

2007 JUN 20 PM 2: 01
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 45-10480 and 45-10481
	)	(Smyer)
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 45-10480 and 45-10481 to Kevin Smyer, P.O. Box 482, Albion, Idaho, 83311, for 1.05 cfs and .14 cfs from Spring Creek, an unnamed stream and a spring to irrigate 54 acres and 6.8 acres in Cassia County from April 1 to October 31 both with a priority date of March 18, 1910, based on beneficial use.

Earl Warthen filed *Objections* on January 3, 2005, alleging the water rights should not exist. IDWR filed a *Supplemental Director's Report Regarding Subcase Nos. 45-10408, 45-10481, 45-10502, 45-12906, and 45-13669* on February 8, 2006, restating its earlier recommendations.

On February 22, 2006, Mr. Smyer filed his *Motion for Summary Judgment* in subcase 45-10481. On February 24, 2006, Mr. Warthen filed his *Motion for Summary Judgment on All Claims and Withdrawing Objection to Sub-Case No. 45-10502* in subcases 45-10408, 45-10481, 45-10502 and 45-12906. A hearing on the cross motions for summary judgment in subcases 45-10480, 45-10481 and 45-12906 was held on March 2, 2006, and on June 13, 2006, the Special Master entered an *Order Denying Cross Motions for Summary Judgment*.

On November 6, 2006, Mr. Warthen and Norman, Delores and Kevin Smyer filed a *Joint Motion for Court Approval of Water Rights Settlement Agreement and Dismissal of Objections* in subcases 45-10480, 45-10481, 45-10502, 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*.

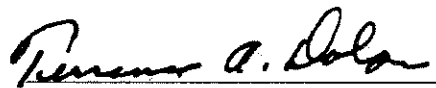
Order

THEREFORE, IT IS ORDERED that the parties' *Joint Motion for Court Approval of Water Rights Settlement Agreement and Dismissal of Objections* in subcases 45-10480 and 45-10481 is **granted**.

Conclusions of Law

Kevin Smyer is entitled to partial decrees adjudicating water rights as described in IDWR's *Supplemental Director's Report* and the attached *Special Master Recommendations for Partial Decrees for Water Rights 45-10480 and 45-10481*.

DATED June 20, 2007.



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

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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

[Signature]
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 45-10481

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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

NAME AND ADDRESS: KEVIN SMYER
PO BOX 482
ALBION, ID 83311

SOURCE: SPRING TRIBUTARY: SINKS

QUANTITY: 0.14 CFS

PRIORITY DATE: 03/18/1910

POINT OF DIVERSION: T12S R25E S16 SWNWNE Within Cassia County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	0.14 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 NWNE 6.8
6.8 Acres Total

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

THIS RIGHT AND RIGHT NOS. 45-10480, 45-13669, 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

JUN 20 2007

John M. Melanson
SPECIAL MASTER

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

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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) CERTIFICATE OF MAILING

Case No. 39576)

Water Right(s): 45-10480
45-10481

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

KEVIN 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

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EARL WARTHEN

Represented by:

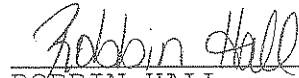
SHELLEY M DAVIS

1010 W JEFFERSON, STE 102

PO BOX 2139

BOISE, ID 83701-2139

Phone: 208-336-0700



ROBBIN HALL
Deputy Clerk

DISTRICT COURT - SRBA
DISTRICT OF THE
FALLS CO. 04410DISTRICT COURT - SRBA
DISTRICT OF THE
FALLS CO. 04410

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

Water Right(s) : 45-10480

ROBBIN HALL
Deputy Clerk