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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
DEC 18 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

) ORDER RE: MOTION TO DISALLOW
) COSTS AND ATTORNEYS' FEES
)
) SPECIAL MASTER'S REPORT
)
) FINDINGS OF FACT AND
) CONCLUSIONS OF LAW
)
) FOR WATER RIGHT 63-07539

I. ORDER RE: MOTION TO DISALLOW
COSTS AND ATTORNEYS' FEES

On September 17, 2008, this Special Master issued an *Order on Motion to Strike; Order Re: Attorney's Fees and Costs; Order Dismissing Objection; Order Vacating Hearing on Motions for Summary Judgment; and Order Requesting Statement from Parties* (hereinafter "*September 17 Order*"). In the *September 17 Order*, this Special Master found that the objector, Craig Whitted (hereinafter "Whitted"), had changed his objection from asserting that the claimant Sarah Jane Smith (hereinafter "Smith") and her predecessors-in-interest had trespassed upon Whitted's land, to an objection asserting that Smith's use of Whitted's land has been permissive, and as such Smith had acquired no rights in Whitted's property through prescription. This Special Master also concluded that Whitted's change in direction is governed by I.R.C.P. 15(a), and as such leave of court is required to make such a change. The *September 17 Order* allowed Whitted to change his assertion from trespass to permission, and found that the change in direction by Whitted warrants an award of the costs and attorneys' fees incurred by Smith in defending against Whitted's trespass theory. The claimant was directed to file a memorandum of costs and fees in the same manner as is contemplated under I.R.C.P. 54.

On October 1, 2008, Smith filed *Sarah Jane Smith's Verified Memorandum of Costs and Attorneys' Fees*, which claimed \$58.01 in discretionary costs; attorneys' fees in the amount of \$23, 229.00; and electronic research costs of \$169.70. Also on October 1, 2008, Smith filed the *Affidavit of John M. Marshall in Support of Sarah Jane Smith's Application for Costs and Attorneys' Fees*. On October 14, 2008, Whitted filed a *Motion to Disallow Costs and Attorneys' Fees* (hereinafter "*Motion*"), together with a memorandum in support thereof. On November 18, 2008, Smith filed *Sarah Jane Smith's Response to Whitted's Motion to Disallow Costs and Fees*. On November 21, 2008, Whitted filed *Craig Whitted's Reply Memorandum in Support of Motion to Disallow Costs and Fees*. A hearing on Whitted's *Motion* was held on November 25, 2008. As set forth below, and with the exception of a reduction of Smith's request in the amount of \$316.00, Whitted's *Motion* is **denied**.

The arguments made by Whitted as to why he cannot be required to pay the costs and attorney fees incurred by Smith can be briefly summarized as follows: (A) Mr. Whitted was not required to seek leave of court pursuant to I.R.C.P. 15(a) to change his position from trespass to permission for the reason that the objection filed by Whitted, which simply states: "The water right holder has no rights on this property, SWSE [Section] 14 [Township] 1S [Range] 2W BM," is equally consistent with either trespass or permissive use; (B) The Court cannot award costs and fees pursuant to some other provision of the Idaho Rules of Civil Procedure because Mr. Whitted has not violated any order of the Court; (C) Mr. Whitted should not be sanctioned for responding to new issues of fact raised by Smith in her summary judgment motion (i.e. the issue of prescriptive easement); and (D) Idaho law does not allow a court to grant an award of costs and attorneys' fees in the absence of a particularized request by the opposing party.

In addition to making the above-summarized arguments as to why Whitted cannot be required to pay any of Smith's costs and attorneys' fees, Whitted also argues that the claim for costs and attorneys' fees submitted by Smith is excessive. These arguments are addressed below.

(A) Mr. Whitted changed his position, and such change required leave of court pursuant to I.R.C.P. 15(a).

