of Idaho's *Objections* are **denied**.

DATED July 7, 2004.


TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

47-15408
47-15454
47-15457
47-15507
47-15510
47-15515
47-16114
47-16116

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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): 47-15408
47-15454 47-15457 47-15507
47-15510 47-15515 47-16114
47-16116

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 07, 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:

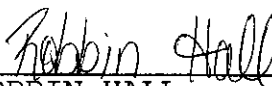
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
PO BOX 44449
BOISE, ID 83711-4449

CERTIFICATE OF MAILING

PAGE 1
07/07/04

USDI BLM

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



ROBBIN HALL
Deputy Clerk

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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): 47-15408
47-15454 47-15457 47-15507
47-15510 47-15515 47-16114
47-16116

On July 07, 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 07, 2004.



ROBBIN HALL
Deputy Clerk

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

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

Water Right 47-15454

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

SOURCE: SPRING TRIBUTARY: MERLES POND

QUANTITY: 0.02 CFS

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

PRIORITY DATE: 04/17/1926

THIS WATER RIGHT IS 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 WATER RESERVE 107.

POINT OF DIVERSION: T15S R13E S20 SENWSW 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
T15S R13E S20 NWSW

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

