

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED
2004 JUL 7 AM 10 41

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 47-15549
	) (split subcases 47-17115 and 47-17116)
Case No. 39576	) (USDI / BLM)
	)
	) SPECIAL MASTER REPORT and
	) RECOMMENDATION

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 47-15549 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 Shack 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 47-15549. 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 in subcase 47-15549: "Objection continues to instream flow under PWR 28. The legal description contains land not within the legal description within PWR 28."

On April 8, 2004, the United States filed an *Affidavit of John R. Ash* in 119 subcases (47-15285, *et al.*), including subcase 47-15549. Mr. Ash, a natural resource specialist with the USDI / BLM in the Jarbidge field office located in Twin Falls, stated the following in several subcases, including 47-15549:

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. . . . I was able to determine that those subcases were also located on unreserved deferral public domain as of May 31, 1915, which was the date of PWR 28.

. . . .
Upon closer examination of the BLM Claim file, the MTP [Master Title Plats], and the HI [Historical Indexes], it was discovered that this instream stockwater claim [47-15549] is partially subject to a federal reserve pursuant to **PWR 28** and that the claim should be appropriately split into two “new” separate claims: one based on state law and the other based upon state and federal law. The federal claim basis is claimed pursuant to an Executive Order, dated May 15, 1915, and known as **Public Water Reserve 28**. The state basis is based on beneficial use with a priority date of June 28, 1934.

On June 10, 2004, the United States and the State, with IDWR’s concurrence, filed *Standard Form 5’s* agreeing to split 47-15549 into 47-17115 (state law) and 47-17116 (PWR 28). 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.

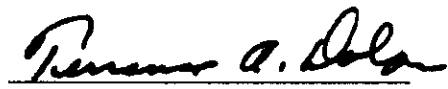
Conclusions of Law

1. The United States of America is entitled to partial decrees adjudicating water rights for subcases 47-17115 and 47-17116 as described in the *SF-5’s* and the attached *Special Master Recommendations for Partial Decrees for Water Rights 47-17115 and 47-17116*, and
2. The United States is **not** entitled to a partial decree for 47-15549, the claim having been split into 47-17115 and 47-17116.

Recommendation

THEREFORE, IT IS RECOMMENDED that claim 47-15549 **not** be decreed and that the claim should be dismissed with prejudice.

DATED July 7, 2004.

A handwritten signature in black ink, reading "Terrence A. Dolan". The signature is written in a cursive style with a horizontal line underneath the name.

TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

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

2004 JUL 7 AM 10 42

Water Right 47-17116

NAME AND ADDRESS: USDI BUREAU OF LAND MANAGEMENT
IDAHO STATE OFFICE
1387 S VINNELL WAY
BOISE, ID 83709-1657

SOURCE: SHACK CREEK TRIBUTARY: BEAR CREEK

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 R13E S28 NWNESE (Instream Beginning Point) Within Twin Falls County
LOT 4 (SWSWSW) (Instream Ending 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 R13E S28 NESW NWSW
LOT 4 (SWSW)

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.

RECOMMENDATION

JUL - 7 2004

James A. Melanson
SPECIAL MASTER

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

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In Re SRBA)
)
Case No. 39576)
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CERTIFICATE OF MAILING

Water Right(s): 47-15549
47-17115 47-17116

CERTIFICATE OF MAILING

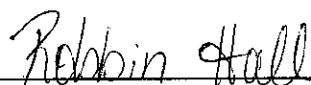
I certify that a true and correct copy of the SPECIAL MASTER'S REPORT, SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on July 07, 2004, with sufficient first-class postage prepaid to the following:

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
USDI BUREAU OF LAND MANAGEMENT
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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NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

Water Right(s): 47-15549
47-17115 47-17116

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