

RECEIVED

MAY 22 2008

DEPARTMENT OF  
WATER RESOURCES

|                                                                                           |       |
|-------------------------------------------------------------------------------------------|-------|
| DISTRICT COURT - SRBA<br>Fifth Judicial District<br>County of Twin Falls - State of Idaho |       |
| MAY 21 2008                                                                               |       |
| By _____                                                                                  | Clerk |
| Deputy Clerk                                                                              |       |

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

- ) SPECIAL MASTER'S REPORT
- ) (Hearn v. Eld/Clancy)
- )
- ) FINDINGS OF FACT AND
- ) CONCLUSIONS OF LAW
- )
- ) FOR WATER RIGHTS 78-00182,
- ) 78-12128, 78-12162, and 78-12165
- )
- ) RECOMMENDATION OF
- ) DISALLOWANCE FOR WATER RIGHT
- ) CLAIM 78-00206A

I. APPEARANCES

Scott L. Campbell, Moffat, Thomas, Barrett, Rock & Fields, Chartered, Boise, Idaho, for claimants / objectors Dan and Mary Hearn.

Jennifer Eld, *pro se*.

II. PROCEDURAL BACKGROUND

78-182, 78-12128, and 78-12165. *Notices of Claim* were filed for these water rights pursuant to I.C. § 42-1409. The Director of the State of Idaho Department of Water Resources (IDWR) examined the water system for this reporting area. The *Director's Report* contained a recommendation or abstract for the elements of these water rights.

On May 9, 2007, the claimant of water rights 78-182, 78-12128, and 78-12165, Dan and Mary Hearn (hereinafter "Hearns"), filed an *Objection* to the *Director's Report* for each right. On July 6, 2007, the United States of America, Department of Agriculture, Forest Service, filed a *Response* to the *Objections* in subcases 78-182 and 78-12165, regarding the point of diversion. On May 14, 2008, the parties filed a *Stipulation to Resolve United States' Responses to Objections*. On May 21, 2008, the parties filed a *Standard Form 5 – Stipulated Elements of a*

*Water Right* which resolved the objections in subcases 78-182, 78-12128, and 78-12165. IDWR concurred with the stipulations.

**78-12162.** Water right claim 78-12162 is for a portion of split right 78-206. A *Notice of Claim* was filed for water right 78-206 on May 19, 1988, by Peggy and Larry Johnson, predecessors-in-interest to Hearn. The *Notice of Claim* for 78-206 claimed 0.64 cfs (32 miner's inches) for use on 148 acres.<sup>1</sup> The *Director's Report for Irrigation and Other Uses for Basin 78*, dated January 3, 2007, contained a recommendation for the elements of 78-12162 in the name of Dan and Mary Hearn.

On May 9, 2007, the Hearn filed an *Objection* to the *Director's Report* for 78-12162, asserting that they should be decreed the full amount of water claimed under 78-206, which is 0.64 cfs.

On October 23, 2001, Dan Hearn filed a *Notice of Change of Ownership* with IDWR regarding water rights 78-182, 78-192, and 78-206. It was through the change of ownership process that IDWR assigned claim number 78-12162 to the Hearn's claim for purposes of differentiating it from the claim filed for 78-206A.

On March 7, 2008, pursuant to an ***Order Granting Motions to File Late Objection and Response***, Jennifer Eld and Barbara Clancy (hereinafter "Eld/Clancy") filed a *Response* to the *Objection* filed by the Hearn in subcase 78-12162.

**78-206A.** A *Notice Of Claim* was filed for water right 78-206A on March 11, 1988, by Eugene and Mozelle McMahan, predecessors-in-interest to Eld/Clancy. The *Director's Report for Irrigation and Other Uses for Basin 78*, dated January 3, 2007, contained a recommendation for the elements of 78-206A in the name of Jennifer Eld and Barbara J. Clancy.

On March 7, 2008, pursuant to an ***Order Granting Motions to File Late Objection and Response***, an *Objection* was filed by Hearn to the *Director's Report* for water right 78-206A, asserting that the water right had been forfeited pursuant to Idaho Code § 42-222(2).

