

2007 JUN 20 PM 12: 03

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 45-327E, 45-7366 and 45-10502
	)	(Warthen)
Case No. 39576	)	
	)	ORDER GRANTING JOINT MOTION
	)	FOR COURT APPROVAL OF WATER
	)	RIGHTS SETTLEMENT AGREEMENT
	)	AND DISMISSAL OF OBJECTIONS and
	)	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 claims 45-327E, 45-7366 and 45-10502 to Earl L. Warthen, Box 145, Albion, Idaho, 83311, for between .4 cfs and 1.25 cfs from groundwater, Howell Creek and Spring Creek to irrigate a combined total of 86 acres in Cassia County from April 1 and April 4 to October 31 with priority dates of March 1, 1881, December 14, 1978, and May 26, 1964, based on a decree, license and beneficial use.

Earl Warthen filed an *Objection* in subcase 45-10502 on January 3, 2005, objecting to priority date. Norman and Delores Smyer were granted leave to participate in subcase 45-10502 on July 12, 2005. On January 3, 2006, the Special Master entered an *Order Adopting Stipulation to Join Subcase 45-10502 with Subcases 45-10408, 45-10481 and 45-12906 for Trial and Scheduling*.

IDWR filed a *Supplemental Director's Report* in subcase 45-10502, plus four other related subcases, on February 8, 2006, restating its earlier recommendation. On February 9, 2006, the United States of America, Department of Agriculture, Forest

Service was granted leave to participate in subcases 45-10502 and another related subcase.

On February 24, 2006, Mr. Warthen filed a *Withdrawal of Objection* in subcase 45-10502 and the same date filed a *Motion to Amend Claim No. 45-10502 and for Leave of the Court to File a Late Claim*. On March 10, 2006, the Special Master entered an ***Order Granting Motion to Amend Claim No. 45-10502***.

On March 22, 2006, IDWR filed an *Amended Director's Report* in subcase 45-10502 recommending the claim for .4 cfs from Spring Creek to irrigate a combined total of 86 acres with a priority date of May 26, 1964, based on beneficial use. No one objected to IDWR's amended recommendation, including the USDA Forest Service.

The Special Master entered a ***Special Master Report*** in subcase 45-10502 on August 3, 2006, but on September 11, 2006, Mr. Warthen and IDWR filed a *Standard Form 5* in subcase 45-327E identifying it as an uncontested overlap with an amended period of use beginning on April 1 instead of April 4. No one objected to the amendment. IDWR also identified 45-7366 as an uncontested overlapping claim.

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 45-10502, plus five other related subcases (45-10480, 45-10481, 45-12906, 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 45-10502 is **granted**.

Conclusions of Law

Mr. Warthen is entitled to partial decrees adjudicating water rights as described in IDWR's *Amended Director's Report*, the *SF-5* and the attached *Special Master Recommendations for Partial Decrees for Water Rights 45-327E, 45-7366 and 45-10502* (amended).

DATED June 20, 2007.



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

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FILED

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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

JUN 20 2007

Ronald L. Melanson
SPECIAL MASTER

John M. Melanson
Presiding Judge of the
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 45-07366

2007 JUN 20 PM 12:04

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
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NAME AND ADDRESS: EARL LAVELL WARTHEN
BOX 145
ALBION, ID 83311

SOURCE: GROUND WATER

QUANTITY: 0.61 CFS

This right when combined with all other rights shall provide no more than 4.0 cfs per acre at the field headgate for irrigation of the lands described below.

This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor exceed a combined annual maximum diversion volume of 268.0 af at the field headgate for the lands above.

PRIORITY DATE: 12/14/1978

POINT OF DIVERSION: T12S R25E S16 SENESW Within Cassia County

PURPOSE AND

PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	0.61 CFS

PLACE OF USE:	Irrigation	Within Cassia County
	T12S R25E S16	NENW 37.0 SENEW 15.0
	67.0 Acres Total	

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 86 ACRES IN A SINGLE IRRIGATION SEASON.
COMBINED RIGHT NOS. 45-7366, 45-327E, AND 45-10502.

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

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

JUN 20 2007

[Signature]
SPECIAL MASTER

John M. Melanson
Presiding Judge of the
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) I.R.C.P. 54(b) FOR
Case No. 39576)
) Water Right 45-10502

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DISTRICT COURT-SRBA
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FILED

NAME AND ADDRESS: EARL WARTHEN
BOX 145
ALBION, ID 83311

SOURCE: SPRING CREEK TRIBUTARY: HOWELL CREEK

QUANTITY: 0.40 CFS

This right when combined with all other rights shall provide no more than 4.0 afa per acre at the field headgate for irrigation of the lands described below.
This right when combined with all other rights shall provide no more than 0.02 cfs per acre.

PRIORITY DATE: 05/26/1964

POINT OF DIVERSION: T12S R25E S16 SENESW Within Cassia County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	0.40 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	NENW 37.0 SENEW 16.0
	68.0 Acres Total	NWNW 15.0

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 86 ACRES IN A SINGLE IRRIGATION SEASON.
COMBINED RIGHT NOS. 45-7366, 45-327E, and 45-10502.

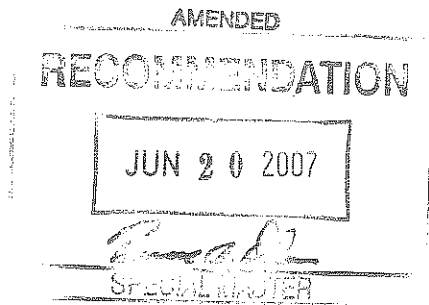
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS RIGHT AND RIGHT NOS. 45-10480, 45-10481, 45-12906, 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.



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

Case No. 39576

CERTIFICATE OF MAILING

Water Right(s): 45-00327E
45-07366 45-10502

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

NORMAN L & DELORES J SMYER

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

EARL WARTHEN

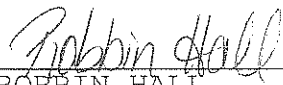
Represented by:
SHELLEY M DAVIS
1010 W JEFFERSON, STE 102
PO BOX 2139
BOISE, ID 83701-2139
Phone: 208-336-0700

CERTIFICATE OF MAILING

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UNITED STATES OF AMERICA (FS)
Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

EARL LAVELL WARTHEN
EARL WARTHEN
BOX 145
ALBION, ID 83311
Phone: 208-673-5385



ROBBIN HALL
Deputy Clerk

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In Re SRBA)
Case No. 39576)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

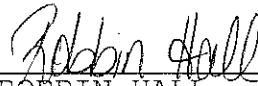
Water Right(s): 45-00327E
45-07366 45-10502

On June 20, 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 June 20, 2007.



ROBBIN HALL
Deputy Clerk