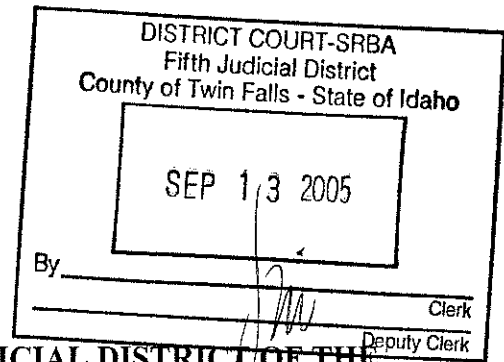




IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case No. 39576

-) For water right claim: 35-04037
-)
-) ORDER SETTING ASIDE PARTIAL
-) DECREE OF DISALLOWED WATER
-) RIGHT CLAIM
-)
-) ORDER OF RECOMMITMENT TO
-) IDWR FOR INVESTIGATION AND
-) AMENDED RECOMMENDATION AND
-) REPORT

A *Partial Decree of Disallowed Water Right Claims* for uncontested rights that were recommended disallowed was entered on March 12, 2002, and included a recommendation for the above-captioned water right claim. On April 8, 2005, claimant Richard Polatis, through counsel, filed a *Motion for Relief from Partial Decree* and *Motion to File Late Objection*. The matter was referred to a Special Master for proceedings on the *Motions*. On July 19, 2005, Special Master Dolan issued a *Special Master's Report and Recommendation* recommending that the *Partial Decree Disallowing Water Right Claim* be set aside and the claimant be allowed to proceed on the claim.

Pursuant to I.R.C.P. 53(e)(2) and *SRBA Administrative Order 1*, Section 13f, this Court has reviewed the Findings of Fact and Conclusions of Law contained in the *Special Master's Report* and wholly adopts them as its own. This Court places weight on the

**ORDER SETTING ASIDE PARTIAL DECREE OF DISALLOWED WATER RIGHT CLAIM;
ORDER OF RECOMMITMENT TO IDWR FOR INVESTIGATION AND AMENDED
RECOMMENDATION**

following factors in following the *Special Master's Recommendation* to set aside the ***Partial Decree of Disallowed Water Right Claim*** despite the lapse of time.

1. No party to the adjudication opposed the *Motion* and no challenges were filed to the *Special Master's Recommendation*.

2. The water right claim would be otherwise decreed disallowed despite some evidence of historical continuous use and no party contesting the *Motion to Set Aside*.

3. The *Director's Recommendation* for disallowing the claim was based on the claimant failing to respond to the Idaho Department of Water Resource's (IDWR) requests for proof of beneficial use. The claimant's failure to respond was in part due to an error regarding the correct mailing address, albeit the error was the fault of the claimant. (The Court notes that the order disallowing the claim was returned as undeliverable).

4. The Special Master found no prejudice to other parties on the same water groundwater source who timely prosecuted their claims and may have relied on the instant claim being disallowed in either prosecuting or settling their respective claims whereby the granting of the *Motion* could potentially undermine any such claims. The Special Master also found no evidence of any party being directly affected by allowing the instant claim to proceed. Parties will still have the opportunity to object to an amended director's report.

THEREFORE, based on the foregoing, THE FOLLOWING ARE HEREBY ORDERED:

**ORDER SETTING ASIDE PARTIAL DECREE OF DISALLOWED WATER RIGHT CLAIM;
ORDER OF RECOMMITMENT TO IDWR FOR INVESTIGATION AND AMENDED
RECOMMENDATION**

IT IS ORDERED that the *Partial Decree of Disallowed Water Right Claim* for water right claim 35-04037 be set aside.

IT IS FURTHER ORDERED that the claim be recommitted to the Idaho Department of Water Resources for further investigation and the issuance of an amended recommendation and director's report.

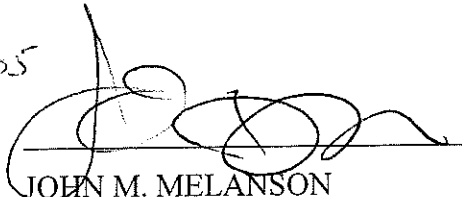
IT IS FURTHER ORDERED that failure of claimant to timely respond to any further requests made by IDWR for proof of beneficial use will result in automatic dismissal of claim upon notification to Court.

IT IS FURTHER ORDERED that the amended recommendation for the claim shall be included in a forthcoming late and miscellaneous claims director's report for irrigation and other water right claims.

IT IS FURTHER ORDERED that claimant or claimant's counsel, whichever the case may be, forthwith contact IDWR for purposes of bringing this *Order* to the attention of IDWR and responding to any requests IDWR may have with respect to investigating and re-reporting this claim.

IT IS SO ORDERED

Dated September 13, 2005


JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

**ORDER SETTING ASIDE PARTIAL DECREE OF DISALLOWED WATER RIGHT CLAIM;
ORDER OF RECOMMITMENT TO IDWR FOR INVESTIGATION AND AMENDED
RECOMMENDATION**

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CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER SETTING
ASIDE PARTIAL DECREE OF DISALLOWED WATER RIGHT CLAIM was mailed
on September 13, 2005, with sufficient first-class postage to
the following:

RICHARD D POLATIS

Represented by:

KENT W FOSTER

1000 RIVERWALK DR, STE 200

PO BOX 50130

IDAHO FALLS, ID 83405

Phone: 208-523-0620

DIRECTOR OF IDWR

PO BOX 83720

BOISE, ID 83720-0098

DANIEL T POLATIS

139 S 1075 W

BLACKFOOT, ID 83221

Phone: 208-684-3135

A handwritten signature in cursive script, reading "Julie Murphy", is written over a horizontal line. The signature is in dark ink and is positioned to the right of the printed text "Deputy Clerk".

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER OF RECOMMITMENT TO IDWR FOR INVESTIGATION AND AMENDED RECOMMENDATION AND REPORT was mailed on September 13, 2005, with sufficient first-class postage to the following:

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