---

<sup>1</sup> The claim filed by the Johnsons for 78-206 claimed 40 acres in the NESE and 28 acres in the NWSE of section 24. The property owned by Eld/Clancy is mostly, if not entirely, in the NESE. It would appear that the claim filed for 78-206 transposed these quarter-quarters, and the Johnson's intended to claim 40 acres in the NWSW and 28 acres in the NESE.

### III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A trial was held in New Meadows, Idaho, on May 15, 2008, regarding the Hearn's assertion that the Eld/Clancy claimed water right (78-206A) has been forfeited pursuant to Idaho Code § 42-222(2) for failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated. The Special Master, having heard the testimony of the witnesses and having reviewed other evidence produced at trial, and having viewed the *locus in quo*, and having considered the closing arguments of the parties, makes the following findings of fact and conclusions of law.

1. Water right claim 78-206A was reported by the Director of IDWR in the *Director's Report for Basin 78 for Irrigation and Other Uses*, dated January 3, 2007, with the following elements:

|                            |                                                                            |
|----------------------------|----------------------------------------------------------------------------|
| Source:                    | Goose Creek, Tributary to Little Salmon River                              |
| Quantity:                  | 0.070 cfs                                                                  |
| Priority Date:             | 05/01/1904                                                                 |
| Point of Diversion:        | T19N R02E S29 SENE Within Adams County                                     |
| Purpose and Period of Use: | Irrigation 04/01 to 10/31                                                  |
| Place of Use:              | T19N R01E S24 NESE (4.4 acres of irrigation within a 10 acre place of use) |

2. Water right claim 78-12162 was reported by the Director of IDWR in the *Director's Report for Basin 78 for Irrigation and Other Uses*, dated January 3, 2007, with the following elements:

|                            |                                                                                                                                                                               |
|----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Source:                    | Goose Creek, Tributary to Little Salmon River                                                                                                                                 |
| Quantity:                  | 0.570 cfs                                                                                                                                                                     |
| Priority Date:             | 05/01/1904                                                                                                                                                                    |
| Point of Diversion:        | T19N R02E S29 SENE Within Adams County                                                                                                                                        |
| Purpose and Period of Use: | Irrigation 04/01 to 10/31                                                                                                                                                     |
| Place of Use:              | T19N R01E S24 NESW (5 acres); SESW (5.5 acres); NESE (23 acres); NWSE (35 acres) SWSE (39 acres); SESE (38 acres) (35.6 acres of irrigation within a 145.5 acre place of use) |

3. Water right claims 78-206A and 78-12162 are both based upon a split of water right 78-206, which was decreed in the case of *Clay v. Clark*, in the District Court of the Seventh Judicial District of the State of Idaho in and for the County of Adams, entered July 19, 1921. In that decree, one John H. Abshire was decreed a water right for the use of water from the South Prong of Goose Creek, in an amount of 32 miner's inches (0.64 cfs), priority date of May 1, 1904, for use in the SE quarter of section 24, Township 19 North, Range 1 East, Boise Meridian. (Typically, one-quarter of a section would contain approximately 160 acres, more or less, with variations attributable to survey error.) The *Clay v. Clark* Decree also states that the duty of water for the water rights described therein (with certain exceptions for small tracts) is eight-tenths ( $8/10^{\text{th}}$ ) of one miner's inch per acre. Accordingly, the 32 miner's inches of water decreed to John H. Abshire, under the  $8/10^{\text{th}}$  of an inch per acre duty, would have been enough water to irrigate 40 acres, or 25% of the 160-acre decreed place of use.

4. The 1921 *Clay v. Clark* Decree is conclusive proof of diversion of the water and of application thereof to beneficial use. That decree fixed the elements of the water rights decreed therein, including the land to which the water is appropriated. *Crow v. Carlson*, 107 Idaho 461, 465-66, 690 P.2d 916, 920-21 (1984).

5. Subsequent to the issuance of the *Clay v. Clark* Decree, a portion of the SE quarter of Section 24 was divided therefrom, such portion lying north of State Highway 55. Through mesne conveyances, said portion of land is currently owned by Jennifer Eld and Barbara Clancy. There are no deeds or other instruments in the record demonstrating when this land division occurred, nor does the record contain any documents showing the chain of title to the Eld/Clancy land.

