

RECEIVED 2008 SEP 17 AM 11:38
SEP 18 2008 DISTRICT COURT-SRBA
DEPARTMENT OF TWIN FALLS CO., IDAHO
WATER RESOURCES 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 74-1080 and 74-15537
Case No. 39576) (Mahaffey)
)
) 2nd 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 claim 74-15537 to Velma Mahaffey, P.O. Box 14, Lemhi, Idaho, 83465, for .14 cfs from an unnamed stream for year-'round stockwater use and to irrigate 4.5 acres from March 15 to November 15 with a priority date of February 12, 1875, based on a decree.¹ Ms. Mahaffey filed an *Objection* on March 21, 2006, objecting to point of diversion.

On February 21, 2008, Ms. Mahaffey was granted leave to file an amended claim "to correct how the original claim was filed [and] to amend the point of diversion and point of use." IDWR filed an *Amended Director's Report, Subcase No. 74-15537* on February 29, 2008, recommending the amended claim be disallowed: "Right not claimed in prior adjudication."

When no one objected to IDWR's *Amended Director's Report*, the Special Master filed a *Report and Recommendation* in the above two subcases on April 9, 2008, recommending 74-1080 be decreed and 74-15537 be disallowed. Then, after considering Ms. Mahaffey's *Motion to Alter or Amend*, the Special Master entered an *Order*

¹ IDWR identified 74-1080 as Ms. Mahaffey's uncontested overlapping claim. Only 74-15537 is now at issue.

Granting Motion to Alter or Amend on June 12, 2008, setting aside the ***Report and Recommendation*** and requesting an I.R.E. 706 report from IDWR.

In preparation for trial, IDWR filed its *Supplemental Director's Report Regarding Subcase No. 74-15537* on July 2, 2008. It reported that during initial hearings in Salmon, Idaho, IDWR learned from Ms. Mahaffey that "74-15537 was actually used on the opposite side of the Lemhi River from how it was claimed and recommended in the SRBA. Furthermore, the source of water to irrigate that ground was different than claimed and recommended."

IDWR examined related water rights and complicated splits in minute detail. Its conclusions were as follows:

The Department cannot recommend water right no. 74-15537 as an accomplished transfer of water right no. 74-1081 because it would involve the unstacking of water right no. 74-1081 from water right no. 74-1862, without corresponding fallowing of water right no. 74-15535. Such a recommendation would result in an illegal enlargement of water right no. 74-15537 because Mahaffey still uses water right no. 74-15535 on the opposite side of the Lemhi River from the claimed place of use for water right no. 74-15537.

It is the Department's position that, but for *res judicata*, water right no. 74-15537 could be recommended, however, as a beneficial use claim . . . because information reviewed by the Department, notably aerial photography from 1946 . . . demonstrates that the property was irrigated prior to enactment of the 1971 mandatory permit statute. Based on information reviewed, August 8, 1946 is the earliest priority date the Department can recommend for water right no. 74-15537. While a home does not appear on the property in the 1946 aerial photograph, the Department can recommend an accomplished change in purpose of use for domestic and heating purposes because the uses are non-consumptive and are not in addition to the recommended rate of flow.

Trial was held at the SRBA Courthouse in Twin Falls, Idaho, on July 31, 2008. Ms. Mahaffey appeared *pro se*, along with her daughter, June Playfair. Chris M. Bromley appeared for IDWR, along with senior water resource agent Nathaniel Arave.

At trial, IDWR amended its draft recommendation of how it would recommend Ms. Mahaffey's amended claim but for *res judicata*.² IDWR Attachment D1. Ms.

² "A matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment. Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the

Mahaffey agreed with the elements described in the amendment, including the 1949 priority date.

The amended draft recommendation is for .14 cfs from springs and waste water for year-'round domestic, heating and stockwater uses and to irrigate 4.5 acres in Lemhi County from March 15 to November 15 with a priority date of March 15, 1949, based on beneficial use. Under explanatory material, IDWR added the following caution to reinforce its legal conclusion:

Right not claimed in prior adjudication: This is included for a claim that is proposed to be disallowed because rights from the source claimed were determined in a prior general adjudication. The right was not decreed in the prior adjudication, and the claim cannot be recommended based upon beneficial use.

