

2007 OCT 23 PM 12:30

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 74-39B, 74-63, 74-72 and 74-15005
Case No. 39576) (Whittaker)
)
) SPECIAL MASTER REPORT
)
_____)

Findings of Fact

The Director of the Idaho Department of Water Resources filed his *Director's Report, Reporting Area 23, IDWR Basin 74* on January 23, 2006. The Director recommended claims 74-39B, 74-63, 74-72 and 74-15005 to F. James and Paula J. Whittaker, P.O. Box 240, Leadore, Idaho, 83464, for between .84 cfs and 6 cfs from Big Timber Creek and an unnamed stream to irrigate 353 acres in Lemhi County from March 15 to November 15 with priority dates between June 1, 1883, and May 14, 1920, based on a decree.

Mr. Whittaker filed an *Objection* in the above four subcase on April 12, 2007, objecting to name and address and quantity. A status conference was held by telephone on October 18, 2007. Mr. Whittaker appeared *pro se* and Andrea L. Courtney appeared for IDWR. On the record, Mr. Whittaker withdrew his *Objections* based on transfer proceedings concluded in 2001.

Conclusions of Law

The Whittakers are entitled to partial decrees adjudicating water rights as recommended by IDWR and as described in the attached *Special Master Recommendations for Partial Decrees for Water Rights 74-39B, 74-63, 74-72 and 74-15005*.

DATED October 23, 2007.

A handwritten signature in black ink, reading "Terrence A. Dolan". The signature is written in a cursive style with a horizontal line underneath.

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 74-00039B

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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

NAME AND ADDRESS: F JAMES WHITTAKER
PAULA J WHITTAKER
PO BOX 240
LEADORE, ID 83464

SOURCE: BIG TIMBER CREEK TRIBUTARY: LEMHI RIVER

QUANTITY: 6.00 CFS
682.50 AFY

Rights 74-39B and 74-63 when combined shall not exceed a total
diversion rate of 6.96 cfs and a total annual maximum diversion
volume of 682.5 af at the field headgate.
Rights 74-39B, 74-63, 74-72 and 74-15005 when combined shall not
exceed a total diversion rate of 12.36 cfs and a total annual
maximum diversion volume of 1235.5 af at the field headgate.

PRIORITY DATE: 06/10/1901

POINT OF DIVERSION: T15N R26E S19 NESE Within Lemhi County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-15 TO 11-15	6.00 CFS 682.50 AFY

PLACE OF USE:	Irrigation	Within Lemhi County
	T15N R26E S21	NENE 38.0 NWNE 35.0 SENE 40.0
	S22	NESE 6.0 NWNE 0.4 SWNE 3.0 NENW 33.0 NWNW 40.0 SWNW 40.0 SENW 40.0 NESW 16.6 NWSW 26.0
	353.0 Acres Total	

Rights 74-39B and 74-63 when combined shall not exceed a total
irrigation of 195 acres in the place of use described above in a
single irrigation season.

Rights 74-39B, 74-63, 74-72 and 74-15005 when combined shall not
exceed a total irrigation of 353.0 acres.

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

Use of water under this water right will be regulated by the
watermaster of State Water District No. 74-W.
The right holder shall maintain a measuring device and lockable
controlling works of a type approved by the Department in a
manner that will provide the watermaster suitable control of the
diversion.

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

OCT 23 2007

James A. Dill
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)
Case No. 39576)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 74-00063

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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED _____

NAME AND ADDRESS: F JAMES WHITTAKER
PAULA J WHITTAKER
PO BOX 240
LEADORE, ID 83464

SOURCE: BIG TIMBER CREEK TRIBUTARY: LEMHI RIVER

QUANTITY: 0.96 CFS
468.40 AFY

PRIORITY DATE: 07/18/1911

POINT OF DIVERSION: T15N R26E S19 NESE Within Lemhi County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-15 TO 11-15	0.96 CFS 468.40 AFY

PLACE OF USE:	Irrigation	Within Lemhi County
	T15N R26E S21	NENE 38.0 SWNE 35.0 SENE 40.0 NESE 6.0
	S22	NWNE 0.4 SWNE 3.0 NENW 33.0 NWNW 40.0 SWNW 40.0 SENW 40.0 NESW 16.6 NWSW 26.0
	353.0 Acres Total	

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

The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.

