

RECEIVED
APR 16 2009
DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
APR 15 2009	
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	)	Subcases 74-340A, 74-340B, 74-1829
	)	and 74-15656
	)	(Whittaker)
Case No. 39576	)	
	)	SPECIAL MASTER REPORT
	)	AND RECOMMENDATION

Findings of Fact

On June 19, 2008, the Special Master entered a *Report and Recommendation* in the above four subcases, plus 74-337 and 74-74-2308, based on *Standard Forms 5* signed by F. James and Paula Whittaker, the United States and IDWR. Based on that *Report*, on September 19, 2008, Presiding Judge John M. Melanson entered an *Order of Partial Decrees* in all six subcases.

Mr. Whittaker wrote a letter to the SRBA Court on January 14, 2009, pointing out there was an error in the legal description of the same point of diversion included in four of the subcases (74-340A, 74-340B, 74-1829 and 74-15656): T 15N, R 25E, §8, SE¼ NE¼ should be the NE¼ NW¼. A review of the record shows that the same mistakes made in the *SF-5*'s were repeated in the *Special Master Report and Recommendation* and the *Partial Decrees*.

A hearing on Mr. Whittaker's letter, deemed to be a motion to set aside partial decrees, was held by telephone on April 9, 2009. David L. Negri appeared for the United States, along with Scott Beeser, and Chris M. Bromley appeared for IDWR. The Whittakers did not appear. It was agreed that the errors warranted correction because they were in the nature of clerical errors arising from oversight. I.R.C.P. 60(a).

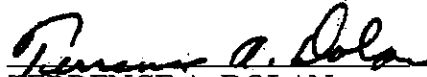
Conclusions of Law

The Whittakers have shown good cause to have the above four *Partial Decrees* set aside and amended to correct the clerical errors in legal descriptions.

Recommendation

THEREFORE, IT IS RECOMMENDED that the four *Partial Decrees* be set aside and the attached *Amended Partial Decrees* be entered *nunc pro tunc* as part of the Court's inherent power to correct the record with no further proceedings.

DATED April 15, 2009.



TERRENCE A. DOLAN

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

AMENDED

In Re SRBA)
)
Case No. 39576)
_____)

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

Water Right 74-00340A

Nunc Pro Tunc

DISTRICT COURT - SRBA	
Fifth Judicial District	
County of Twin Falls - State of Idaho	
APR 15 2009	
By _____	Clerk
_____	Deputy Clerk

NAME AND ADDRESS: F. JAMES WHITTAKER
PAULA J WHITTAKER
83 BIG EIGHT MILE RD
PO BOX 240
LEADORE, ID 83464

SOURCE: BIG EIGHTMILE CREEK TRIBUTARY: LEMHI RIVER

QUANTITY: 0.80 CFS

The rights listed below are limited to a total combined
diversion rate of 10.22 cfs.
Combined Right Nos. 74-337, 74-340A, 74-340B, 74-1829, 74-2308,
74-15655, and 74-15656.

PRIORITY DATE: 10/03/1887

POINT OF DIVERSION: T15N R25E S05 SENE Within Lemhi County
S08 NENW

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-15 TO 11-15	0.80 CFS

PLACE OF USE:	Irrigation	Within Lemhi County
	T16N R25E S26	SESW 40.0
	S34	NENE 40.0
		SWNE 31.0
		NESE 40.0
		SWSE 35.0
	S35	NWNE 38.0
		NENW 40.0
		SWNW 40.0
		NESW 40.0
		SWSW 37.0
		NWSE 21.0
	716.3 Acres Total	

This right is limited to the irrigation of 150.8 acres within the
place of use described above in a single irrigation season.
Place of use does not include federal public lands.
The rights listed below are limited to the irrigation of a
combined total of 716.3 acres in a single irrigation season.
Combined Right Nos.: 74-337, 74-340A, 74-340B, 74-1829, 74-2308,
74-15655, and 74-15656.

