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DEPARTMENT OF
WATER RESOURCES

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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

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	) Subcases 35-13553 and 35-13554
	) (Robert F. Underwood Estate)
Case No. 39576	)
	) SPECIAL MASTER REPORT
_____	) AND RECOMMENDATION

Findings of Fact

The Robert F. Underwood Estate, c/o Jeff Underwood, personal representative, 360 Kurtwood Place, Pocatello, Idaho, 83204, filed *Motions to File Late Notices of Claims to Water Rights* in the above two subcases on April 11, 2006. In subcase 35-13553, the Estate claimed 2.67 cfs from groundwater for stockwater use and to irrigate 101.8 acres in Bingham County from April 1 to November 1 with a priority date of May 15, 1948, based on beneficial use. In subcase 35-13554, the Estate claimed 1.22 cfs from groundwater to irrigate 68.49 acres in Bingham County from April 1 to November 1 with a priority date of April 1, 1956, based on beneficial use.

On July 24, 2006, the Presiding Judge of the SRBA entered an *Order of Reference Appointing Terrence Dolan Special Master for Further Proceedings on Motion to File Late Claim* in both subcases. In both subcases, the Presiding Judge found that the Estate "demonstrated an excuse for the timely 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," but referred the claims "for further proceedings to determine the degree of prejudice, if any, to other parties on the claimed source."

A hearing on the *Motions* was held by telephone on October 5, 2006. Randall C. Budge appeared for the Estate and Candice M. McHugh appeared for IDWR. Mr. Budge argued that the deceased, Robert Underwood, bought the property in 1941, and the two

wells were drilled in 1947 (Well No. 1) and 1955 or 1956 (Well No. 2). The decedent's son, Jeff Underwood, wrote:

Both wells have been continuously pumped from the priority date stated for each and used to flood-irrigate the described property raising hay and grain on a rotation basis. My father owned, operated and irrigated the property in the manner described himself until approximately 2000, when he was no longer able to do so due to his age and health problems. From that time until his death he leased the property out on a year-to year basis and the water was used in the same manner by the lessee to irrigate the property and raise crops in the same manner described above.

The *Motions to File Late Notices of Claims* were noticed on the Court's Docket Sheet once for before the initial hearing with the Presiding Judge and a second time before the hearing with the Special Master. No one objected. There is considerable documentation to support the claims of continuous use since the wells were dug and no other groundwater user can reasonably claim injury based on the historical use of the water.

Conclusions of Law

There is no cognizable prejudice to other parties on the groundwater source now claimed by the Robert F. Underwood Estate.

Recommendation

THEREFORE, IT IS RECOMMENDED that the late claims filed by the Robert F. Underwood Estate be **granted**.

DATED October 10, 2006.



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 October 10, 2006, with sufficient first-class postage to the following:

ROBERT F UNDERWOOD ESTATE

Represented by:

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