6. A division of a tract of land to which water is appurtenant, without segregating or reserving the water right, works a division of such water right in proportion as the land is divided. *Crow v. Carlson*, 107 Idaho 461, 467, 690 P.2d 916, 922 (1984)(quoting *Hunt v. Bremer*, 47 Idaho 490, 493, 276 P. 964, 965 (1929)).

7. Upon the division of land as set forth in paragraph No. 5 above, a proportional share of water right 78-206 was conveyed as an appurtenance to the predecessors-in-interest to

Eld/Clancy.<sup>2</sup> The parcel of land owned by Eld/Clancy contains 16.1 acres of the 160-acre place of use decreed to John H. Abshire in the *Clay v. Clark* Decree.<sup>3</sup> Accordingly, the proportional share of the water right appurtenant to the Eld/Clancy parcel is  $16.1/160 \times 32$ , or 3.22 miner's inches (0.0644 cfs).<sup>4</sup>

8. IDWR agent Carter Fritschle, who is qualified as an expert witness pursuant to IRE 702, testified that he was the agent that prepared the recommendations for water rights 78-206A and 78-12162. Mr. Fritschle testified that he conducted a field exam in August 2005 for purposes of verifying the location of the point of diversion using a GPS device. Mr. Fritschle stated that he could not ascertain the exact location of the point of diversion based upon aerial photographs. Mr. Fritschle stated that he did not conduct a field exam of the place of use for water right claims 78-206A or 78-12162; but rather his recommendation was based upon interpretation of aerial photography. Mr. Fritschle testified that because of the high water table in the vicinity, the determination of actual irrigation on a particular place of use can be very difficult. Mr. Fritschle stated that there is nothing in IDWR's records to show that water diverted at the applicable point of diversion has been or is actually used on the Eld/Clancy property.

9. Based upon the testimony of Carter Fritschle that IDWR did not investigate or ascertain actual use of water on the Eld/Clancy property, but rather that the determination of use by IDWR was based upon interpretation of aerial photography and because of the high water table in the vicinity the determination of actual irrigation using such aerial photography is problematic, this Special Master concludes that the *prima facie* weight of the *Director's Report* regarding the actual beneficial use of irrigation water on the Eld/Clancy property is rebutted.

10. At trial, and upon the motion of counsel for the Hearn, this Special Master drove to the location of the Eld/Clancy and Hearn property. This Special Master viewed the premises

---

<sup>2</sup> The instrument which divided the Eld/Clancy parcel from the parcel owned by John H. Abshire in 1921, is not in the record. This Special Master's finding of fact that a proportional share of water right 78-206 was conveyed as an appurtenance upon that division of land is based upon the *prima facie* weight of the *Director's Report*. The *Director's Report* recommended such a proportional share to Eld/Clancy, and there is nothing in the record to show that such a conveyance of a proportional share of the water right did not occur. Indeed, the assertion of forfeiture by the Hearn presupposes that at some point in time a proportional share of water right 78-206 was in fact conveyed upon the division of Abshire's land, whenever that may have occurred.

<sup>3</sup> The Trial Exhibit marked "IDWR 6," which is a letter from David Tuthill to Eugene McMahan dated October 1, 1981, indicates that the McMahan (Eld/Clancy) property is 16.1 acres. The Notice of Claim filed by the McMahan on March 11, 1988, states: "Tax Record Shows 16.64 acres in the NE ¼ of the SE ¼ Sec. 24."