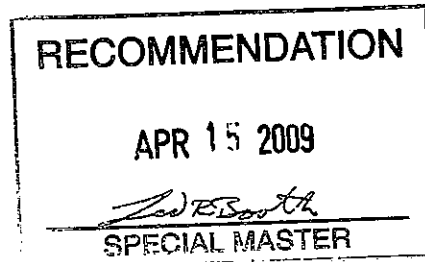
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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



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

AMENDED

In Re SRBA)
)
Case No. 39576)
_____)

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

Water Right 74-00340B
Nunc Pro Tunc

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

APR 15 2009

By _____ Clerk

Deputy Clerk

NAME AND ADDRESS: F JAMES WHITTAKER
PAULA J WHITTAKER
83 BIG EIGHT MILE RD
PO BOX 240
LEADORE, ID 83464

SOURCE: BIG EIGHTMILE CREEK TRIBUTARY: LEMHI RIVER

QUANTITY: 2.50 CFS

The rights listed below are limited to a total combined
diversion rate of 10.22 cfs.
Combined Right Nos. 74-337, 74-340A, 74-340B, 74-1829, 74-2308,
74-15655, and 74-15656.

PRIORITY DATE: 10/03/1887

POINT OF DIVERSION: T15N R25E S05 SENE Within Lemhi County
S08 NENW
T16N R25E S28 SWSE

PURPOSE AND
PERIOD OF USE: PURPOSE OF USE PERIOD OF USE QUANTITY
Irrigation 03-15 TO 11-15 2.50 CFS

Water may not be diverted from the point of diversion in the
SWSE, S28, T16N, R25E after May 15 of each year.

PLACE OF USE: Irrigation Within Lemhi County

T16N R25E S26	SESW 40.0	
S34	NENE 40.0	NWNE 40.0
	SWNE 31.0	SENE 40.0
	NESE 40.0	NWSE 40.0
	SWSE 35.0	SESE 37.0
S35	NWNE 38.0	SWNE 38.0
	NENW 40.0	NWNW 38.0
	SWNW 40.0	SENE 36.0
	NESW 40.0	NWSW 40.0
	SWSW 37.0	SESW 5.3
	NWSE 21.0	
716.3 Acres Total		

This right is limited to the irrigation of 117.6 acres within the
place of use described above in a single irrigation season.
Place of use does not include federal public lands.
The rights listed below are limited to the irrigation of a
combined total of 716.3 acres in a single irrigation season.
Combined Right Nos.: 74-337, 74-340A, 74-340B, 74-1829, 74-2308,
74-15655, and 74-15656.

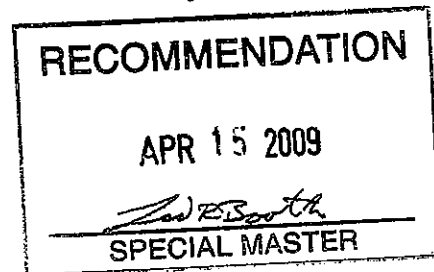
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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



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

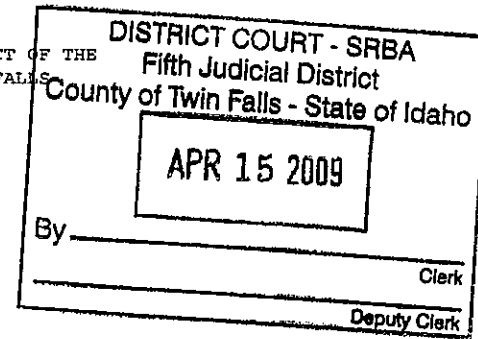
AMENDED

In Re SRBA)
Case No. 39576)
_____)

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

Water Right 74-01829

Nunc Pro Tunc



NAME AND ADDRESS: F JAMES WHITTAKER
PAULA J WHITTAKER
83 BIG EIGHT MILE RD
PO BOX 240
LEADORE, ID 83464

SOURCE: BIG EIGHTMILE CREEK TRIBUTARY: LEMHI RIVER

QUANTITY: 2.22 CFS

The rights listed below are limited to a total combined
diversion rate of 10.22 cfs.
Combined Right Nos. 74-337, 74-340A, 74-340B, 74-1829, 74-2308,
74-15655, and 74-15656.