The objection filed by Whitted states: "The water right holder has no rights on this property, SWSE [Section] 14 [Township] 1S [Range] 2W BM." Whitted argues that this statement is broad enough to include both positions of trespass and of permissive use, and therefore Rule 15(a)¹ is inapplicable and Whitted was not required to seek leave of court to amend his objection. This Special Master disagrees with the assertion that the language used in Whitted's objection can encompass both theories. The language is clearly consistent with the unlawful entry upon the land of another (i.e. trespass), but it is inconsistent with permissive use. If Smith and/or her predecessor's-in-interest had been given permission (i.e. a license) to utilize Whitted's land for the purpose of drilling and maintaining a well, then for purposes of determining whether the subject point of diversion is a valid element of the water right, it cannot be said that Smith "has no rights on this property . . ." The most that can be said about the language used by Whitted in his objection is that, although not explicitly stated, it is not inconsistent with revoked permission. This Special Master further notes that to the extent Whitted meant "trespass" in the objection, this constitutes a legally cognizable objection to a water right claim, but no such objection can be recognized if Smith's use of Whitted's land has been pursuant to a license.

Assuming for the sake of argument that Whitted is correct in his assertion that the language in his objection is broad enough to encompass both trespass and permissive use, for the reasons set forth below it is the opinion of this Special Master that Whitted was still required to seek leave of court to change directions. It is not unreasonable for the opposing party to rely on subsequent statements made by Whitted in determining what he

¹ I.R.C.P. 15(a) states: **Amended and supplemental pleadings – Amendments.** A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within twenty (20) days after it is served. Otherwise a party may amend a pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires, and the court may make such order for the payment of costs as it deems proper. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten (10) days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

may have meant in the allegedly ambiguous language used in the objection. If there was any question as to what Whitted meant at the time he filed his objection, there certainly was no question remaining after the July 1, 2008, pretrial conference. Mr. Whitted meant trespass. First, Whitted's discovery response submitted in the record in the September 12, 2008, *Affidavit of J. Will Varin* clearly states that Whitted is alleging trespass. Next, at the July 1, 2008, pretrial conference Whitted left no doubt about his position. At the pretrial conference, Whitted cited the Idaho Supreme Court case of *Rabido v. Furey*, 33 Idaho 56, 190 P. 73 (1920), for the proposition that a water right cannot be initiated in trespass. Mr. Whitted further stated that his trial witnesses would testify at trial regarding the trespass of the well. Mr. Whitted also stated on the record that the well was drilled without permission. Also at the pretrial conference, this Special Master inquired of the parties – in an attempt to determine what factual issues needed to be determined at trial – whether there was a factual issue regarding whether or not Rex Jensen (Smith's predecessor-in-interest and the man who had the well drilled) had been given permission to drill the well on his neighbor's land. Mr. Whitted made no assertion at the pretrial conference that there was a factual question of permission.

Based upon the foregoing, this Special Master finds and concludes that Whitted's objection did not encompass both trespass and permission. However, to the extent Whitted's objection was ambiguous, it is entirely proper for the opposing party to rely on Whitted's subsequent statements in determining what was meant. Mr. Whitted meant trespass, and it wasn't until he filed his *Cross-Motion for Summary Judgment* and accompanying memorandum in support and affidavits on September 10, 2008, that the issue of permission was raised.² Mr. Whitted was required pursuant to I.R.C.P. 15(a) to seek leave of court to change his position.

² It should also be noted that on July 31, 2008, Whitted filed a *Motion for Summary Judgment* again alleging trespass.

Not only was Whitted required to seek leave of court to change his position, this case provides a perfect example of why the rules require parties to seek such leave. Trial was scheduled to be held on July 18, 2008. At the time of the July 1, 2008, pre-trial conference, the deadlines for disclosure of witnesses and completion of discovery had come and gone. At the pre-trial conference the parties and this Special Master had a long discussion as to what factual issues needed to be tried. Once it was determined that there was no dispute that the subject well is located on Mr. Whitted's property; and with no assertion by Mr. Whitted that he or his predecessors-in-interest had given any permission for the drilling or maintenance of a well on the property, this Special Master decided that the issue left to be resolved was likely one of law, not fact. Accordingly, the trial was vacated and the parties were given a deadline for the filing of motions for summary judgment. The procedural posture of this subcase would have been much different if Whitted had alleged permissive use at or before the pre-trial conference. A summary judgment schedule would not have been put in place as there clearly would have been an issue of fact to be determined at trial.

