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DEPARTMENT OF
WATER RESOURCES

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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	)	Subcases 03-7009, 03-7034,
	)	03-10010 & 03-10198
Case No. 39576	)	and
	)	67-2320, 67-4291, 67-4412,
	)	67-10971, 67-10975 & 67-14129
	)	(City of Weiser)
	)	
	)	ORDER VACATING TRIAL and
	)	SPECIAL MASTER REPORT
	)	AND RECOMMENDATION

Findings of Fact

On July 27, 2007, the City of Weiser filed its *Motion for Expedited Hearing of (1) Motion to Consolidate the City's Subcases in Basin 03 and 67, and (2) Motion for Reconsideration of Partial Decree for Water Right No. 3-7009*. On July 31, 2007, SRBA Presiding Judge John M. Melanson entered an *Order of Reference Appointing Terrence Dolan Special Master for Further Proceedings* on the City's *Motion and an Order Rescinding Order of Reference to Special Master Theodore Booth* for the City's claims. The *Order of Reference* required further proceedings for the following purposes:

- (1) To determine whether the subcases should be consolidated or alternatively heard by the same special master;
- (2) To determine whether the *Partial Decree* issues for claim 03-7009 should be set aside and amended;
- (3) To conduct proceedings on the underlying merits if the Special Master concludes that the subcases should be consolidated or heard by the same special master;

(4) If the Special Master concludes that subcases should not be consolidated or heard by the same special master then to issue a recommendation that the claims in Basin 67 be referred back to Special Master Theodore Booth.

Following the City' filing of its *Motion to Consolidate* and *Motion for Reconsideration of Partial Decree for Water Right No. 3-7009*, the City filed a third *Motion to Set Aside Partial Decrees for City of Weiser Water Right Nos. 3-7034 and 3-10198*.

A hearing on the City's three *Motions* was held on August 30, 2007. Josephine P. Beeman appeared for the City and Garrick L. Baxter appeared for IDWR. The ten SRBA claims include diversions from the Snake River (Basin 03) and ground water and surface water diversions in the Weiser River Drainage (Basin 67). Three of the City's water rights (03-7009, 03-7034 and 03-10198) were partially decreed on July 9, 2007,¹ while its Basin 67 claims are still in the response period.

The City moved to consolidate all ten of its interrelated claims in Basins 03 and 67 "in order to facilitate appropriate documentation and remarks regarding the interrelated combined use of Weiser's surface and ground water rights." The City moved to set aside *Partial Decrees* entered in subcases 03-7009, 03-7034 and 03-10198 essentially for the same reasons, "because [they are] interrelated with contested subcase 3-10010, which is proceeding before SRBA Special Master Dolan, and because of the City's related basin 67 claims which are still subject to objection and response deadlines at the SRBA court."² City's August 3, 2007 *Brief in Support of Motion for Reconsideration of Partial Decree for Water Right No. 3-7009*, at 2. Further, the City argued:

The entering of partial decrees for these uncontested rights [03-7034 and 03-10198] was a ministerial process, not predicated on any kind of factual determination. The entry of these partial decrees also deviated from the SRBA's common practice to hold entry of a partial decree when an uncontested right is interrelated with other rights not yet presented for

¹ The City's fourth claim in Basin 03 (03-10010) was recommended by IDWR for disallowal: "Recommended as right no. 3-7009." Subcase 03-10010 remains at issue.

² The Basin 67 objection deadline was August 22, 2007, and the response deadline is October 22, 2007.

partial decree. Setting aside these partial decrees will allow these two claims to be adjudicated in conjunction with the rest of Weiser's interrelated SRBA claims. The new decrees will truthfully and accurately reflect the history and combined usage of these rights.

City's Brief in Support of Motion to Set Aside Partial Decrees for Weiser Water Right Nos. 3-7034 and 3-10198, at 3.

Conclusions of Law

The City of Weiser has shown good cause to set aside the *Partial Decrees* entered in subcases 03-7009, 03-7034 and 03-10198 and it would be in the best interests of justice and efficient judicial administration for Special Master Dolan to consider all ten of the City's Basins 03 and 67 claims together.

Recommendation

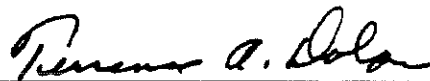
THEREFORE, IT IS RECOMMENDED that:

1. The *Partial Decrees* entered in subcases 03-7009, 03-7034 and 03-10198 be **set aside**; and
2. The ten City of Weiser claims in Basins 03 and 67 proceed together before Special Master Dolan.

Order

THEREFORE, IT IS ORDERED that the trial set before Special Master Dolan on November 1, 2007, in subcase 03-10010 is **vacated**.

DATED October 17, 2007.


TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER VACATING TRIAL AND SPECIAL MASTER REPORT AND RECOMMENDATION was mailed on October 17, 2007, with sufficient first-class postage to the following:

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