<sup>4</sup> At trial, IDWR Agent Carter Fritschle testified that the 0.070 cfs recommended under water right claim 78-206A reflects a rounding-off of 0.0644 cfs.

from State Highway 55 and from Walker Lane. There did not appear to be any irrigation of the Hearn property at the time of the viewing. There is a culvert under State Highway 55 in which water could flow from south to north, i.e. from the Hearn Property to the Eld/Clancy Property. However, there did not appear to be any ditch or other means of conveyance that would be able to convey water under claim 78-206A directly to said culvert. In other words, it would appear that the only way water from claim 78-206A could reach the Eld/Clancy property would be as tail water from the irrigation of the Hearn's land. From the view of the premises, even this seems unlikely, as there is a ditch crossing the Hearn property in a generally southeast to northwest direction (i.e. parallel to State highway 55), which said ditch would appear to block or intercept any irrigation water from crossing into the northeast portion of Hearn's land and then proceeding under the highway to the Eld/Clancy property. The trial testimony was that this ditch is not used in connection with the irrigation of the Hearn property, but rather it is used to convey water by the holder of an unrelated water right to that holder's place of use.

11. Darrell Campbell, a rancher and long-time resident of New Meadows, testified that he leased the Eld/Clancy parcel of land from the McMahan's, who were the predecessors-in-interest to Eld/Clancy. Darrell Campbell used the land to pasture cattle. This lease arrangement began in 1970 and ended when Eld/Clancy purchased the property from the McMahan's, which to his recollection was about 10 or 12 years ago (i.e. 1996-1998).<sup>5</sup> Darrell Campbell testified that during the entire period that he leased the Eld/Clancy land he never irrigated it at all.

12. Darrell Campbell also testified that he used to lease the property now owned by the Hearn's, beginning in 1980 and ending when the Hearn's purchased the land. Darrell Campbell testified that he used to irrigate the Hearn's property and that when irrigated the tail water would drain to the west, not to the north (i.e. not to the culvert under State Highway 55 and to the Eld/Clancy property). Darrell Campbell testified that he never took any action to dam or block water from flowing to or through the culvert under State Highway 55.

13. Tim Farrell testified that he is the current owner of the land north of and adjacent to the Eld/Clancy parcel and that he acquired ownership from his parents. Mr. Farrell has lived there for a cumulative total of 35 years. During that time he conducted ranching activities on his

---

<sup>5</sup> The five-year forfeiture time period is tolled upon the filing of a claim in the SRBA. *Memorandum Decision and Order on Challenge; and Order of Partial Decree* (Wood v. Troutt), Subcase 65-5663B (May 9, 2002). Therefore, the exact date upon which Darrell Campbell ceased leasing the Eld/Clancy parcel is immaterial. The claim for water right 78-206A was filed by Eugene and Mozelle McMahan on March 11, 1988, well before the Darrell Campbell stopped leasing the land for cattle pasture.

property, including herding cows, irrigating, and mending fences. He has never seen the Eld/Clancy parcel be irrigated, although he has occasionally seen natural flood water on the Eld/Clancy property.

14. Dan Hearn, the current owner of the property associated with water right 78-12162, testified that he has run cattle on his land since 1991. Mr. Hearn testified that he irrigates his land and that the irrigation water enters his land near the southeast corner thereof. His method of irrigating is to flood irrigate by placing tarp dams in the ditches that cross the property. He stated that the tail water drains to the west, not the north, and he has never seen any tail water from the irrigation of his land cross State Highway 55 through the culvert to the Eld/Clancy property. Mr. Hearn testified that he does not need to irrigate the most northeasterly portion of his land (i.e. in the area where the culvert crosses the highway) because it tends to stay wet without any purposeful application of water. Dan Hearn testified that he never took any action to dam or block water from flowing to or through the culvert under State Highway 55.

15. Mr. Hearn also testified that he pays the yearly assessment from the water district and that he has been assessed and paid for all deliveries of water right 78-206 and has never been told that he was paying for water delivered to the Eld/Clancy property.

16. Tana Kerby, who is the Treasurer for the Goose Creek Water District 78C, testified that she has lived in the New Meadows area for 50 years and has never seen any irrigation on the Eld/Clancy property, nor is she aware of any ditch that could convey water to the Eld/Clancy property. Mrs. Kerby testified that in her capacity as Treasurer of the Goose Creek Water District 78C, she has no record of any billing for water usage on the Eld/Clancy property. She also testified that she has reviewed the records of the previous treasurer, Marge Clay, and that the records do not indicate any water deliveries or billing to the Eld/Clancy (previously McMahan) property.