On September 10, 2008, Whitted first alleged permissive use, and an issue of fact was presented (i.e. whether Whitted's predecessors-in-interest had given permission). At that point in time, Whitted was required to seek leave of court, and this Special Master would have been required to decide how to proceed in a manner that would be most likely to ascertain the truth, while giving due consideration to issues of fairness, expense, and delay. Again at that point in time, considerations of fairness, expense, and delay would at a minimum dictate that the subcase schedule need be altered so as to avoid further expense by Smith in proceeding with a motion for summary judgment that was rendered useless by Whitted's change in direction. Mr. Whitted bypassed his obligation to seek leave of court, resulting in Smith's filing of a *Motion to Strike*.

In accordance with the foregoing, this Special Master finds and concludes: (1) that Whitted's position began as trespass at the time he sought leave to file a late objection on February 12, 2008; (2) that he changed his position from trespass to permission in his September 10, 2008, *Cross-Motion for Summary Judgment*; (3) that I.R.C.P. 15(a) is applicable to such a change in position; and (4) that Whitted was

required to seek leave of court to make such a change. Finally, this Special Master concludes that interests of fairness require Whitted to pay the costs and reasonable attorneys' fees incurred by Smith in defending her water right claim against Whitted's allegation of trespass.

(B) Mr. Whitted is not being required to pay Smith's costs and attorneys' fees pursuant to any rule other than I.R.C.P. 15(a).

Whitted argues that he has not violated any orders of the court, and thus the imposition of sanctions against him pursuant to a provision of the Idaho Rules of Civil Procedure other than Rule 15(a) would be unwarranted. This Special Master agrees with Whitted in this regard. This Special Master has not and does not now find that Whitted has violated any court orders. Additionally, this Special Master is not relying on any rule of law other than I.R.C.P. 15(a) with respect to the imposition of costs and attorneys' fees. Finally, this Special Master has made no finding that Whitted's change in position was made for any improper reason such as to cause delay.

This Special Master further points out that the award of costs and attorneys' fees recommended in the *September 17 Order* is not intended to punish or sanction Whitted for some inappropriate conduct, but rather the recommended award is intended to compensate Smith for the fees and costs she incurred in having her lawyer defend her water right claim against Whitted's allegation of trespass. Mr. Whitted has been allowed to change his position to one of permission based upon the directive in I.R.C.P. 15(a) that such "leave shall be freely given when justice so requires" The payment of the costs and attorneys' fees incurred by Smith regarding Whitted's trespass position is simply the price that Whitted should pay to abandon his position and adopt a new one.

(C) Smith did not raise new issues in her motion for summary judgment.

Whitted argues that the change in positions he undertook in his *Cross-Motion for Summary Judgment* was simply in response to new issues raised by Smith in her *Motion for Summary Judgment*. Specifically, Whitted argues that Smith raised a claim for an

easement by prescription for the first time in her *Motion for Summary Judgment*. This is contrary to the record in this subcase. At the February 12, 2008, hearing on Whitted's motion to file a late objection, there was a lengthy discussion on the record regarding whether the venue for hearing Smith's claim for an easement by prescription would be in the SRBA or in Canyon County. Perhaps it could be argued that Smith should have been required to file some sort of supplemental or amended pleading in the SRBA to clarify the written record in the subcase prior to Smith's filing of her motion for summary judgment, but it cannot be said that Whitted was somehow misled to his detriment or prejudiced by the absence of such pleading. The comments made by counsel for Smith at the hearing on Whitted's motion to file a late objection put Whitted on notice that Smith was going to pursue an action for easement by prescription in response to Whitted's allegation of trespass. Mr. Whitted didn't need to wait until Smith had incurred substantial legal fees to change his position to permissive use. Had Whitted changed his position earlier in the proceedings, the cost of making such a change would have been significantly less.

