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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) Subcase 45-13968
) (Qualls-Kelley)
Case No. 39576)
) SPECIAL MASTER REPORT
) AND RECOMMENDATION

Findings of Fact

Cindy Qualls Kelley, P.O. Box 193, Oakley, Idaho, 83346, filed a *Motion to File Late Notice of Claim* on July 11, 2005, claiming .016 cfs from Birch Creek to irrigate 1 acre in Cassia County from February 25 to November 15 with a priority date of March 1, 1875, based on a decree. SRBA Presiding Judge John M. Melanson entered an *Order of Reference to Special Master Terrence A. Dolan* on October 21, 2005, to determine:

- 1.) Whether prejudice to any other claimant in Basin 45 would result from the granting of this late claim; and
- 2.) Whether the late claim has merit.

Hearings on the *Motion* were held on November 10 and 17, 2005. Ms. Qualls Kelley appeared *pro se* during the first hearing and Chris M. Bromley appeared for IDWR both times. IDWR agent Jean Robertson and the Birch Creek and Cottonwood Creek Watermaster Clint Muhlestein appeared for the second hearing.

Agent Robertson said that Ms. Qualls Kelley's claim would not prejudice any other Basin 45 water users because the claim would only partly fill a portion of the water from Birch Creek yet to be allocated. Watermaster Muhlestein said his records show that Ms. Qualls Kelley's land has historically been delivered 5/6 of an inch (0.16 cfs) of such water and she and her predecessors-in-interest have consistently paid assessments for such deliveries within the City of Oakley. Ms. Qualls Kelley said that she uses Birch Creek water to irrigate 3/4 of an acre of lawn, not 1 acre as noted on her late claim.

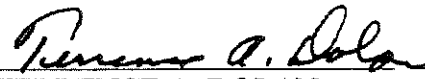
Conclusions of Law

Ms. Qualls Kelley's late claim, if adjudicated as a water right, would not prejudice other water right claimants in Basin 45 and her claim has merit, the water having been historically used to irrigate her $\frac{3}{4}$ acre lawn.

Recommendation

THEREFORE, IT IS RECOMMENDED that Ms. Qualls Kelley's *Motion to File Late Notice of Claim* in subcase 45-13968 be **granted**.

DATED November 21, 2005.

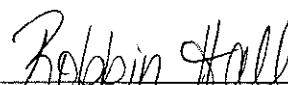

TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER REPORT AND RECOMMENDATION was mailed on November 21, 2005, with sufficient first-class postage to the following:

CINDY QUALLS-KELLEY
PO BOX 193
OAKLEY, ID 83346
Phone: 208-312-2927

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


Deputy Clerk