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DEC - 3 2002

Department of Water Resources

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED 70

2002 DEC 2 AM 11 50

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 36-02169
) (Dan & Irma McFaddan
) Family Limited Partnership)
)
) SPECIAL MASTER REPORT

Findings of Fact

Ruth E. Cary filed a *Notice of Claim to a Water Right* on August 31, 1988, claiming .205 cfs from an unnamed spring tributary to Billingsley Creek for year-'round domestic use and to irrigate 5.5 acres in Gooding County from March 15 to November 15 with a priority date of January 2, 1891, based on beneficial use, a license and a decree. The Director of the Idaho Department of Water Resources filed his *Director's Report, Part I, for Reporting Area 3 (Basin 36)* on November 2, 1992. The Director recommended the claim to Dan and Irma McFaddan for .16 cfs for year-'round domestic use and to irrigate 4.5 acres from March 15 to November 15 with a priority date of April 10, 1952, based on a license.

The McFaddans filed an *Objection* on April 29, 1993, objecting to nearly all the recommended elements. On November 4, 1993, former-Presiding Judge Daniel C. Hurlbutt, Jr., entered an *Order of Reference Appointing Terrence A. Dolan Special Master in Reporting Area 3 (Basin 36)*.

On December 12, 1995, the Special Master entered an *Order* allowing Cranney Bros., to file a late response in this and other subcases. On February 28, 1996, the Special Master entered a *Findings and Recommendation* that the McFaddans' *Motion for Permissive Review* of the *Order* be denied.

On April 24, 1996, Judge Hurlbutt entered an *Amended Order of Reference Appointing Fritz X. Haemmerle Special Master* for 30 subcases in Basin 36, including 36-02169. Later, on May 17, 1996, Judge Hurlbutt entered an *Order of Temporary Remand to Newly Appointed*

Special Master in several subcases, again including 36-02169, "to facilitate a more expeditious review of the issues presented by way of the request for permissive review."

Special Master Haemmerle entered an **Order Denying Motion to File Late Responses** on June 17, 1996, denying Cranney Bros.' late responses, as well as those filed by May Farms, Ltd., and Sand Springs Ranch Partnership in related subcases. Also see Special Master Haemmerle's **Order on Reconsideration of Motions to Strike Affidavits and Motions to File Late Responses**, dated July 8, 1996, again denying the motions to file late responses.

On October 27, 1997, Special Master Haemmerle entered an **Order for Withdrawal of Attorney** granting the law firm of Hepworth, Lezamiz & Hohnhorst leave to withdraw from multiple subcases in Basin 36, including 36-02169.

Judge Hurlbutt entered a **Memorandum Decision on Motion for Permissive Review** on June 3, 1998, denying permissive review of Special Master Haemmerle's orders, partly because "the orderly resolution of these subcases has been materially retarded by the delay." However, on October 27, 1998, Judge Hurlbutt entered a **Memorandum Decision and Order on Permissive Review** granting the motions to file late responses and remanding to matter to Special Master Haemmerle "for a full determination of the subcases on their merits."

On July 30, 1999, former-Presiding Judge Barry Wood entered an **Amended Order of Reference Appointing Terrence A. Dolan Special Master** in subcase 36-02169, plus two related subcases. IDWR filed an **Amended Director's Report, Subcase Nos. 36-00048A, 36-00049 & 36-02169** on August 31, 2000, recommending 36-02169 to the McFaddans for .16 cfs from Florence Livestock Spring for year-'round domestic use and to irrigate 4.5 acres from February 15 to November 30 with a priority date of April 10, 1952.

IDWR filed a **Notice of Completed Administrative Proceeding** on November 13, 2001, for a substitution of party with the new owner being the Idaho State Building Authority. On March 19, 2002, the parties filed a **Stipulation to Vacate Trial** stating:

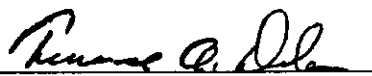
Water Right No. 36-02169 is pending transfer back to the McFaddan family. This transfer will be accomplished by execution of a correction deed at the Idaho Building Authority Board meeting on March 29, 2002. No issues remain for resolution by this Court.

IDWR filed a second **NCAP** on October 15, 2002, for a substitution of party with the owner being Dan & Irma McFaddan Family Limited Partnership, 970 Pioneer Road, Hagerman, Idaho 83332.

Conclusions of Law

The Dan & Irma McFaddan Family Limited Partnership is entitled to a partial decree adjudicating a water right as described in the *NCAP*, dated October 15, 2002, and the attached *Special Master Recommendation for Partial Decree for Water Right 36-02169*.

DATED December 2, 2002.



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
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In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 36-02169

NAME AND ADDRESS: DAN & IRMA MCFADDEN FAMILY
LIMITED PARTNERSHIP
970 PIONEER RD
HAGERMAN, ID 83332

SOURCE: FLORENCE LIVESTOCK SPRING TRIBUTARY: BILLINGSLEY CREEK

QUANTITY: 0.16 CFS

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

PRIORITY DATE: 04/10/1952

POINT OF DIVERSION: T07S R13E S12 SESENW Within Gooding County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	02-15 TO 11-30	0.14 CFS
	Domestic	01-01 TO 12-31	0.04 CFS

PLACE OF USE: Irrigation Within Gooding County
T07S R13E S11 NWSE 4.5
4.5 Acres Total

Domestic Within Gooding County
T07S R13E S11 NWSE

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

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR
DOMESTIC USE 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

DEC - 2 2002

Ronald C. DeLeon

SPECIAL MASTER

Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

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Department of Water Resources

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
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STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case No. 39576

CERTIFICATE OF MAILING

Water Right(s): 36-02169

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 December 02, 2002, with sufficient first-class postage prepaid to the following:

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

DAN & IRMA MCFADDEN FAMILY
LIMITED PARTNERSHIP
970 PIONEER RD
HAGERMAN, ID 83332

STATE OF IDAHO
Represented by:
CLIVE STRONG
NATURAL RESOURCES
DEP AG OFFICE OF ATTY GEN
STATEHOUSE MAIL
BOISE, ID 83720-0010
Phone: 208-334-2400

CERTIFICATE OF MAILING

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CRANNEY BROS

Represented by:
MICHAEL C. CREAMER
PO BOX 2720
BOISE, ID 83701-2720
Phone: 208-388-1200

DAN H MCFADDAN

Represented by:
PATRICK D. BROWN
HUTCHINSON & BROWN, LLP
P O BOX 207
TWIN FALLS, ID 83303-0207
Phone: 208-733-9300



ROBBIN HALL
Deputy Clerk

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In Re SRBA
Case No. 39576

)
)
)
)
)
NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

Water Right(s): 36-02169

On December 02, 2002, 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 December 02, 2002.

Robbin Hall
ROBBIN HALL
Deputy Clerk