

2004 SEP 23 PM 4 33

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 47-14923B and 47-17131
	)	(Bedke & Poulton)
Case No. 39576	)	
	)	SPECIAL MASTER REPORT
_____	)	AND RECOMMENDATION

Findings of Fact

Winslow B. Whiteley, Bruce Bedke, Gary R. Poulton and Ray C. Bedke filed a *Notice of Claim to a Water Right* under claim number 47-14923B on July 13, 1998, claiming .02 cfs from Thoroughbred Creek for instream stockwater use in Cassia County from April 1 to November 30 with a priority date of April 1, 1872, based on beneficial use. 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 the claim as filed. The United States of America, Department of Agriculture, Forest Service (USDA), filed an *Objection* on February 12, 1999, alleging the water right should not exist.

On June 3, 2004, IDWR filed a *Notice of Completed Administrative Proceeding* for a substitution of party and split of water right: 47-14923B was split into 47-17131 (Patricia Bedke, Karl U. Bedke, Scott Bedke and Michael A. Poulton) and 47-17132 (Bruce Bedke).¹ On June 25, 2004, the USDA filed an *Objection* in subcase 47-17131 objecting to quantity and priority date. Finally, on September 2, 2004, the claimants of 47-17131 and the USDA, with IDWR's concurrence, filed a *Standard Form 5* agreeing to a priority date of February 4, 1895.

Conclusions of Law

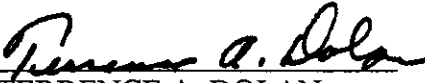
Patricia Bedke, Karl U. Bedke, Scott Bedke and Michael A. Poulton are entitled to a partial decree adjudicating a water right for claim 47-17131 as described in the *SF-5* and the attached *Special Master Recommendation for Partial Decree for Water Right 47-17131*.

¹ Subcase 47-17132 remains at issue.

Recommendation

THEREFORE, IT IS RECOMMENDED that claim 47-14923B **not** be adjudicated as a water right, the claim having been split into 47-17131 and 47-17132.

DATED September 23, 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

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

2004 SEP 23 PM 4 33

In Re SRBA)
Case No. 39576)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 47-17131

NAME AND ADDRESS: KARL U BEDKE
PATRICIA BEDKE
1876 S 600 W
OAKLEY, ID 83346

SCOTT BEDKE
450 N CENTER AVE
OAKLEY, ID 83346

MICHAEL A POULTON
605 W 2200 S
OAKLEY, ID 83346

SOURCE: THOROUGHbred CREEK TRIBUTARY: GOOSE CREEK
THOROUGHbred CREEK, EAST FORK TRIBUTARY: THOROUGHbred CREEK
THOROUGHbred CREEK, WEST FORK TRIBUTARY: THOROUGHbred CREEK

QUANTITY: 0.02 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.
THIS RIGHT SHALL BE USED IN CONJUNCTION WITH 47-16448 AND
47-16470 AND IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF
.02 CFS AND A TOTAL COMBINED QUANTITY OF 13,000 GALLONS PER DAY.

PRIORITY DATE: 02/04/1895

POINT OF DIVERSION:	T16S R19E S03	NWNWSW	(Instream Beginning Point) Within Cassia County
	S10	SENENW	(Instream Beginning Point)
	S21	NWSESW	(Instream Beginning Point)
		NWSESW	(Instream Ending Point)
	S32	NWNE	(Instream Ending Point)

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Stockwater	04-01 TO 11-30	0.02 CFS

PLACE OF USE:	Stockwater		Within Cassia County
	T16S R19E S04	NESE	SESE
	S09	NENE	NWNE
		SWNE	NESW
		SESW	NWSE
	S10	NENW	SWNW
		SENW	NWSW
		SWSW	
	S15	NWNW	SWNW
		NWSW	SWSW
	S16	NENW	SENW
		NESW	SESW
	S21	NENE	SWNE
		SENE	NENW
		SWNW	SENW
		NESW	NWSW
		SWSW	SESW
		NWSE	
	S22	NWNW	
	S28	NENW	NWNW
		SWNW	NWSW

SRBA Partial Decree Pursuant to I.R.C.P. 54(b) (continued)

PLACE OF USE (continued)

S29	NESE	SESE
S32	NENE	

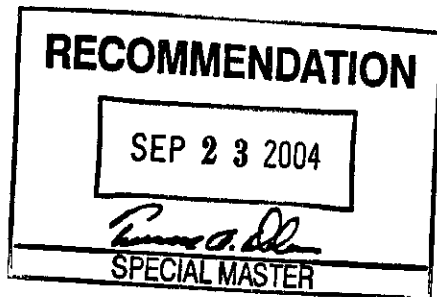
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE. THE OPERATION, USE, AND ADMINISTRATION OF THIS WATER RIGHT IS ALSO SUBJECT TO THE TERMS AND CONDITIONS OF THE STIPULATION AND JOINT MOTION FOR ORDER APPROVING STIPULATION ENTERED INTO ON AUGUST 29, 2002 BETWEEN THE UNITED STATES OF AMERICA AND SCOTT BEDKE, KARL U. BEDKE, AND MICHAEL POULTON, FILED IN THE OFFICE OF THE CASSIA COUNTY RECORDER AND RECORDED ON JUNE 6, 2003 AS INSTRUMENT NO: 289179; AND THE STIPULATION BETWEEN THE UNITED STATES AND PATRICIA BEDKE, ENTERED INTO ON JUNE 10, 2004, FILED IN THE OFFICE OF THE CASSIA COUNTY RECORDER AND RECORDED ON JUNE 8, 2004 AS INSTRUMENT NO: 296141, THE PROVISIONS OF SUCH STIPULATIONS TO APPLY FULLY TO 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.



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)

CERTIFICATE OF MAILING

Case No. 39576)
_____)

Water Right(s): 47-14923B
47-17131

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 23, 2004, with sufficient first-class postage prepaid to the following:

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

UNITED STATES OF AMERICA

Represented by:

DAVID NEGRI
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATURAL RESOURCE
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

GARY RUSSEL POULTON
RAY C BEDKE
WINSLOW B WHITELEY

Represented by:

TRAVIS L THOMPSON
113 MAIN AVE WEST, SUITE 303
TWIN FALLS, ID 83301-6167
Phone: 208-733-0700

CERTIFICATE OF MAILING

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USDA FOREST SERVICE

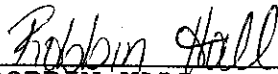
Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

BRUCE BEDKE
BASIN RD
42 E 1975 S
OAKLEY, ID 83346

KARL U BEDKE
PATRICIA BEDKE
1876 S 600 W
OAKLEY, ID 83346

SCOTT BEDKE
450 N CENTER AVE
OAKLEY, ID 83346

MICHAEL A POULTON
605 W 2200 S
OAKLEY, ID 83346



ROBBIN HALL
Deputy Clerk

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)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

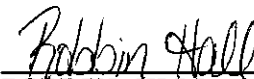
Water Right(s): 47-14923B
47-17131

On September 23, 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 September 23, 2004.



ROBBIN HALL
Deputy Clerk