17. John C. Steiner, who is a consultant employed by Jennifer Eld to help her resolve certain irrigation and building site issues on her property, testified that he witnessed water flowing from the Hearn property to the Eld/Clancy property via the culvert under State

Highway 55 on July 6, 2007, and again four days later.<sup>6</sup> Mr. Steiner did not state whether or not the water he viewed was being delivered pursuant to water right 78-206A.

18. Abandonments and forfeitures are not favored. *Sagewillow, Inc. v. Idaho Dept. of Water Resources*, 138 Idaho 831, 836, 70 P.3d 669, 674 (2003)(citing *Zezi v. Lightfoot*, 57 Idaho 707, 68 P.2d 50 (1937)).

19. Forfeiture of water rights must be proven by clear and convincing evidence. *Sagewillow*, 138 Idaho at 842, 70 P.3d at 680 (citing *McCray v. Rosenkrance*, 135 Idaho 509, 20 P.3d 693 (2001)).

20. In accordance with the foregoing, this Special Master finds that the Eld/Clancy property has not been irrigated with water pursuant to water right 78-206, as represented by water right claim 78-206A, since at least 1970. The evidence admitted at trial in this regard is clear and convincing. Accordingly, this Special Master finds that the proportional share of water right 78-206, as represented by water right claim 78-206A, has been forfeited by reason of non-use beginning on April 1, 1970 (the beginning of the irrigation season in the year that Darrell Campbell started leasing the Eld/Clancy property) and ending on March 11, 1988 (the date the claim was filed by the McMahan for 78-206A).<sup>7</sup>

21. When any right to the use of water is lost through nonuse or forfeiture, such rights to such water shall revert to the state and again be subject to appropriation in accordance with Idaho law. I.C. § 42-222(2).

22. This Special Master also finds that the entire 32 miner's inches of water decreed to John H. Abshire in the *Clay v. Clark* Decree has been used each year on the Hearn property during the time period set forth in paragraph No. 20 above. However, because a water right

---

<sup>6</sup> The testimony of Mr. Steiner was offered by Jennifer Eld for the purpose of showing, pursuant to Mr. Steiner's experience and expertise, that the respective elevations of the Hearn property and the Eld/Clancy property are such that tail water from the irrigation of the Hearn land should flow to the culvert under the highway and onto the Eld/Clancy property. However, pursuant to an objection by counsel for the Hearn, this Special Master ruled that Jennifer Eld failed to qualify Mr. Steiner as an expert pursuant to Idaho Rule of Evidence 702 and, accordingly, with the exception of Mr. Steiner's personal observation that he saw water flowing to the Eld/Clancy property on a certain date, his testimony is inadmissible.

<sup>7</sup> There is evidence in the record from which one could infer that the period of non-use began much earlier than April 1, 1970. Based upon the testimony of both Darrell Campbell and Dan Hearn that the irrigation water on the property drains to the west and not to the north and based upon this Special Master's observations of the property, it is certainly possible that the land owned by Eld/Clancy was never irrigated under water right 78-206 (remember that 78-206 is only enough water to irrigate 40 acres of the decreed 160 acre place of use). Furthermore, after State Highway 55 was constructed – whenever that may have been – it would likely have been even more difficult to get irrigation water to the Eld/Clancy place of use. However, unlike the testimony of Darrell Campbell that he never irrigated the Eld/Clancy property during the time he leased it, this Special Master does not find the evidence set forth in this footnote, and the inferences that could be drawn therefrom, to be clear and convincing.

forfeited pursuant to Idaho Code § 42-222(2) reverts to the State of Idaho and is again subject to appropriation, the Hearn's (and predecessor's) use of that water is insufficient to establish a water right in the Hearn's to the water so forfeited.<sup>8</sup> Therefore, this Special Master recommends that water right 78-12162 be decreed for a quantity of water that reflects: 1) the conveyance of a proportional share of water right 78-206 upon the division of land that created the Eld/Clancy parcel; and 2) the subsequent forfeiture of said proportional share. This is the quantity recommended in the *Director's Report* for water right 78-12162.

