

2007 JUN 20 AM 11:34

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	)
	) ORDER GRANTING JOINT MOTION
	) FOR COURT APPROVAL OF WATER
	) RIGHTS SETTLEMENT AGREEMENT
	) AND DISMISSAL OF OBJECTIONS and
_____	) AMENDED 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.

On November 6, 2006, Mr. Warthen and the Smyers filed a *Joint Motion for Court Approval of Water Rights Settlement Agreement and Dismissal of Objections* in subcase 45-12906, plus five other related subcases (45-10480, 45-10481, 45-10502, 45-13669 and 45-13991). In the *Water Right Settlement Agreement*, recorded November 2, 2006, with the Cassia County Recorder, No. 311858, Mr. Warthen and the Smyers agreed:

All of the Parties' water right claims shall be presented to the Court as reflected in the decree or claims referred to herein. It is intended that "Other Provisions Necessary" of the Parties' claims as finally decreed shall contain a reference to this recorded Agreement and be administered accordingly.

No one opposed the *Joint Motion*.

Order

THEREFORE, IT IS ORDERED that the parties' *Joint Motion for Court Approval of Water Rights Settlement Agreement and Dismissal of Objections* in subcase 45-12906 is **granted**.

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 June 20, 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)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 45-12906

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TWIN FALLS CO., IDAHO
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NAME AND ADDRESS: DELORES J SMYER
NORMAN L SMYER
76 S HWY 77
DECLO, 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:

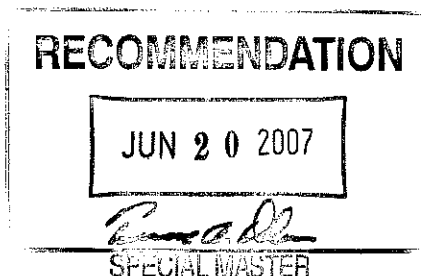
THIS RIGHT AND RIGHT NOS. 45-10480, 45-10481, 45-10502, 45-13669, AND 45-13991 SHALL BE ADMINISTERED IN ACCORDANCE WITH THAT CERTAIN WATER RIGHTS SETTLEMENT AGREEMENT RECORDED AS INSTRUMENT NUMBER 311858, CASSIA COUNTY RECORDERS OFFICE.

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.

AMENDED



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

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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

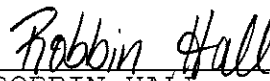
In Re SRBA	)	CERTIFICATE OF MAILING
	)	
Case No. 39576	)	
_____	)	Water Right(s): 45-12906

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 June 20, 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



ROBBIN HALL
Deputy Clerk

CERTIFICATE OF MAILING

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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED
CITY OF TWIN FALLS

In Re SRBA	)	NOTICE OF ISSUANCE OF
	)	SPECIAL MASTER'S
Case No. 39576	)	RECOMMENDATION
	)	
	)	Water Right(s): 45-12906

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