(D) The court did not award costs and fees to Smith *sua sponte*, but rather pursuant to Smith's request.

In his *Reply Memorandum*, Whitted argues that this Special Master erred by awarding attorneys' fees based upon I.R.C.P. 15(a), when Smith's *Motion to Strike* does not specifically cite the rule or statute under which Smith sought costs and attorneys' fees in the event that the Court allowed Whitted to proceed with his September 10, 2008, *Cross-Motion for Summary Judgment*. Whitted cites the case of *Bingham v. Montane Resource Associates*, 133 Idaho 420, 987 P.2d 1035 (1999) in support of this proposition. This Special Master has reviewed the *Bingham* case and finds that the rule of law enunciated therein is inapplicable to the facts of the instant subcase.

As is discussed in the previous sections of this decision, the change in position taken by Whitted in his September 10, 2008, *Cross-Motion for Summary Judgment* constituted a change which required an amendment to the pleadings upon leave of court pursuant to I.R.C.P. 15(a). Whitted did not seek leave of court to make his change, but

rather he simply filed his *Cross-Motion* as if he were under no such requirement. Whitted cannot bypass the requirements of I.R.C.P. 15(a) and then argue that the payment of costs and attorneys' fees allowed by Rule 15(a) cannot be ordered because the opposing party did not mention Rule 15(a) in her response. Rule 15(a) applies in this situation because Whitted was required by the Rule to seek leave of court to make his fundamental change in positions. Whitted did not ask for leave of court, and Smith did not specifically mention the Rule in her *Motion to Strike*, but these facts do not render the Rule inapplicable. Rule 15(a) became applicable when Whitted changed his position, and the response of the opposing party, or even a lack of response, does not affect the applicability of the Rule.

(E) The costs and attorneys' fees submitted by Smith are not unreasonable or excessive.

In his *Motion*, Whitted claims that the award sought by Smith of \$23,456.71 is excessive. Specifically, Whitted asserts that the fees incurred by Smith both before the pretrial conference, and after the filing of Smith's summary judgment motion, are outside the scope of what is allowable to compensate Smith for defending against Whitted's abandoned trespass allegation. Additionally, Whitted asserts that attorneys' fees incurred in preparing a memorandum of costs and fees are not customarily granted, and in any event the amount claimed by Smith in connection therewith is astonishing and excessive.

This Special Master has carefully reviewed the *Verified Memorandum of Costs and Attorneys' Fees* submitted by Smith against the criteria set forth in I.R.C.P. 54(e)(3), and with the exceptions set forth below, finds such fees to be reasonable and directly attributable to defending Smith's water right claim from Whitted's trespass objection.

I.R.C.P. 15(a) commits the decision of whether to impose conditions in connection with the amendment of a pleading to the discretion of the court. *Curtis v. City of Ketchum*, 111 Idaho 27, 31, 720 P.2d 210 (1986). The standard applicable to court discretion in Idaho is: "(1) whether the trial court correctly perceived the issue as one of discretion; (2) whether the trial court acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it;

and (3) whether the trial court reached its decision by an exercise of reason.” *Sun Valley Shopping Center, Inc., v. Idaho Power Company*, 119 Idaho 87, 803 P.2d 993 (1991). The calculation of a reasonable attorneys’ fees award is within the discretion of the trial court and will not be overturned absent an abuse of discretion. *Lettunich v. Lettunich*, 185 P.3d 258, 261 (Idaho 2008).