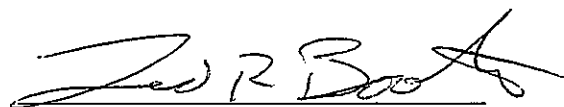
23. Regarding the Hearn's objection to the recommended point of diversion for 78-12162, Carter Fritschle testified that he conducted a field exam of the point of diversion. Based on his GPS readings, he determined the point of diversion for water right 78-12162 to be T19N R02E S29 SENE. No party introduced any evidence to the contrary.<sup>9</sup>

#### IV. RECOMMENDATION

Having weighed the entirety of the evidence presented, this Special Master finds and concludes that the Hearn's have met their burden to prove, by clear and convincing evidence, that water right 78-206A has been forfeited by reason of non-use for five (5) years, pursuant to Idaho Code § 42-222(2). Therefore, IT IS RECOMMENDED that the SRBA District Court enter a final order be issued **disallowing** water right claim 78-206A.

IT IS FURTHER RECOMMENDED that water rights 78-00182, 78-12128, 78-12162, and 78-12165 be **decreed** with the elements as set forth in the attached *Recommendation for Partial Decree Pursuant to I.R.C.P. 54(b)*.

Dated May \_\_\_\_\_, 2008



Theodore R. Booth  
Special Master  
Snake River Basin Adjudication

<sup>8</sup> Because the five-year forfeiture period was not complete until April 2, 1975, Mr. Hearn will be unable to assert a beneficial use claim to the water so forfeited because Idaho's mandatory permit requirement began in 1971.

<sup>9</sup> On May 21, 2008, the Court received a *Stipulation to Resolve Objection*. This *Stipulation* was not signed by any representative of the United States, Department of Agriculture, Forest Services, nor was it signed by Eld/Clancy.

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

|                                       |       |
|---------------------------------------|-------|
| DISTRICT COURT - SRBA                 |       |
| Fifth Judicial District               |       |
| County of Twin Falls - State of Idaho |       |
| MAY 21 2008                           |       |
| By _____                              | Clerk |
| Deputy Clerk                          |       |

In Re SRBA )  
 )  
Case No. 39576 )  
 )  
Water Right 78-00182

NAME AND ADDRESS: DAN HEARN  
MARY F HEARN  
PO BOX 383  
NEW MEADOWS, ID 83654

SOURCE: GOOSE CREEK TRIBUTARY: LITTLE SALMON RIVER

Water is delivered from the West Branch of Goose Creek.

QUANTITY: 1.448 CFS

PRIORITY DATE: 05/01/1888

POINT OF DIVERSION: T19N R02E S29 SENE Within Adams County

|                            |                |                |           |
|----------------------------|----------------|----------------|-----------|
| PURPOSE AND PERIOD OF USE: | PURPOSE OF USE | PERIOD OF USE  | QUANTITY  |
|                            | Irrigation     | 04-01 TO 10-31 | 1.448 CFS |

|               |                   |                     |
|---------------|-------------------|---------------------|
| PLACE OF USE: | Irrigation        | Within Adams County |
|               | T19N R01E S24     | SWSE 0.2 SESE 0.9   |
|               | S25               | NENE 40.0 NWNE 39.0 |
|               |                   | SWNE 36.0 SENE 39.0 |
|               | 155.1 Acres Total |                     |

This right is limited to the irrigation of 90.5 acres within the place of use described above in a single irrigation season. The rights listed below are limited to the irrigation of a combined total of 301.5 acres in a single irrigation season. Combined Right Nos.: 78-182, 78-12128, 78-12162 and 78-12165

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

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~~

RECOMMENDATION

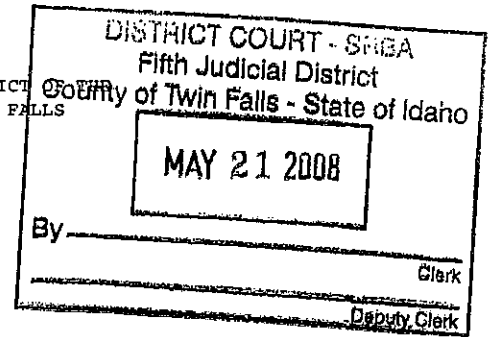
MAY 21 2008

*John M. Melanson*  
SPECIAL MASTER

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
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 78-12162



