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JUL 24 2008 2008 JUL 23 PM 3:07
DEPARTMENT OF DISTRICT COURT--SRBA
WATER RESOURCES 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 35-7210 & 35-7369
	)	(Allen Farms)
Case No. 39576	)	
	)	SPECIAL MASTER REPORT
	)	AND RECOMMENDATION

Findings of Fact

Licenses

35-7210 – licensed to Allen Brothers on October 9, 1976, for 6.4 cfs from groundwater to irrigate 320 acres in Power County from April 1 to October 15 with a priority date of February 14, 1972.

35-7369 – licensed to Allen Brothers (general partnership) on February 26, 1979, for 1.4 cfs from groundwater to irrigate 70 acres in Power County from April 1 to November 1 with a priority date of January 15, 1974.

SRBA Claims

On March 16, 1990, Allen Farms, 2799 Vollmer Loop, American Falls, Idaho, 83221, claimed both water rights in the SRBA as they were licensed by IDWR.

IDWR Director's Recommendations

The Director of the Idaho Department of Water Resources filed his *Director's Report for Irrigation and Other Uses, Reporting Area 5, Part III (IDWR Basin 35)* on January 29, 1999. The Director recommended the two claims for a combined diversion rate of 7.08 cfs to irrigate a combined total of 367 acres (320 acres within the place of use for 35-7210 and 61 acres within the place of use for 35-7639) from April 1 to October 15 (35-7210) or 31 (35-7369).

Partial Decrees

On January 31, 2002, former SRBA Presiding Judge Roger S. Burdick entered *Orders of Partial Decrees* for water rights 35-7210 and 35-7369. The two claims were among 1,720 claims recommended by the Special Master on November 6, 2001, after *Objections* filed by the Twin Falls and North Side Canal Companies were dismissed. The two water rights were then decreed as recommended by IDWR.

Motion to Set Aside

On April 14, 2008, Sid and Marilyn Allen, d/b/a Allen Farms, filed their *Motion to Set Aside Partial Decrees and File Late Objection*. They alleged: “The purpose is to amend and correct the Partial Decrees[s] to reflect a combined place of use of 390 acres as reflected in the original Licenses and original SRBA Notices of Claim instead of the 367 combined acres reflected in the Partial Decrees.”

The Allens also submitted 1) the *Supporting Affidavit of Sid E. Allen*, 2) the two *Water Right Licenses*, 3) the Allens’ SRBA claims, 4) IDWR’s March 5, 2008 “cease and desist” letter addressed to Allen Farms stating there was no water right appurtenant to 35 acres irrigated by the Allens and 5) Judge Burdick’s *Partial Decrees*.

Order of Reference

SRBA Presiding Judge John M. Melanson entered an *Order of Reference Appointing Special Master Terrence A. Dolan* on April 14, 2008, “to issue a recommendation . . . as to the *Motion* and to the underlying merits as to how the *Partial Decrees* should be amended, if it is determined that said *Partial Decrees* should be set aside or amended.”

Hearing

A hearing on the Allens’ *Motion* was held by telephone on July 3, 2008. Randall C. Budge appeared for the Allens; David J. Barber appeared for the State of Idaho; and Andrea L. Courtney appeared for IDWR.

Mr. Allen wrote the following in his *Affidavit*:

Because IDWR personnel assisted me in the preparation of the SRBA Claims, because the water rights claimed were exactly as licensed, and because Partial Decrees issued on all other of my rights were exactly as claimed and licensed, I had good reason to believe that the Partial Decrees issued on Water Rights Nos. 35-7210 and 35-7369 had also been issued exactly as those rights were previously licensed and claimed. It was through oversight and inadvertence on my part that I did not discover the reduction in the irrigated acres under these rights until after I received the [cease and desist] letter from Mr. Carlson dated March 5, 2008. . . . Because all of the land identified in the place of use of these rights as licensed and claimed had always been continuously irrigated by wheel lines to date, it would be extremely burdensome, if not impossible, to avoid irrigating the 35 acre tract identified in the map attached to the March 5, 2008 letter. Furthermore, it would be entirely unfair, unjust and inequitable not to correct and/or set aside the Partial Decrees omitting this irrigated acreage to provide me with an opportunity to correct this mistake.

Mr. Allen speculated that IDWR reduced the irrigated acreage by 35 acres because aerial imagery may indicate certain “sandy areas” on his land are incapable of supporting normal row crops. But he said that land has always been farmed and irrigated to raise natural grasses to prevent soil erosion.

The State did not lodge a brief on the Allens’ *Motion*, but instead appeared and argued its concern that the *Motion*, filed under I.R.C.P. 60(b) and *SRBA Administrative Order 1, Rules of Procedure*, was filed over 6 years after the *Partial Decrees* were entered. While the State was sympathetic to the *Motion*, it was concerned with the standards applied in similar subcases—hence it opposed the *Motion*.¹

Conclusions of Law

The Allens demonstrated just reasons for relief under I.R.C.P. 60(b)(6). As suggested by their counsel, the Allens filed their claims based on licenses and they relied in good faith that the claims would be decreed as licensed and claimed. As noted earlier, their claims were among 1,720 claims objected to by the Twin Falls and North Side Canal Companies on grounds only remotely related to the Allens’ claimed acreage.

¹ Counsel for IDWR pointed out that a Rule 60(b) motion for relief from a final judgment, order or proceeding based on “(6) any other reason justifying relief from the operation of the judgment” is no longer limited to 6 months after entry of the judgment. See Idaho Supreme Court *Order Amending Rules*, dated April 4, 2008, effective July 1, 2008 (two days after the hearing with the Special Master).

While those objections were being closely examined, it is unlikely the Allens closely scrutinized IDWR's recommendations of their individual claims.

The Allens pointed out their *Motion* asks for a relatively small number of additional acres which they have historically irrigated by wheel lines since they were licensed. Therefore, there is no likelihood any other water user will be adversely affected if the Allens are allowed to continue such beneficial use of water.

Recommendation

THEREFORE, IT IS RECOMMENDED that the *Partial Decrees* in subcases 35-7210 and 35-7369 be set aside and amended to include the 390 acres described in the licenses and SRBA claims.

DATED July 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 July 23, 2008, with sufficient first-class postage to the following:

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