Before discussing Whitted’s specific objections regarding the reasonableness of Smith’s claimed costs and attorneys’ fees, it should be noted, as pointed out by Smith in her *Response to Whitted’s Motion to Disallow Costs and Fees*, what Whitted did not do in his *Motion*. (1) Whitted did not object to Smith’s claimed discretionary or legal research costs; (2) Whitted did not object to Smith’s counsels’ billing rates; (3) Whitted did not object to the time spent by Smith’s attorneys in researching and drafting her *Motion for Summary Judgment*; and (4) Whitted provided no analysis or criticism of any specific billing entries with the exception of a couple of billing entries dated August 4, 2008, which are discussed below. Accordingly, pursuant to I.R.C.P. 54(d)(6), Whitted had waived any objection to any items to which he filed no timely objection.

Whitted argues that he should not be required to pay any of Smith’s attorneys’ fees incurred prior to the July 1, 2008, pretrial conference (an amount of \$8,437.00) because Whitted allegedly did not assert trespass until that time, and the *September 17 Order* grants “Smith’s request for costs and attorneys’ fees incurred in connection with prosecuting the case in response to Mr. Whitted’s trespass theory . . .” As discussed above, it is the opinion of this Special Master that Whitted’s position was trespass from the time he was granted leave to file a late objection on February 12, 2008, until the time he filed his *Cross-Motion for Summary Judgment* on September 10, 2008. Again, Whitted’s permissive use position does not state a valid objection to Smith’s water right claim. Apparently Whitted is now arguing that his strategy in this subcase was to file an objection as an empty vessel which could be filled in later with either his trespass assertion or his permissive use assertion as he saw fit. This Special Master is not convinced by this argument. Ms. Smith was responding to Whitted’s trespass theory from the time he sought to file a late objection. This Special Master disagrees that the

July 1, 2008, pretrial conference was the date at which Smith began her response to Whitted's trespass assertion.

Whitted asserts that Smith's claim for \$2,870.50 for fees incurred following summary judgment should be denied because the *September 17 Order* was based upon the theory that "counsel for the claimant would not have filed for summary judgment regarding trespass if the objector had initially framed the case in terms of permissive use." *Id.* at p. 4. This argument provides too narrow of a reading of the *September 17 Order*, and ignores the preceding sentence which speaks in terms of Smith's attorneys' fees incurred in response to Whitted's trespass theory. This Special Master does agree with Whitted, however, that the attorneys' fees incurred by Smith in connection with an incident that apparently transpired on the weekend immediately preceding August 4, 2008, are outside the scope of the *September 17 Order*. Smith's request for these billing entries, dated August 4 and 11, 2008, for \$221, \$50, and \$45 (total of \$316) is denied, and this amount will be subtracted from Smith's request.

Lastly, Whitted complains that the \$1,930.50 in attorneys' fees requested by Smith for creating the verified memorandum of costs and attorney fees and supporting affidavits is "astonishing." According to the records submitted by Smith, her attorneys worked a total of eleven hours in preparing the memorandum of costs and associated affidavit. Whitted has not specifically pointed to any particular billing entry or item he finds to be unreasonable or out of line with the time that would be anticipated for such work. This Special Master has reviewed Smith's attorneys' records in this regard and cannot say that the time spent or the rate charged is unreasonable.

II. RECOMMENDATION

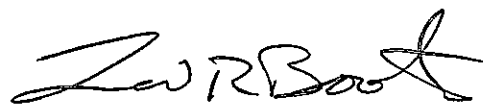
In the *September 17 Order*, this Special Master ruled that the objection previously filed by Whitted is dismissed. The basis for the dismissal of the objection is that Whitted's permissive use theory does not constitute a legally cognizable objection to a water right. If the facts are as Whitted now asserts – i.e. that Whitted and his predecessor-in-interest have permissively allowed Smith and her predecessor-in-interest to use Whitted's land for the purpose of drilling a well and diverting water therefrom –

then there has been no trespass and therefore the water from the well has been used pursuant to a valid water right. If the use of the well by Smith has been permissive, and such permission has now been revoked, then Smith may not have future access to the well. The question of whether Smith may or may not have future access to the well is irrelevant in determining whether the SRBA court should issue a partial decree confirming the validity and existence of the subject water right. Simply stated, Whitted's assertion of permissive use does not state a defense upon which relief can be granted.

