

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

2004 SEP 2 PM 2 52

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 82-10577
	) (USDI/BLM)
Case No. 39576	)
	) 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 22 (IDWR Basin 82)* on March 19, 1999. The Director recommended 82-10577 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 Elk Creek for year-'round stockwater use in Idaho County with a priority date of January 1, 1861, based on beneficial use.

On June 2, 1999, the State of Idaho filed an *Objection* in multiple subcases, including subcase 82-10577, objecting 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.") and alleging that the water right should not exist. On September 17, 1999, the United States filed an *Objection* to point of diversion and place of use.

On August 29, 2002, the United States and certain private parties filed a *Stipulation* in multiple subcases, including 82-10577, and an *Order Granting Withdrawal of Objections and Responses* was entered on September 5, 2002. On June 11, 2003, an *Order Dismissing State of Idaho Objections* was entered based on the parties' *Stipulation to Resolve Objections*.

On July 22, 2004, the United States, with IDWR's concurrence, filed an *Amended Claim Standard Form 5* agreeing to a June 28, 1934, priority date and amending the point of diversion and place of use.

Conclusions of Law

The United States of America is entitled to a partial decree adjudicating a water right under claim 82-10577 as described in the *Amended Claim SF-5* and the attached *Special Master Recommendation for Partial Decree for Water Right 82-10577*.

DATED September 2, 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)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 82-10577

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

SOURCE: ELK CREEK TRIBUTARY: AMERICAN RIVER

QUANTITY: 0.02 CFS

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

PRIORITY DATE: 06/28/1934

POINT OF DIVERSION: T29N R08E S23 SWSNW (Instream Ending Point) Within Idaho County
SESENW (Instream Beginning Point)
NWNESW (Instream Ending Point)
NWNESW (Instream Beginning Point)

ALL POINTS OF DIVERSION LIE WITHIN THE SERG SUR SURVEY

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 Idaho County
T29N R08E S23 SENW NESW

ALL PLACES OF USE LIE WITHIN THE SERG SUR SRUVEY.

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

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

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

SEP - 2 2004

James A. Melanson
SPECIAL MASTER

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

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STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)

CERTIFICATE OF MAILING

Case No. 39576)
_____)

Water Right(s): 82-10577

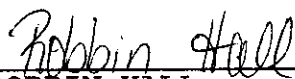
CERTIFICATE OF MAILING

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 September 02, 2004, with sufficient first-class postage prepaid to the following:

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

USDI BLM

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



ROBBIN HALL
Deputy Clerk

CERTIFICATE OF MAILING

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In Re SRBA)
Case No. 39576)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

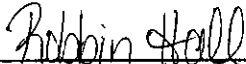
Water Right(s): 82-10577

On September 02, 2004, Special Master TERRENCE A. DOLAN issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s) pursuant to SRBA Administrative Order 1 (A01), 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 September 02, 2004.



ROBBIN HALL
Deputy Clerk