

RECEIVED

FEB 3 2005
DEPARTMENT OF
WATER RESOURCES

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

2005 FEB 11 PM 3 01

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 45-12511
Case No. 39576) (USDI/BLM)
)
) ORDER GRANTING MOTION FOR
) SPECIAL MASTER'S REPORT,
) ORDER GRANTING MOTION TO
) WITHDRAW MOTION TO FILE
) LATE OBJECTIONS and SPECIAL
) MASTER REPORT

Findings of Fact

The Director of the Idaho Department of Water Resources filed his *Director's Report, Domestic and Stock, Reporting Area 10 (IDWR Basin 45)* on March 2, 1998. The Director recommended claim 45-12511 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 Mountain Meadow Spring for year-'round stockwater use in Cassia County with a priority date of January 1, 1873, based on beneficial use. Under priority date, the Director noted:

4/17/1926 Claimed under federal reserved water right.

This water right is also 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.

The State of Idaho filed an *Objection* in multiple subcases, including 45-12511, on July 2, 1998, alleging the water right should not exist. On July 12, 1999, Joe Tugaw filed a *Motion to File Late Objections* in multiple subcases, including 45-12511. On August 29, 2002, the United States and counsel for multiple private parties, including Tugaw Ranches, filed a *Stipulation and Joint Motion for Order Approving Stipulation*. The private parties agreed to dismiss their pending objections in multiple subcases, including 45-12511, subject to the following proviso:

ORDER GRANTING MOTION FOR SPECIAL MASTER'S REPORT,
ORDER GRANTING MOTION TO WITHDRAW MOTION TO FILE
LATE OBJECTIONS and SPECIAL MASTER REPORT
g:\45mrr\12511

Section 5, A, i. Claims for which the United States has not yet received a partial decree. If the United States has not yet received a partial decree for a water right claim, the following shall apply. For claims on lands administered by the Bureau of Land Management, the United States shall receive a water right with a priority date which is the later of a) the claimed priority date or b) June 28, 1934.

On April 21, 2003, the Special Master entered an *Order Dismissing State of Idaho Objections* in multiple subcases, including 45-12511. The United States lodged the *Affidavit of Fredric W. Price* on December 6, 2004, in five subcases, including 45-12511, and on February 9, 2005, it filed a *Motion for Special Master's Report*. The United States wrote that counsel for Mr. Tugaw was contacted and does not oppose the *Motion* for a special master report containing certain explanatory material. Hence, Mr. Tugaw is deemed to have requested withdrawal of his pending *Motion to File Late Objections*.

A hearing on the *Motion* was held by telephone on February 10, 2005. R. Lee Leininger appeared for the United States, along with Frederic W. Price; David J. Barber appeared for the State; Travis L. Thompson appeared for Joe Tugaw; and Roxanne Brown represented IDWR. The United States offered Mr. Price's *Affidavit*. Mr. Price, a water rights specialist in the BLM state office, stated that the claim describes land that was subject to a PWR 107 reservation on April 17, 1926; however, on November 22, 1940, the United States issued a Stock Raising Homestead Entry and reacquired the land on June 1, 1966. For that reason, the United States wished to pursue a June 28, 1934, priority date under state law consistent with settlement reached with the State.

Order

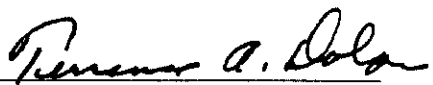
THEREFORE, IT IS ORDERED that:

1. The United States *Motion for Special Master's Report* is **granted** and
2. Joe Tugaw's motion to withdraw his *Motion to File Late Objections* in subcase 45-12511 is **granted**.

Conclusions of Law

The United States is entitled to a partial decree adjudicating a state law based water right under claim 45-12511 with a priority date of June 28, 1934, as described in the *Motion for Special Master's Report* and the attached *Special Master Recommendation for Partial Decree for Water Right 45-12511*.

DATED February 11, 2005.


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

In Re SRBA)
)
Case No. 39576)
)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 45-12511

FILED
2005 FEB 11 PM 3 01

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

SOURCE: MOUNTAIN MEADOW SPRING TRIBUTARY: MOUNTAIN MEADOW 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 RIGHT NO. 45-13502
AND IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF .02 CFS AND
A TOTAL QUANTITY OF 13,000 GALLONS PER DAY.

PRIORITY DATE: 06/28/1934

POINT OF DIVERSION: T12S R20E S21 NWNESE Within Cassia 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 Within Cassia County
T12S R20E S21 NESE

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 JOSEPH
TUGAW IN THE OFFICE OF THE IDAHO COUNTY RECORDER AND RECORDED ON
OCTOBER 31, 2002 AS INSTRUMENT NO: 425169; THE PROVISIONS OF SUCH
STIPULATION 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.

RECOMMENDATION

FEB 11 2005

John M. Melanson
SPECIAL MASTER

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

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

2005 FEB 11 PM 3 01

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): 45-12511

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 11, 2005, with sufficient first-class postage prepaid to the following:

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

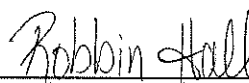
JOE TUGAW

Represented by:
NORMAN M. SEMANKO
ATTORNEY AT LAW
205 N 10TH ST, STE 530
BOISE, ID 83702
Phone: 208-344-6690

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

PAGE 1
02/11/05

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

2005 FEB 11 PM 3 01

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

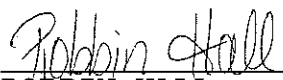
Water Right(s): 45-12511

On February 11, 2005, 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 11, 2005.



ROBBIN HALL
Deputy Clerk