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DEPARTMENT OF
NATURAL 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 35-13565 and 35-13566
Case No. 39576) (DeGiulio)
)
) SPECIAL MASTER REPORT
) AND RECOMMENDATION

Findings of Fact

Velia DeGiulio, 1643 West, 500 South, Pingree, Idaho, 83362, filed *Motions to File Late Notices of Claims* in the above two subcases on May 26, 2006. In subcase 35-13565, Ms. DeGiulio claimed 3.05 cfs from groundwater to irrigate 250 acres in Bingham County from April 1 to October 31 with a priority date of September 11, 1950, based on beneficial use. In subcase 35-13566, she claimed 1 cfs from groundwater to irrigate 250 acres in Bingham County (an enlargement of 113 acres based on 35-2109¹ and 35-13565) from April 1 to October 31 with a priority date of April 1, 1975, based on beneficial use.

On August 17, 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. The Judge found that Ms. DeGiulio "has demonstrated an excuse for the untimely filing of the subject late claims and a meritorious position; both of which are elements of the 'good cause' standard for filing a late claim," but noted that the "question of prejudice to other parties, if any, that may arise by the late claims was not addressed." The Judge then referred the subcases "for further proceedings to determine the degree of prejudice, if any, to other parties on the same claimed source.

¹ Water right 35-2109 was partially decreed to Billy and Velia DeGiulio on January 31, 2002, for 1.5 cfs from groundwater to irrigate 94 acres in Bingham County from April 1 to October 31 with a priority date of September 25, 1948, based on a license. Mr. DeGiulio is now deceased.

A hearing on the *Motions to File Late Notices of Claims* was held by telephone on October 5, 2006. Ms. DeGiulio appeared *pro se* and Candice M. McHugh appeared for IDWR, along with Dave Carlson with IDWR's eastern regional office.

Ms. McHugh wrote to the Court on September 28, 2006, with an initial review of the late claims that found the water has been used continuously on the lands since 1987, and prior. A 1950 field inspection of licensed water right 35-2109 noted that the original well was producing 3.05 cfs and was being used to irrigate 134 acres, but the permit was approved for 1.5 cfs on 120 acres. Since that date up to the commencement of the SRBA, the irrigated acreage has been enlarged to 250 acres. The two late claims comprise the extra capacity of the well and additional acreage noted in 1950, plus the enlarged acreage:

One claim could have been filed for what was observed during the 1950 field exam for 35-2109 and another, for the enlargement of irrigated acres based on the 1987 NAPP aerial photography. David Carlson of the Department's Eastern Regional Office helped prepare late claim nos. 35-13565 and 35-13566 to cover these uses. Mrs. Degiulio appears to have continuously irrigated the larger place of use since 1987. The 2004 aerial photos show the majority of the ground still being irrigated, with only pivot corners being dry.

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 1987, and before 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 Ms. DeGiulio.

Recommendation

THEREFORE, IT IS RECOMMENDED that the late claims filed by the Velia DeGiulio be **granted**.

DATED October 10, 2006.

A handwritten signature in black ink, reading "Terrence A. Dolan". The signature is written in a cursive style with a horizontal line underneath.

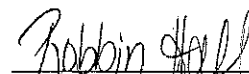
TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

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:

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

VELIA DEGIULIO
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PINEGREE, ID 83262
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Deputy Clerk