

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

JUL 24 2006

By _____ Clerk
_____ Deputy Clerk

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

JUL 25 2006

DEPARTMENT OF
WATER RESOURCES

In Re SRBA

Case No. 39576

**ORDER OF REFERENCE APPOINTING
TERRENCE DOLAN SPECIAL MASTER
FOR FURTHER PROCEEDINGS ON
MOTION TO FILE LATE CLAIM**

For Water Right Claims: 35-13553 & 35-13554

This matter came before this Court pursuant to a *Motion to File a Late Claim*, heard July 18, 2006. The claimant, Robert F. Underwood Estate, appeared through counsel. No party filed an objection or appeared in opposition to the *Motion*. Following a review of the file and after hearing the comments made by counsel in open court, the Court finds that the claimant has demonstrated an excuse for the untimely filing of the subject late claim and a meritorious position; both of which are elements of the "good cause" standard for filing a late claim as required by *SRBA Administrative Order 1 (AOI)* 4.d.(2)(d) and I.R.C.P. 55(c). However, the question of prejudice to other parties, if any, that may arise by the late claim was not addressed. The Court places emphasis on this element because the originally reported irrigation and other purposes water rights in Basin 35 have substantially all been litigated and decreed. A new late claim on a fully decreed source potentially puts parties with rights on the same source in the position of re-litigating issues that may have already been decided, or in the position of addressing new issues that should have been properly raised at the time the source of the subject claim was initially reported and litigated. Therefore, THE FOLLOWING ARE HEREBY ORDERED;

This matter is referred to Special Master Terrence Dolan for further proceedings to determine the degree of prejudice, if any, to other parties on the same claimed source. If the

Special Master finds no such prejudice, then to recommend to this Court that the late claim be granted.

Special Master Dolan shall set proceedings in conformity with *AOI*, section 9, notwithstanding the provisions of I.R.C.P. 53(d)(1), and exercise the power to regulate all proceedings in every hearing and to do all acts and take all measures necessary or proper for the efficient performance of his duties under this *Order*.

IT IS SO ORDERED.

DATED: July 24, 2006



John M. Melanson
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER OF REFERENCE APPOINTING TERRENCE DOLAN SPECIAL MASTER FOR FURTHER PROCEEDINGS ON MOTION TO FILE LATE CLAIM was mailed on July 24, 2006, with sufficient first-class postage to the following:

ROBERT F UNDERWOOD ESTATE

Represented by:

RANDALL C BUDGE

201 E CENTER, STE A2

PO BOX 1391

POCATELLO, ID 83204-1391

Phone: 208-232-6101

DIRECTOR OF IDWR

PO BOX 83720

BOISE, ID 83720-0098

A handwritten signature in cursive script, appearing to read "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".