In the *September 17 Order*, this Special Master required the parties to submit statements as to how they wish to proceed with Smith's claim for an easement by prescription (sometimes generically referred to as the quiet title cause of action), i.e. a statement as to whether the quiet title action should proceed in the SRBA, or dismissed without prejudice so as to allow the filing of an action in Canyon County district court. Both parties have filed statements stating that they do not intend to proceed with the quiet title action in the SRBA.

Therefore based on the file and record herein, IT IS RECOMMENDED that water right 63-07539 be **decreed** with the elements as set forth in the attached *Recommendation for Partial Decree Pursuant to I.R.C.P. 54(b)*. IT IS FURTHER RECOMMENDED that the SRBA District Court enter a Judgment in favor of the claimant Sarah Jane Smith, and against the objector Craig Whitted in the amount of \$23,140.71. Said Judgment should also state that Sarah Jane Smith's claim for an easement by prescription is dismissed without prejudice.

Dated Dec 16, 2008



THEODORE R. BOOTH
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)

Case No. 39576)

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

Water Right 63-07539

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho
DEC 16 2008
By _____ Clerk
Deputy Clerk

NAME AND ADDRESS: SARAH JANE SMITH
7511 WARREN SPUR RD
MELBA, ID 83641-5231

SOURCE: GROUND WATER

QUANTITY: 0.40 CFS
40.00 AFY

PRIORITY DATE: 02/27/1972

POINT OF DIVERSION: T01S R02W S14 SWSE Within Canyon County
S23 NENW

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE Stockwater	PERIOD OF USE 01-01 TO 12-31	QUANTITY 0.40 CFS 40.00 AFY
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PLACE OF USE:	Stockwater	Within Canyon County
	T01S R02W S14 SESW	
	S23 NENW	NWNW
	SENW	

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
DEC 16 2008
<i>Lawrence Booth</i>
SPECIAL MASTER

DISTRICT COURT - SRBA	
Fifth Judicial District	
County of Twin Falls - State of Idaho	
DEC 16 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

CERTIFICATE OF MAILING

Water Right(s): 63-07539

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 December 16, 2008, with sufficient first-class postage prepaid to the following:

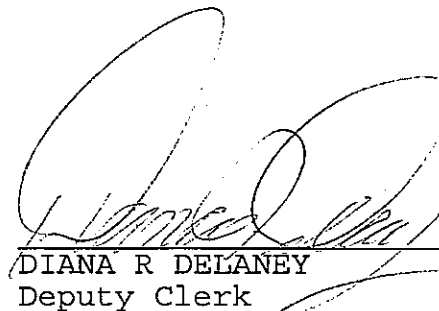
DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

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CRAIG WHITTED
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Phone: 208-344-3585

CERTIFICATE OF MAILING

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12/16/08


DIANA R DELANEY
Deputy Clerk

DISTRICT COURT - SRBA	
Fifth Judicial District	
County of Twin Falls - State of Idaho	
DEC 16 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

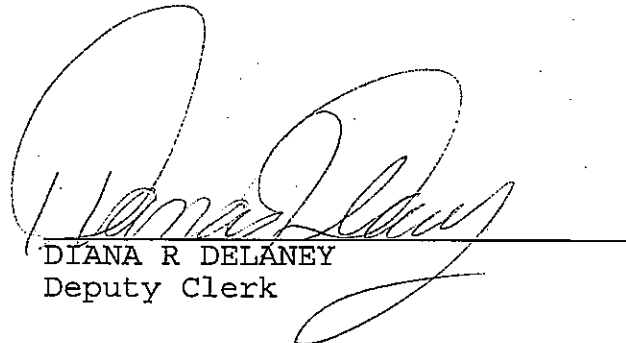
Water Right(s): 63-07539

On December 16, 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 December 16, 2008.


DIANA R DELANEY
Deputy Clerk