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

OCT 23 2007

John M. Melanson
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 74-00072

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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

NAME AND ADDRESS: F JAMES WHITTAKER
PAULA J WHITTAKER
PO BOX 240
LEADORE, ID 83464

SOURCE: UNNAMED STREAM TRIBUTARY: TEXAS CREEK

QUANTITY: 0.84 CFS
409.90 AFY

Rights 74-72 and 74-15005 when combined shall not exceed a total diversion rate of 5.40 cfs, and a total annual maximum diversion volume of 553.0 af at the field headgate.
Rights 74-39B, 74-63, 74-72 and 74-15005 when combined shall not exceed a total diversion rate of 12.36 cfs and a total annual maximum diversion volume of 1235.5 af at the field headgate.

PRIORITY DATE: 06/01/1883

POINT OF DIVERSION: T15N R26E S21 NWSE Within Lemhi County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-15 TO 11-15	0.84 CFS 409.90 AFY

PLACE OF USE:	Irrigation	Within Lemhi County
	T15N R26E S21	NENE 38.0 NWNE 35.0 SENE 40.0
	S22	NWNE 0.4 SWNE 3.0 NENW 33.0 NWNW 40.0 SWNW 40.0 SENW 40.0 NESW 16.6 NWSW 26.0
	353.0 Acres Total	

Rights 74-39B, 74-63, 74-72 and 74-15005 when combined shall not exceed a total irrigation of 353.0 acres.
Rights 74-72 and 74-15005 when combined shall not exceed a total irrigation of 158.0 acres in the place of use described above in a single irrigation season.

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

Use of water under this water right will be regulated by the watermaster of State Water District No. 74-W.
The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.
Prior to diversion of water under Rights 74-72 and 74-15005, the right holder shall provide and maintain a means of measurement acceptable to the watermaster for measuring the flow in Nez Perce Creek at the original points of diversion in NESW, S15 and S22, T14N, R26E.
Diversion of water under Rights 74-72 and 74-15005 is limited to those times water is available for diversion under these rights and priorities from Nez Perce Creek, and shall not exceed the

OTHER PROVISIONS (continued)

amount that remains undiverted in Nez Perce Creek that is ultimately allowed to reach Texas Creek.

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

OCT 23 2007

James A. Melanson
SPECIAL MASTER

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

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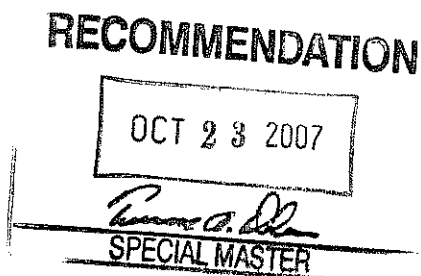
OTHER PROVISIONS (continued)

Diversion of water under Rights 74-72 and 74-15005 is limited to those times water is available for diversion under these rights and priorities from Nez Perce Creek, and shall not exceed the amount that remains undiverted in Nez Perce Creek that is ultimately allowed to reach Texas Creek.

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.



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)
_____)

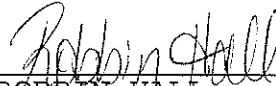
Water Right(s): 74-00039B
74-00063 74-00072 74-15005

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 October 23, 2007, with sufficient first-class postage prepaid to the following:

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

F JAMES WHITTAKER
PAULA J WHITTAKER
Represented by:
SCOTT L CAMPBELL
101 S CAPITOL BLVD 10TH FLOOR
PO BOX 829
BOISE, ID 83701-0829
Phone: 208-345-2000



ROBBIN HALL
Deputy Clerk

CERTIFICATE OF MAILING

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In Re SRBA)
)
Case No. 39576)
)
)

Water Right(s): 74-00039B
74-00063 74-00072 74-15005

ROBBIN HALL
Deputy Clerk