

2007 OCT -9 AM 11: 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	)	Subcase 35-2178J
	)	(Wada)
Case No. 39576	)	
	)	SPECIAL MASTER REPORT
_____	)	AND RECOMMENDATION

Findings of Fact

On May 16, 2007, Albert and Christine Wada, 326 South, 1400 West, Pingree, Idaho, 83262, filed a *Motion to File Late Notice of Claim* in subcase 35-2178J claiming 1 cfs from groundwater to irrigate 109.4 acres in Bingham County from April 1 to October 31 with a priority date of July 8, 1950, based on a license.

On August 29, 2007, SRBA Presiding Judge John M. Melanson entered an ***Order of Reference Appointing Terrence Dolan Special Master for Further Proceedings on Motion to File Late Claim*** after finding "that the claimant has demonstrated an excuse for the untimely filing of the subject late claim and a meritorious position. . . ." The ***Order*** went on to state:

However, the element of prejudice to other parties, if any, that may arise by the late claim was not addressed. The Court places emphasis on this element because the originally reported irrigation and other purposes water rights in Basin 35 have substantially all been litigated and decreed. A new late claim on a fully decreed source potentially puts parties with rights on the same source in the position of re-litigating issues that have already been decided, or in the situation of addressing new issues that should have been properly raised at the time the source of the subject claim was initially reported and litigated.

The ***Order*** then referred the matter "to determine the degree of prejudice, if any, to other parties on the same claimed source."

A hearing on the *Motion* was held by telephone conference on September 27, 2007. Dallas Ward, a non-attorney representative of the Wadas joined the conference and Garrick Baxter represented IDWR. Under the circumstances, only Mr. Baxter addressed the single issue of prejudice. He announced that IDWR is not aware of any evidence of prejudice to other parties on the same groundwater source because 1) no other party has claimed this right, 2) the claim is based on a license, 3) water has been historically been used under the license since 1950 and 4) the license process provided notice of its use.

Conclusions of Law

There is no evidence of prejudice to other parties on the same source claimed by the Wadas.

Recommendation

THEREFORE, IT IS RECOMMENDED that the Wadas' *Motion to File Late Notice of Claim* in subcase 35-2178J be **granted**.

DATED October 9, 2007.



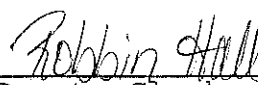
TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER REPORT AND RECOMMENDATION was mailed on October 09, 2007, with sufficient first-class postage to the following:

DIRECTOR OF IDWR
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ALBERT T WADA
CHRISTINE WADA
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PINEGREE, ID 83262-1137
Phone: 208-684-9801


Deputy Clerk