

AUG 31 2005
DEPARTMENT OF
WATER RESOURCES

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

2005 AUG 30 PM 3 38

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

**SPECIAL MASTER’S REPORT AND
RECOMMENDATION ON MOTION
TO SET ASIDE PARTIAL DECREE**

WATER RIGHT: 29-11371

I. PROCEDURAL BACKGROUND

The SRBA District Court issued a *Partial Decree* for water right 29-11371 on March 22, 2004. At the time the *Partial Decree* was issued, no objection had been filed to the *Director's Report*. On April 8, 2004, this Court received an *Objection* to this water right. Presiding Judge John Melanson issued an *Order of Reference To Special Master Brigitte Bilyeu* on February 7, 2005. A hearing on the *Motion to File Late Objection / Motion to Set Aside Partial Decree* was held on March 9, 2005. Subsequent hearings were held on May 4, 2005, and July 13, 2005. The Claimant and IDWR submitted a *Standard Form 5* on August 19, 2005.

II. FINDINGS OF FACT

At hearing, counsel for Connie Rowland explained that claimant failed to timely object to the *Director's Report* because she mistakenly believed her written letter to the Department of Water Resources preserved her objection. In addition, Rowland asserted that an acreage larger than that

contained in the *Director's Report* and *Partial Decree* were historically irrigated. *Affidavit of Connie Rowland; Affidavit of Dan Rowland*. There was no opposition to the *Motion*.

III. STANDARD OF REVIEW

Mrs. Rowland asks the court to set aside the *Partial Decree* for 29-11371 because it did not include the entire acreage that has historically been irrigated.

A *Partial Decree* for this right was issued March 22, 2004. *Motions to Set Aside Partial Decree* may be considered under Idaho Rule of Civil Procedure 60(b). I.R.C.P. 60(b) allows a court to relieve a party from a final judgment, order or proceeding for the following reasons:

- 1) mistake, inadvertence, surprise, or excusable neglect;
- 2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial;
- 3) fraud, misrepresentation or other misconduct of an adverse party;
- 4) the judgment is void;
- 5) the judgment has been satisfied, released or discharged; and
- 6) any other reason justifying relief from the operation of the judgment.

The Rule requires that a motion to set aside be made within a reasonable time, and for reasons 1, 2, 3, and 6, not more than six (6) months after the judgment, order or decree. The *Partial Decree* for 29-11371 was issued on March 22, 2004, and the *Motion to Set Aside* was filed on April 8, 2004. Therefore, the *Motion* is timely under I.R.C.P. 60(b) Subpart 1.

In support of the *Motion to Set Aside*, counsel for Connie Rowland explained that the claimant failed to timely object to the *Director's Report* because she mistakenly believed that her written letter to the Idaho Department of Water Resources would preserve her objection. In addition, Rowland asserted that a larger acreage has historically been irrigated with this right. Recently, the Idaho Department of Water Resources reviewed the additional information provided by Mrs. Rowland and submitted a *Standard Form 5* increasing the total acreage from 7.2 acres to 13 acres and increasing the quantity from 0.150 cfs to 0.260 cfs. The elements agreed to in the *Standard Form 5* are within the facts set forth in the *Affidavit of Connie Rowland* and the *Affidavit of Dan Rowland*. No parties to the SRBA objected to this *Motion to Set Aside Partial Decree*.

IV. CONCLUSIONS AND RECOMMENDATIONS

Therefore, based on the file and record herein, IT IS RECOMMENDED that the *Motion to Set Aside Partial Decree* be **granted**, and that this water right be **decreed** with the elements set forth in the attached *Special Master's Recommendation for Amended Partial Decree*. The recommended elements are consistent with the *Standard Form 5* signed by the claimant and IDWR.

Dated: August 30, 2005.


BRIGETTE BILYEU,
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 _____

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 29-11371

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NAME AND ADDRESS: CONNIE ROWLAND
1254 W SYPHON RD
POCATELLO, ID 83204

SOURCE: SPRINGS TRIBUTARY: PORTNEUF RIVER

QUANTITY: 0.26 CFS

PRIORITY DATE: 05/01/1965

POINT OF DIVERSION: T06S R33E S01 LOT 3 (NENENW) Within Power County

PURPOSE AND
PERIOD OF USE: PURPOSE OF USE PERIOD OF USE QUANTITY
Irrigation 04-01 TO 10-31 0.26 CFS

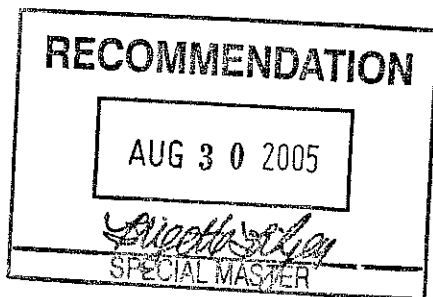
PLACE OF USE: Irrigation Within Power County
T06S R33E S01 LOT 2 (NWNE) 9.5 SWNE 0.8
LOT 3 (NENW) 2.7
13.0 Acres Total

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF 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

2005 AUG 30 PM 3 39

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

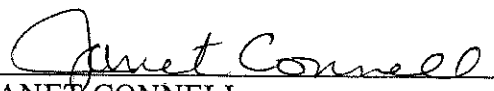
In Re SRBA	)	NOTICE OF ISSUANCE OF
	)	SPECIAL MASTER'S
Case No. 39576	)	RECOMMENDATION
	)	
_____	)	Water Right (s) : 29-11371

On August 30, 2005, Special Master BRIGETTE BILYEU issued a SPECIAL MASTER'S REPORT AND RECOMMENDATION ON MOTION TO SET ASIDE PARTIAL DECREE 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 August 30, 2005.


JANET CONNELL
Deputy Clerk

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

2005 AUG 30 PM 3 39

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) : 29-11371

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT
AND RECOMMENDATION ON MOTION TO SET ASIDE PARTIAL DECREE
was mailed on August 30, 2005, with sufficient first-class postage prepaid to the
following:

Director of IDWR
PO Box 83720
Boise, Idaho 83720-0098

Connie Rowland
Represented by:
Scott J Smith
201 E Center
Po Box 1391
Pocatello, Idaho 83204-1391


Deputy Clerk