

2004 AUG 26 PM 3 10

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

)
) Subcase 47-15417
) (USDI / BLM)
)
) 2nd 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 47-15417 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 for year-'round stockwater use in Twin Falls County with a priority date of January 1, 1975, 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 Water Reserve 107.

The State of Idaho filed an *Objection* on February 10, 1999, objecting to priority date and alleging the water right should not exist. The United States filed an *Objection* on February 12, 1999, objecting to point of diversion.

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)* on May 12, 2003. On February 11, 2004, the United States and the State, with IDWR's concurrence, filed an *Amended Claim Standard Form 5* agreeing to an amended point of diversion. Finally, on February 24, 2004, the State filed a *Report on Status of State of Idaho's Objections for Selected Subcases in Basins 35 and 47* stating its objection in 47-15417 was withdrawn.

On March 29, 2004, the Special Master entered a *Special Master Report and Recommendation* recommending the claim be decreed with 1934 priority date based on state law and on May 4, 2004, the Presiding Judge of the SRBA entered an *Order of Partial Decree*.

The United States filed a *Motion to Set Aside Partial Decree and Refer Subcase to the Special Master* on August 11, 2004, because the water right was incorrectly recommended and partially decreed under a state-law basis with a June 28, 1934 priority date. On August 16, 2004, the Presiding Judge entered an *Order Setting Aside Partial Decree I.R.C.P. 60(a)*.

An I.C. § 42-1411A hearing was held by telephone on August 26, 2004. Larry A. Brown and 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.

On April 8, 2004 (after the *Special Master Report and Recommendation* was entered in subcase 47-15417), the United States filed the *Affidavit of John R. Ash* in 119 subcases (47-15285, *et al.*), including subcase 47-15417. Mr. Ash, a natural resource specialist with the USDI / BLM in the Jarbidge field office located in Twin Falls, Idaho, stated: claim 47-15417 is a dual-based claim (based on state and federal law) with the federal basis pursuant to an Executive Order, dated April 17, 1926, known as Public Water Reserve 107; the claim is located on federal public domain as of April 17, 1926, and the land currently remains under Department of Interior administration; the claimed water source was verified and confirmed by field investigation; there is sufficient surface water at the site for consumptive use by livestock; and the source of the water is located at the claimed point of diversion and place of use (as amended in the *Amended Claim SF-5*).

Conclusions of Law

The United States is entitled to a partial decree adjudicating a water right for claim 47-15417 as described in the *Amended Claim SF-5* (but with an April 17, 1926 priority date) and the attached 2nd *Special Master Recommendation for Partial Decree for Water Right 47-15417*.

DATED August 26, 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

AMENDED

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 47-15417

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

SOURCE: SPRING TRIBUTARY: BROWNS CREEK

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 DECREED 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 R14E S28 SWNWSW 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 R14E S28 NWSW

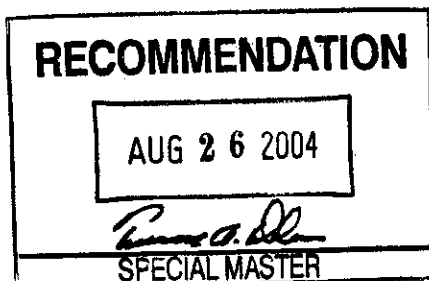
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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.

AMENDED



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): 47-15417

CERTIFICATE OF MAILING

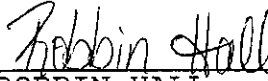
I certify that a true and correct copy of the SPECIAL MASTER'S REPORT, SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on August 26, 2004, with sufficient first-class postage prepaid to the following:

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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08/26/04

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
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Case No. 39576)
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NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

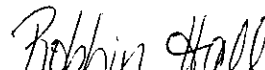
Water Right(s): 47-15417

On August 26, 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 August 26, 2004.



ROBBIN HALL
Deputy Clerk