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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	) Subcase 74-15661
	) (Whittaker)
Case No. 39576	)
	) SPECIAL MASTER REPORT
	) AND RECOMMENDATION

Findings of Fact

On February 12, 2007, F. James Whittaker wrote a letter to the SRBA Court in subcase 74-15661 stating: "Please correct Water Right #74-15661 by adding the name, Paula J. Whittaker, and changing the source from Big Timber Creek to Little Timber Creek and the tributary from the Lemhi River to Big Timber Creek to correspond with Water Right #74-55."¹

Though not stated in his letter, it is evident that Mr. Whittaker seeks to have the *Partial Decree* entered in subcase 74-15661 set aside and amended; he does not seek to file a late objection in subcase 74-55.

Water right 74-15661 was partially decreed as an uncontested claim by the SRBA Court on January 26, 2007, in the name of Mr. Whittaker alone for 1 cfs from Big Timber Creek, tributary to the Lemhi River, to irrigate 161.2 acres in Lemhi County from March 15 to November 15 with a priority date of March 15, 1983, based on beneficial use. The *Partial Decree* notes: "Right Nos. 74-55 and 74-15661 are limited to a total combined diversion rate of 6.2 cfs. . . . This right is based upon an enlargement of Right No. 74-55 pursuant to Section 42-1426, Idaho Code."

¹ Claim 74-55 has been recommended by the Director of the Idaho Department of Water Resources to F. James and Paula Whittaker for 6.2 cfs from Little Timber Creek, tributary to Big Timber Creek for irrigation of 144.8 acres within a 161.2 acre place of use in Lemhi County from March 15 to November 15 with a priority date of August 19, 1910, based on a decree. No objections have been filed to the recommendation.

A hearing on Mr. Whittaker's motion to set aside the *Partial Decree* in subcase 74-15661 was held June 14, 2007, along with other matters. Scott L. Campbell appeared for Mr. Whittaker; Milton A. "Jock" Slavin and Milton Chace Slavin appeared for Karl Tyler / Leadore Land Partners Ltd Partnership; Travis L. Thompson appeared for Lemhi Irrigation District; K. Heidi Gudgell appeared for the Nez Perce Indian Tribe; Allan Purcell, Kurt Bird and Laura Warren (Richard E. Foster) appeared *pro se*; Harriet A. Hensley appeared for the State of Idaho; and Chris M. Bromley appeared for IDWR, along with Andrea Courtney.

No one opposed Mr. Whittaker's motion to set aside the *Partial Decree* in subcase 74-15661 and there are no other parties to the subcase.

Conclusions of Law

Mr. Whittaker has shown good cause to have the *Partial Decree* in subcase 74-15661 set aside and amended. Because the water right is an enlargement of claim 74-55, the two water rights must be consistent in describing the source. Mr. Whittaker wrote his letter to the SRBA Court in a timely manner (within 1 month of entry of the decree), there is no evidence that other water rights will be prejudiced and he has stated a meritorious position.

Recommendation

THEREFORE, IT IS RECOMMENDED that the Presiding Judge of the SRBA Court set aside the *Partial Decree* in subcase 74-15661 so that IDWR can examine, report and recommend the requested amendments.

DATED July 19, 2007.


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 July 19, 2007, with sufficient first-class postage to the following:

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