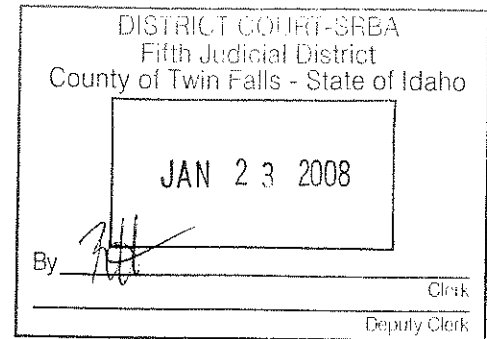




IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA) Subcase 35-2444
Case No. 39576) (Murdock)
)
) SPECIAL MASTER REPORT
) AND RECOMMENDATION

Findings of Fact

On January 31, 2002, former-SRBA Presiding Judge Roger S. Burdick entered an *Order of Partial Decree* in subcase 35-2444, one of 1,720 claims for which *Objections* were dismissed and a *Special Master Report* recommended for partial decree on November 6, 2001. The *Partial Decree* awarded to Robert and Teresa Murdock, 1473 W. Hoff Road, Blackfoot, Idaho, 83221, 9.2 cfs from groundwater to irrigate 615 acres in Bingham County from April 1 to October 31 with a priority date of December 9, 1955.

On December 12, 2007, Robert A. Murdock filed an *Objection* alleging "IDWR reduced it unnecessarily." The same date, SRBA Presiding Judge John M. Melanson considered the *Objection* as a *Motion to Set Aside Partial Decree* and entered an *Order of Reference Appointing Special Master Terrence A. Dolan* "as to the underlying merits as to how the *Partial Decree* should be amended, if it is determined that said *Partial Decree* should be seat aside or amended."

A hearing on the Murdocks' *Motion* was held on January 17, 2008. Robert Murdock appeared *pro se*, along with his brother Bryan Murdock; David J. Barber appeared for the State of Idaho; and Andrea L. Courtney appeared for IDWR.

Mr. Murdock said that in November, 2007, IDWR agent Ernie Carlsen, with IDWR's Eastern Regional Office in Idaho Falls, brought to Mr. Murdock's attention that there was a problem with the water right on one of his fields. In a letter, dated December 12, 2007, attached to Mr. Murdock's *Objection*, he wrote:

That field had been in a federal government acreage set-aside program when a photo was taken of it in 1987. It was a year to year set-aside program in which ground was set-aside and crops not grown on it. This was part of the Farm Bill program intended to reduce the amount of grain crops grown and had nothing to do with water usage. The photo of only one year of the farm's production history seems to be all that was looked at. Mr. Ruberry, formerly of the Department of Water Resources, seems to have mistakenly taken some of the set-aside ground out of our water right. Somehow in the adjudication claim the acreage was reduced. I didn't realize that this had been done until it was pointed out to me this November. We're asking the court to please look at this problem and give us back our full water right. Ground that is in a government program cannot have the water right taken away from it because of the program.

The record indicates that Mr. Murdock had 49.8 acres set-aside in 1987, but each year the acreage changed. He maintained that water right 35-2444 should include the licensed 640 acres, not 615 acres. Mr. Barber had no objection to setting aside the *Partial Decree* and Ms. Courtney agreed.

Conclusions of Law

The Murdocks have shown good cause to have the *Partial Decree* set aside and amended.

Recommendation

THEREFORE, IT IS RECOMMENDED that:

1. The Murdocks' *Motion to Set Aside Partial Decree* in subcase 35-2444 should be **granted**; and
2. A deadline should be set for IDWR to file an amended director's report within 45 days of the order concerning the Murdock's claim in light of the newly discovered evidence.

DATED January 23, 2008.



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

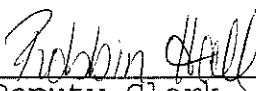
I certify that a true and correct copy of the SPECIAL MASTER REPORT AND RECOMMENDATION was mailed on January 22, 2008, with sufficient first-class postage to the following:

STATE OF IDAHO

Represented by:
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ROBERT A MURDOCK
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Deputy Clerk