

2004 JUL 7 AM 11 07

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 47-15478
	) (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 47-15478 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 House Creek in Twin Falls County for year-'round instream 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 subcase 47-15478. 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 for subcase 47-15478: "The designation of ending point and beginning point should be reversed. House

Creek flows from the South to the North.” On April 5, 2004, the United States and the State, with IDWR’s concurrence, filed a *Standard Form 5* to correct the instream beginning and ending points and the federal law basis of the claim.

On April 8, 2004, the United States filed an *Affidavit of John R. Ash* 119 subcases (47-15285, *et al.*), including subcase 47-15478. Mr. Ash, a natural resource specialist with the USDI / BLM in the Jarbidge field office located in Twin Falls, stated that for several subcases, including subcase 47-15478:

As these subcases describe claims to streams, the lands described in these subcases would only be subject to a federal reserve pursuant to **PWR 28**. This reservation is not limited to certain water source types. As these subcases do not describe springs or waterholes, PWR 107 would not apply to these subcases.

Mr. Ash also stated that for 47-15478, the claim is: 1) located on unreserved federal public domain as of May 31, 1915; 2) the land currently remains under Department of Interior administration; 3) the water source was verified and confirmed by field investigation; 4) there is sufficient surface water at the site for consumptive use by livestock; and 5) the source of water is 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 a partial decree adjudicating a water right for subcase 47-15478 as described in the attached *Special Master Recommendation for Partial Decree for Water Right 47-15478*, and
2. That except to correct designations of the beginning and ending points, 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 7, 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)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Case No. 39576)
Water Right 47-15478

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

SOURCE: HOUSE CREEK TRIBUTARY: CEDAR CREEK RESERVOIR

QUANTITY: 0.02 CFS

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

PRIORITY DATE: 05/31/1915

THIS WATER RIGHT IS DECREED BASED ON FEDERAL LAW WITH AN
MAY 31, 1915, DATE OF PRIORITY PURSUANT TO AN EXECUTIVE ORDER
SIGNED THE SAME DATE AND KNOWN AS PUBLIC WATER RESERVE 28.

POINT OF DIVERSION: T16S R12E S12 NENESE (Instream Ending Point) Within Twin Falls County
S13 SWNENE (Instream Beginning 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 Twin Falls County
	T16S R12E S12 NESE SESE	
	S13 NENE	

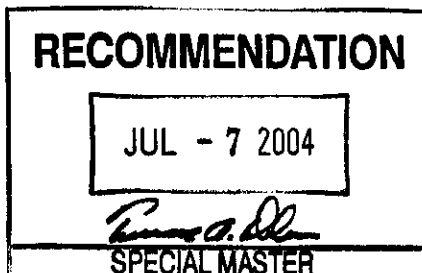
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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 _____

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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)
Case No. 39576)
_____)

CERTIFICATE OF MAILING

Water Right(s): 47-15478

CERTIFICATE OF MAILING

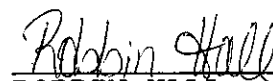
I certify that a true and correct copy of the SPECIAL MASTER'S REPORT, SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on July 07, 2004, with sufficient first-class postage prepaid to the following:

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

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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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
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In Re SRBA)
Case No. 39576)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

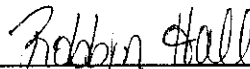
Water Right(s): 47-15478

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