Agent Arave testified at length why he felt 74-15537 should be recommended as based on beneficial use and not a decree if the claim is not barred by *res judicata*. He noted the place of use claimed for 74-15537 is on the east side of the Lemhi River opposite from related water rights decreed in the Lemhi Adjudication. He said there is no evidence that any water right appurtenant to Ms. Mahaffey's property east of the river has been decreed.

Mr. Arave suggested there may be good reasons why Ms. Mahaffey's amended claim was never decreed in the Lemhi Adjudication. Because the sources for 74-15517 are springs and waste water and because IDWR's view back in the 1970's was that such sources were "private water," IDWR probably deferred consideration to "future proceedings." See IDWR Exhibits 1 and 2.

Conclusions of Law

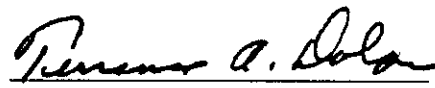
Under I.R.C.P. 60(b)(6), a court may relieve a party from a final judgment for any reason justifying relief from the operation of the judgment, but any motion for relief must be made within a reasonable time.

rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action." *Black's Law Dictionary* 1174 (5th ed., West 1979).

The record supports Ms. Mahaffey's beneficial use claim in subcase 74-15537 and she has stated sufficient reason justifying relief from the operation of District Judge Arnold T. Beebe's December 30, 1982 *Partial Decree Pursuant to Rule 54(b), I.R.C.P.* in the Lemhi Adjudication. Ms. Mahaffey's motion for relief was made within a reasonable time considering her timely *Objection* and amended claim. It would not be fair to deny Ms. Mahaffey's amended claim given the likelihood that her claimed sources were excluded from consideration in the Lemhi Adjudication.

Ms. Mahaffey is entitled to partial decrees adjudicating water rights as recommended by IDWR (74-01080) and as described in Attachment D1 to IDWR's *Supplemental Director's Report* (74-15537) and the attached *Special Master Recommendations for Partial Decrees for Water Rights 74-01080 and 74-15537*.

DATED September 17, 2008.



TERRENCE A. DOLAN
Special master
Snake River Basin Adjudication

In Re SRBA	)	PARTIAL DECREE PURSUANT TO
	)	I.R.C.P. 54(b) FOR
Case No. 39576	)	
	)	Water Right 74-01080

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 74-15537

NAME AND ADDRESS: VELMA MAHAFFEY
PO BOX 14
LEMHI, ID 83465

SOURCE: SPRINGS TRIBUTARY: LEMHI RIVER
WASTE WATER

QUANTITY: 0.14 CFS

PRIORITY DATE: 03/15/1949

POINT OF DIVERSION: T18N R24E S33 NWSWN Within Lemhi County
LOT 3 (NENW)
LOT 4 (NWNW)

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-15 TO 11-15	0.14 CFS
	Stockwater	01-01 TO 12-31	0.04 CFS
	Domestic	01-01 TO 12-31	0.04 CFS
	Heating	01-01 TO 12-31	0.04 CFS

PLACE OF USE: Irrigation Within Lemhi County
T18N R24E S33 LOT 4 (NWNW) 4.5
4.5 Acres Total

Stockwater Within Lemhi County
Same as Irrigation

Heating Within Lemhi County
Same as Irrigation

Domestic Within Lemhi County
Same as Irrigation

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.

RECOMMENDATION

SEP 17 2008

James A. Olson

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

2008 SEP 17 AM 11:38

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)
_____)

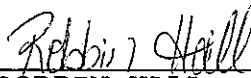
Water Right(s): 74-01080
74-15537

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 September 17, 2008, with sufficient first-class postage prepaid to the following:

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

VELMA MAHAFFEY
PO BOX 14
LEMHI, ID 83465
Phone: 208-768-2413



ROBBIN HALL
Deputy Clerk

CERTIFICATE OF MAILING

PAGE 1
09/17/08

2008 SEP 17 AM 11:38

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)
Case No. 39576)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

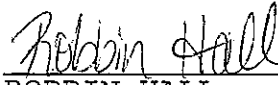
Water Right(s): 74-01080
74-15537

On September 17, 2008, Special Master TERRENCE A. DOLAN 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 September 17, 2008.



ROBBIN HALL
Deputy Clerk