NAME AND ADDRESS: DAN HEARN  
MARY F HEARN  
PO BOX 383  
NEW MEADOWS, ID 83654

SOURCE: GOOSE CREEK TRIBUTARY: LITTLE SALMON RIVER

QUANTITY: 0.57 CFS

PRIORITY DATE: 05/01/1904

POINT OF DIVERSION: T19N R02E S29 SENE Within Adams County

| PURPOSE AND PERIOD OF USE: | PURPOSE OF USE | PERIOD OF USE  | QUANTITY |
|----------------------------|----------------|----------------|----------|
|                            | Irrigation     | 04-01 TO 10-31 | 0.57 CFS |

| PLACE OF USE: | Irrigation        | Within Adams County |
|---------------|-------------------|---------------------|
|               | T19N R01E S24     |                     |
|               | NESW 5.0          | SESW 5.5            |
|               | NESE 23.0         | NWSE 35.0           |
|               | SWSE 39.0         | SESE 38.0           |
|               | 145.5 Acres Total |                     |

This right is limited to the irrigation of 35.6 acres within the place of use described above in a single irrigation season. The rights listed below are limited to the irrigation of a combined total of 301.5 acres in a single irrigation season. Combined Right Nos.: 78-182, 78-12128, 78-12162 and 78-12165

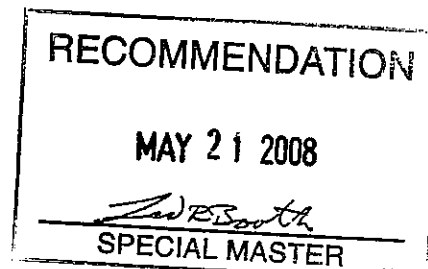
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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



DISTRICT COURT - SRBA  
Fifth Judicial District  
County of Twin Falls - State of Idaho

MAY 21 2008

By \_\_\_\_\_ Clerk  
\_\_\_\_\_  
Deputy Clerk

PAGE 1  
May-21-2008

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

|                                       |              |
|---------------------------------------|--------------|
| DISTRICT COURT - SRBA                 |              |
| Fifth Judicial District               |              |
| County of Twin Falls - State of Idaho |              |
| MAY 21 2008                           |              |
| By _____                              | Clerk        |
| _____                                 | Deputy Clerk |

In Re SRBA )  
                  ) PARTIAL DECREE PURSUANT TO  
Case No. 39576 ) I.R.C.P. 54(b) FOR  
                  ) Water Right 78-12128

NAME AND ADDRESS: DAN HEARN  
MARY F HEARN  
PO BOX 383  
NEW MEADOWS, ID 83654

SOURCE: CAMPBELL SWAMP TRIBUTARY: SINKS

QUANTITY: 3.00 CFS

PRIORITY DATE: 06/01/1890

POINT OF DIVERSION: T19N R02E S29 SWNW Within Adams County

|                |                |                |          |
|----------------|----------------|----------------|----------|
| PURPOSE AND    |                |                |          |
| PERIOD OF USE: | PURPOSE OF USE | PERIOD OF USE  | QUANTITY |
|                | Irrigation     | 04-01 TO 10-31 | 3.00 CFS |

|               |                   |           |                     |
|---------------|-------------------|-----------|---------------------|
| PLACE OF USE: | Irrigation        |           | Within Adams County |
|               | T19N R01E S24     | NESW 5.0  | SESW 5.5            |
|               |                   | NESE 23.0 | NWSE 35.0           |
|               |                   | SWSE 40.0 | SESE 39.0           |
|               | S25               | NENE 40.0 | NWNE 39.0           |
|               |                   | SWNE 36.0 | SENE 39.0           |
|               | 301.5 Acres Total |           |                     |

The rights listed below are limited to the irrigation of a  
combined total of 301.5 acres in a single irrigation season.  
Combined Right Nos.: 78-182, 78-12128, 78-12162 and 78-12165

