

2003 FEB 24 PM 1: 27

CLERK OF DISTRICT COURT
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	)	Subcase 35-12979
	)	(USDI/BLM)
Case No. 39576	)	
	)	2 nd AMENDED 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 5, (IDWR Basin 35)* on May 29, 1997. The Director recommended this dual-based claim to the United States of America, Department of Interior, Bureau of Land Management, Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, for .02 cfs from Frenchmans Spring, tributary to sinks, for year-'round stockwater use in Butte County with a priority date of January 1, 1880, based on beneficial use. On September 25, 1997, the State of Idaho filed a *Domestic and Stock Water Right Objection* in 35-12979, *et al.*, objecting to priority date and alleging the priority date should be no earlier than June 28, 1934.

On August 10, 1998, the Special Master entered an *Order on Motions for Summary Judgment* in subcase 35-12979, *et al.*, stating the United States is entitled to a priority date *before* June 28, 1934. On August 26, 1998, the United States and IDWR filed a *Standard Form 5* agreeing to an amended point of diversion and place of use and a priority date of January 1, 1880, and a *Special Master Report and Recommendations* was entered the same date. However, on December 1, 1998, the Special Master entered an *Order Granting, in Part, State's Motion to Alter or Amend* in subcase 35-12979, *et al.*, that the priority date should be June 28, 1934. An *Amended Special Master's Report and Recommendations* in subcases 35-12979, *et al.*, was entered the same date.

On September 23, 1999, the Special Master entered an *Order Granting, in Part, United States Motion to Alter of Amend and State of Idaho Motions to Amend Objections* in subcase

35-12979, *et al.*, and on August 5, 2002, the United States, the State of Idaho and IDWR filed a *Standard Form 5* agreeing to a federal reserve basis and priority date of April 17, 1926.

An evidentiary hearing required by I.C. § 42-1411A, (14), was held on September 26, 2002, at the SRBA Courthouse in Twin Falls, Idaho. Larry A. Brown appeared for the United States and David J. Barber appeared for the State of Idaho. Later, on February 21, 2003, the United States followed up the hearing by filing an *Affidavit of Deena M. Teel* to establish the elements of this stockwater claim on the unreserved federal public domain as of April 17, 1926, which remains under Department of Interior administration. The *Affidavit* also amended the point of diversion quarter-quarter-quarter.

Conclusions of Law

The United States has demonstrated a *prima facie* case of the existence of water right 35-12979 established under federal law. The United States is entitled to a partial decree adjudicating a federal reserved water right under claim 35-12979 with a priority date of April 17, 1926, as described in the attached *2nd Amended Special Master Recommendation for Partial Decree for Federal Reserved Water Right 35-12979*.

DATED February 24, 2003.



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

In Re SRBA)
Case No. 39576)
_____)

AMENDED
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 35-12979

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TWIN FALLS CO., IDAHO

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

SOURCE: FRENCHMANS SPRING TRIBUTARY: SINKS

QUANTITY: 0.02 CFS

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

PRIORITY DATE: 04/17/1926

* 4/17/1926 CLAIMED UNDER FEDERAL RESERVED WATER RIGHT. *
* * * * *
* THIS WATER RIGHT IS 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. *

POINT OF DIVERSION: T01N R29E S15 NWSWE Within Butte 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 T01N R29E S15 SWSE Within Butte County

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

FEB 24 2003

Ronald A. Dole

SPECIAL MASTER

Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

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In Re SRBA)

CERTIFICATE OF MAILING

Case No. 39576)
_____)

Water Right(s): 35-12979

CERTIFICATE OF MAILING

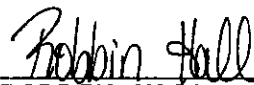
I certify that a true and correct copy of the SPECIAL MASTER'S REPORT, SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on February 24, 2003, with sufficient first-class postage prepaid to the following:

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

UNITED STATES OF AMERICA
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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In Re SRBA)

Case No. 39576)
_____))

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

Water Right(s): 35-12979

On February 24, 2003, 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 February 24, 2003.

Robbin Hall
ROBBIN HALL
Deputy Clerk