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Department of Water Resources

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

2004 SEP 22 PM 2 42

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) Subcases 41-00008C, 41-00008D and 41-
Case No. 39576) 00008F
(Taysom, Weston & 7UD Ranches)
ORDER FOR I.R.E. 706 REPORT

On June 14, 2004, James Juan Spillettt filed a *Motion to Set Aside Partial Decrees* in subcases 41-00008C (Taysom), 41-00008D (Weston), 41-00008E (Robert R. and James V. Spillettt) and 41-00008F (7UD Ranches) and the matter was referred to the Special Master on July 9, 2004, with 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* set aside and the entire matter opened to be re-litigated unless there is an express acknowledgement from IDWR in [an I.R.E.] 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. . . . 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.

Presiding Judge John M. Melanson's *Order of Reference to Special Master Terrence Dolan with Special Instructions*, at 2-3, dated July 9, 2004.

The *Partial Decree* for water right 41-00008E (Robert R. and James V. Spillettt) was already set aside on July 3, 2002, so a hearing on the *Motion* in subcases 41-00008C, 41-00008D and 41-00008F was held in Rockland, Idaho, on September 9, 2004. Brian J. Coffey appeared for James Juan Spillettt; Scott J. Smith appeared for 7UD Ranches (Gene and Richard Nelson); Kelvin Taysom appeared *pro se*; R. Scott and Ben Weston appeared *pro se*; James V. and Mooney Spillettt appeared *pro se*; Nicholas B. Spencer appeared for IDWR, along with Steve C. Clelland and Vicki Kelly; and James Robinson (Watermaster) appeared *pro se*.

At the hearing, Counsel for the 7UD Ranches said it would agree to have its *Partial Decree* set aside, but only if changes are limited to amounts (cfs) – no changes in the rotation

schedule. Counsel for James Juan Spillet argued there should be no such limitation, although he does not intend to address rotation. Kelvin Taysom does not oppose setting aside the *Partial Decrees* but not if “pre-conditioned” by the terms in Mr. Spencer’s September 23, 2003 letter.

The parties agreed with the following: 1) the Special Master should consider as part of the record a letter dated September 23, 2003, from IDWR Deputy Attorney General Nicholas B. Spencer to Gene Nelson and Kelvin Taysom; 2) an I.R.E. 706 report from IDWR concerning the respective claims to water from the Adshead Ditch may be helpful to resolve the disputed claims and the pending *Motion to Set Aside Partial Decrees*; and 3) additional informal settlement conferences¹ may be useful, especially before IDWR files its I.R.E. 706 report.

THEREFORE, IT IS ORDERED that IDWR shall prepare and file with the SRBA Court an I.R.E. 706 report concerning the respective claims to water from the Adshead Ditch, with particular mention of whether “errors were made in allocating water for the source of the subject rights,” such report to be filed **no later than Friday, December 3, 2004.**

DATED September 22, 2004.


TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

¹ Mr. Spencer suggested that another informal settlement conference with the parties and IDWR would be useful, especially if all concerned parties brought with them to the conference all their records in support of their claims.

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER FOR IRE 706 REPORT was mailed on September 22, 2004, with sufficient first-class postage to the following:

7 U D RANCHES

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