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DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

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

) ORDER VACATING SEPTEMBER
) 21, 2004, HEARING ON MOTIONS
) TO SET ASIDE PARTIAL DECREES;
) and,
)
) ORDER OF REFERENCE TO
) SPECIAL MASTER TERRENCE
) DOLAN WITH SPECIAL
) INSTRUCTIONS
)
) For Water Rights: 41-00008C,
) 41-00008D, 41-00008E¹ and 41-00008F

I.
PROCEDURE

- A. The above-captioned water right claims were previously decreed as uncontested claims on July 28, 2000, and subsequently amended *nunc pro tunc* on March 12, 2001.
- B. On June 14, 2004, Juan James Spillett, through counsel, filed a *Motion to Set Aside Partial Decrees* for the above-captioned rights, contending that the respective quantities allocated and recommended in the *Director's Reports* were inconsistent with the *Houtz Arbitration* on which all of the claims are based. Spillett asserts there is insufficient water for the above-captioned claims, which are also based on the *Houtz Arbitration* and IDWR's allocation.
- C. On June 16, 2004, this Court set the matter for hearing before this Presiding Judge to be heard September 21, 2004.
- D. Previously on July 3, 2002, pursuant to a *Special Master's Recommendation*, the *Partial Decree* for water right 41-00008E, along with other rights, was ordered set aside

¹ The *Partial Decree* for this right was already set aside and is now pending before Special Master Dolan.

for purposes of re-examining and re-reporting by IDWR. The matter is currently before Special Master Dolan.

E. On July 7, 2004, also pursuant to a **Recommendation** from Special Master Dolan to grant a late claim for water rights 41-00042 and 41-00047, also based on the *Houtz Arbitration*, this Court conditionally granted the late claim subject to the condition that the decreeing of the right would not require that other **Partial Decrees** also based on the *Houtz Arbitration* be set aside. The matter is currently before Special Master Dolan.

F. Because the above-captioned rights are also based on the *Houtz Arbitration* and may be affected by the late claim, and because the **Partial Decree** for 41-00008E was already set aside and the matter pending before Special Master Dolan, for purposes of judicial economy it is appropriate to have the instant *Motions* also heard by the same Special Master.

II.

ORDER OF REFERENCE

Therefore, IT IS ORDERED that the above-captioned matter is hereby referred to Special Master Terrence Dolan for a recommendation on the *Motions to Set Aside* and the underlying merits if necessary, consistent with the authority previously conferred to Special Master Dolan pursuant to the *General Order of Reference for Basin 41* previously issued.

III.

SPECIAL INSTRUCTIONS

It is not the intent of the Court to have all of the **Partial Decrees** issued for the source of the subject rights pursuant to the *Houtz Arbitration* to be set aside and the entire matter opened to be re-litigated unless there is an express acknowledgment from IDWR in a I.R.C.P. 706 Report or Supplemental Director's Report to the Special Master that errors were made in allocating water for the source of the subject rights. The parties were previously accorded sufficient opportunity to raise and litigate these issues. However, the Court acknowledges that the quantities decreed under the *Houtz Arbitration* did not use conventional standards (i.e. Houtz box) and that errors could have resulted in allocating

the source for purpose of making recommendations. An error in allocation could result in some users being decreed more water than was historically being used and other users being decreed less. The Court further acknowledges that the above-captioned rights were uncontested and therefore claimants implicitly were reliant on the accuracy of IDWR's allocation of the subject source. Lastly, the Court takes into account that the *Partial Decree* for the 41-00008E water right was previously set aside.

If IDWR determines that errors were not made in allocating the source, then the Special Master should decline to re-open the matter in accordance with the applicable I.R.C.P. 60(b) standards.

IV.

ORDER VACATING SEPTEMBER 21, 2004, HEARING

Based on the foregoing the hearing on the Motions set to be heard September 21, 2004, before the Presiding Judge is **VACATED**.

DATED: JULY 9, 2004

JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER VACATING SEPTEMBER 21, 2004, HEARING ON MOTIONS TO SET ASIDE PARTIAL DECREES & ORDER OF REFERENCE was mailed on July 09, 2004, with sufficient first-class postage to the following:

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