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DEPARTMENT OF
WATER RESOURCES

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 45-13991
	) (Warthen)
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

Earl Warthen, P.O. Box 145, Albion, Idaho, 83311, filed a *Motion to File Late Notice of Claim* on March 7, 2006, claiming .2 cfs from Spring Creek to irrigate 18 acres in Cassia County from April 1 to October 31 with a priority date of March 18, 1910, based on beneficial use. On June 22, 2006, the SRBA Presiding Judge entered an *Order Granting Motion to File Late Notice of Claim*.

The Director of the Idaho Department of Water Resources filed his *Director's Report, Subcase No. 45-13991* on February 14, 2007, recommending the late claim as filed. No one objected to the Director's recommendation.¹

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

¹ Claim 45-13991 was also inadvertently included in the *Director's Report for Late Claims, Irrigation & Misc. Claims* filed April 27, 2007. No one objected to that recommendation.

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*.

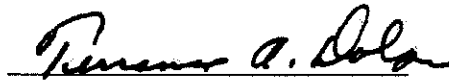
Order

THEREFORE, IT IS ORDERED that the parties' *Joint Motion for Court Approval of Water Rights Settlement Agreement and Dismissal of Objections* in subcase 45-13991 is **granted**.

Conclusions of Law

Earl Warthen is entitled to a partial decree adjudicating a water right as recommended by IDWR and as described in the attached *Special Master Recommendation for Partial Decree for Water Right 45-13991*.

DATED September 11, 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 45-13991

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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

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

SOURCE: SPRING CREEK TRIBUTARY: HOWELL CREEK

QUANTITY: 0.20 CFS

PRIORITY DATE: 03/18/1910

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	0.20 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 SENW 1.0 NESW 17.0
18.0 Acres Total

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

The 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.

AMENDED

RECOMMENDATION

SEP 11 2007

[Signature]
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): 45-13991

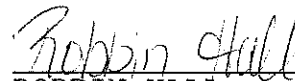
CERTIFICATE OF MAILING

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 September 11, 2007, with sufficient first-class postage prepaid to the following:

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

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

CERTIFICATE OF MAILING

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153 KING ST - SRBA
 TWIN FALLS CO., IDAHO
 83401

In Re SRBA)
)
Case No. 39576)
)
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Water Right(s) : 45-13991

ROBBIN HALL
Deputy Clerk