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

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

|                         |
|-------------------------|
| RECOMMENDATION          |
| MAY 21 2008             |
| <i>John M. Melanson</i> |
| SPECIAL MASTER          |

|                                                                                           |
|-------------------------------------------------------------------------------------------|
| DISTRICT COURT - SRBA<br>Fifth Judicial District<br>County of Twin Falls - State of Idaho |
| MAY 21 2008                                                                               |
| By _____ Clerk                                                                            |
| Deputy Clerk                                                                              |

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 )  
\_\_\_\_\_ )

NOTICE OF ISSUANCE OF  
SPECIAL MASTER'S  
RECOMMENDATION

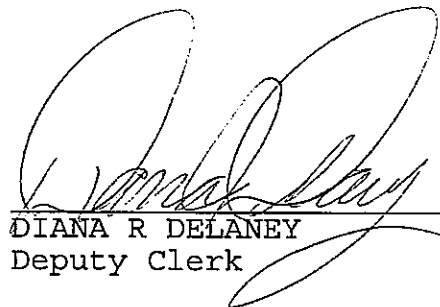
Water Right(s): 78-00182  
78-00206A 78-12128 78-12162  
78-12165

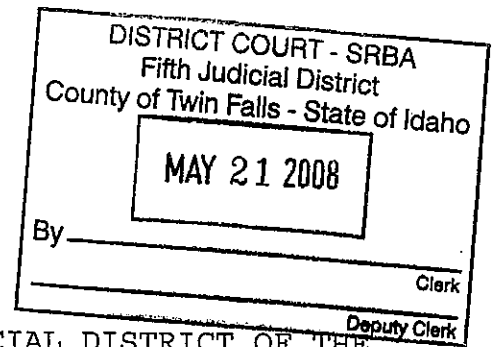
On May 21, 2008, Special Master THEODORE R. BOOTH issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s) pursuant to SRBA Administrative Order 1 (AO1), Section 13a.

Pursuant to SRBA Administrative Order 1, Section 13a, any party to the adjudication including parties to the subcase, may file a Motion to Alter or Amend on or before the 28th day of the next month.

Failure of any party in the adjudication to pursue or participate in a Motion to Alter or Amend the SPECIAL MASTER'S RECOMMENDATION shall constitute a waiver of the right to challenge it before the Presiding Judge.

DATED May 21, 2008.

  
DIANA R DELANEY  
Deputy Clerk



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 )  
\_\_\_\_\_ )

CERTIFICATE OF MAILING

Water Right(s): 78-00182  
78-00206A 78-12128 78-12162  
78-12165

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 May 21, 2008, with sufficient first-class postage prepaid to the following:

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

DAN & MARY HEARN  
DAN HEARN  
Represented by:  
ANDREW J WALDERA  
101 S CAPITOL BLVD 10TH FLOOR  
PO BOX 829  
BOISE, ID 83701  
Phone: 208-345-2000

CERTIFICATE OF MAILING

PAGE 1  
05/21/08

DAN & MARY HEARN

DAN HEARN

MARY F HEARN

Represented by:

SCOTT L CAMPBELL

101 S CAPITOL BLVD 10TH FLOOR

PO BOX 829

BOISE, ID 83701-0829

Phone: 208-345-2000

UNITED STATES OF AMERICA

Represented by:

US DEPARTMENT OF JUSTICE

ENVIRONMENT & NATL' RESOURCES

550 WEST FORT STREET, MSC 033

BOISE, ID 83724

JENNIFER ELD

PO BOX 103

DONNELLY, ID 83615

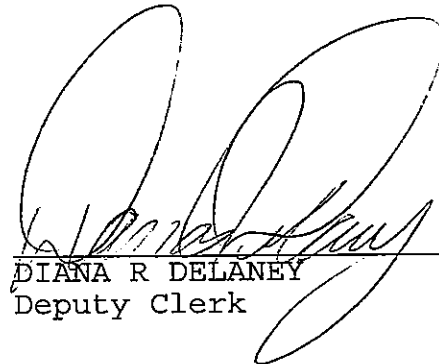
Phone: 208-325-3251

BARBARA J CLANCY

2810 SOUTHSIDE BLVD

NAMPA, ID 83686

Phone: 208-466-0247



DIANA R DELANEY  
Deputy Clerk