

2007 APR 18 AM 10: 20

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) **Subcase 45-12906**
) **(Smyer)**
Case No. 39576)
) **SPECIAL MASTER REPORT**
)
_____)

Findings of Fact

The Director of the Idaho Department of Water Resources filed his *Director's Report for Irrigation and Other, Reporting Area 10, IDWR Basin 45* on September 7, 2004. The Director recommended claim 45-12906 to Norman and Delores Smyer, 76 S. Highway 77, Declo, Idaho, 83323, for 14 cfs from Spring Creek and an unnamed stream to irrigate 4.6 acres in Cassia County from April 1 to October 31 with a priority date of March 18, 1910, based on beneficial use.

Earl Warthen filed an *Objection* on January 3, 2005, alleging the water right should not exist. IDWR filed a *Supplemental Director's Report* in the above subcase, plus four other related subcases, on February 8, 2006, again recommending 45-12906 as claimed.

Mr. Warthen filed a *Motion for Summary Judgment* on February 24, 2006, in four related subcases, including 45-12906. The *Motion* was heard on March 2, 2006, and on June 13, 2006, the Special Master entered an *Order Denying Cross Motions for Summary Judgment, inter alia*, denying Mr. Warthen's *Motion*.

On November 6, 2006, the parties filed a *Joint Motion for Court Approval of Water Rights Settlement Agreement and Dismissal of Objections* in six related subcases, including 45-12906. The same date, the Smyers filed a *Motion to File Amended Notice of Claim* in subcase 45-12906 to amend the priority date to August 31, 1874, and the

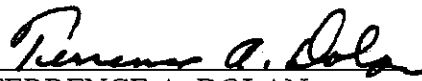
basis of the claim to a decree. On January 9, 2007, the Special Master entered an ***Order Granting Motion to Amend Notice of Claim*** in subcase 45-12906.

On February 14, 2007, IDWR filed an *Amended Director's Report* in subcase 45-12906 recommending the claim for .1 cfs with a priority date of August 31, 1874, based on a decree. No one objected to IDWR's amended recommendation.

Conclusions of Law

The Smyers are entitled to a partial decree adjudicating a water right as described in IDWR's *Amended Director's Report* and the attached ***Special Master Recommendation for Partial Decree for Water Right 45-12906***.

DATED April 18, 2007.


TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

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)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 45-12906

2007 APR 18 AM 10:20

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

NAME AND ADDRESS: DELORES J SMYER
NORMAN I SMYER
76 S HWY 77
DEVELO ID 83323

SOURCE: SPRING CREEK TRIBUTARY: HOWELL CREEK
UNNAMED STREAM TRIBUTARY: SUMMIT CREEK

QUANTITY: 0.10 CFS

PRIORITY DATE: 08/31/1874

POINT OF DIVERSION: T12S R25E S16 NESESW Within Cassia County
SWNWSE

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	0.10 CFS

The use of water for irrigation under this right may begin as early as March 15 provided other elements of the right are not exceeded. The use of water before April 1 under this remark is subordinate to all water rights having no subordinated early irrigation use and a priority date earlier than the date a partial decree is entered for this right

PLACE OF USE: Irrigation Within Cassia County
T12S R25E S16 NWSE 4.6
4.6 Acres Total

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS RIGHT AND RIGHT NOS. 45-10480, 45-10481, 45-10502, 45-12906 AND 45-13991 SHALL BE ADMINISTERED IN ACCORDANCE WITH THAT CERTAIN WATER RIGHTS SETTLEMENT AGREEMENT RECORDED AS INSTRUMENT NUMBER 311858, CASSIA COUNTY RECORDERS OFFICE.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE I.C. SECTION 42-1412(6)

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules

RECOMMENDATION

APR 18 2007

James A. Melanson
SPECIAL MASTER

John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

2007 APR 18 AM 10:20

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

Case No. 39576

CERTIFICATE OF MAILING

Water Right(s): 45-12906

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT, SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on April 18, 2007, with sufficient first-class postage prepaid to the following:

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

DELORES J SMYER
NORMAN L SMYER
Represented by:
MICHAEL P TRIBE
MICHAEL P. TRIBE
615 H STREET
PO BOX 396
RUPERT, ID 83350-0396
Phone: 208-436-4717

CERTIFICATE OF MAILING

PAGE 1
04/18/07

EARL WARTHEN

Represented by:

SHELLEY M. DAVIS

1010 W JEFFERSON, STE 102

PO BOX 2139

BOISE, ID 83701-2139

Phone: 208-336-0700



ROBBIN HALL

Deputy Clerk

2007 APR 18 AM 10:21

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
Case No. 39576

)
)
)
)
)
NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

Water Right(s): 45-12906

On April 18, 2007, Special Master TERRENCE A. DOLAN issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s) pursuant to SRBA Administrative Order 1 (AO1), Section 13a.

Pursuant to SRBA Administrative Order 1, Section 13a, any party to the adjudication including parties to the subcase, may file a Motion to Alter or Amend on or before the 28th day of the next month.

Failure of any party in the adjudication to pursue or participate in a Motion to Alter or Amend the SPECIAL MASTER'S RECOMMENDATION shall constitute a waiver of the right to challenge it before the Presiding Judge.

DATED April 18, 2007.



ROBBIN HALL
Deputy Clerk