PRIORITY DATE: 07/02/1928

POINT OF DIVERSION: T15N R25E S05 SENE Within Lemhi County
S08 NENW

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-15 TO 11-15	2.22 CFS

PLACE OF USE:	Irrigation	Within Lemhi County
	T16N R25E S26	SESW 40.0
	S34	NENE 40.0
		SWNE 31.0
		NESE 40.0
		SWSE 35.0
	S35	NWNE 38.0
		NENW 40.0
		SWNW 40.0
		NESW 40.0
		SWSW 37.0
		NWSE 21.0
	716.3 Acres Total	

This right is limited to the irrigation of 150.8 acres within the
place of use described above in a single irrigation season.
Place of use does not include federal public lands.
The rights listed below are limited to the irrigation of a
combined total of 716.3 acres in a single irrigation season.
Combined Right Nos.: 74-337, 74-340A, 74-340B, 74-1829, 74-2308,
74-15655, and 74-15656.

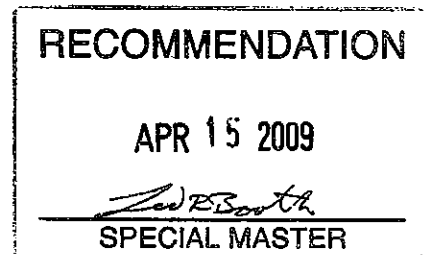
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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

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John M. Melanson
Presiding Judge of the
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

AMENDED

DISTRICT COURT - SRBA	
Fifth Judicial District	
County of Twin Falls - State of Idaho	
APR 15 2009	
By _____	Clerk
Deputy Clerk	

In Re SRBA)
Case No. 39576)
_____)

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

Water Right 74-15656
Nunc Pro Tunc

NAME AND ADDRESS: F JAMES WHITTAKER
PAULA J WHITTAKER
83 BIG EIGHT MILE RD
PO BOX 240
LEADORE, ID 83464

SOURCE: BIG EIGHTMILE CREEK TRIBUTARY: LEMHI RIVER

QUANTITY: 1.02 CFS

THE RIGHTS LISTED BELOW ARE LIMITED TO A TOTAL COMBINED
DIVERSION RATE OF 10.22 CFS.
COMBINED RIGHT NOS.: 74-337, 74-340A, 74-340B, 74-1829,
74-2308, 74-15655, AND 74-15656.

PRIORITY DATE: 03/15/1983

THIS WATER RIGHT IS SUBORDINATE TO ALL WATER RIGHTS WITH A
PRIORITY DATE EARLIER THAN APRIL 12, 1994, THAT ARE NOT DECREED
AS ENLARGEMENTS PURSUANT TO SECTION 42-1426, IDAHO CODE. AS
BETWEEN WATER RIGHTS DECREED AS ENLARGEMENTS PURSUANT TO SECTION
42-1426, IDAHO CODE, THE EARLIER PRIORITY RIGHT IS THE SUPERIOR
RIGHT.

POINT OF DIVERSION: T15N R25E S05 SENE Within Lemhi County
S08 NENW

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-15 TO 11-15	1.02 CFS

PLACE OF USE:	Irrigation	Within Lemhi County
	T16N R25E S26	SESW 40.0
	S34	NENE 40.0
		SWNE 31.0
		NESE 40.0
		SWSE 35.0
	S35	NWNE 38.0
		NENW 40.0
		SNNW 40.0
		NESW 40.0
		SWSW 37.0
		NWSE 21.0
		SESE 37.0
		SWNE 38.0
		NWNW 38.0
		SESW 5.3
	716.3 Acres Total	

THE RIGHTS LISTED BELOW ARE LIMITED TO THE IRRIGATION OF A
COMBINED TOTAL OF 716.3 ACRES IN A SINGLE IRRIGATION SEASON.
COMBINED RIGHT NOS.: 74-337, 74-340A, 74-340B, 74-1829, 74-2308,
74-15655, AND 74-15656.

PLACE OF USE DOES NOT INCLUDE FEDERAL PUBLIC LANDS.

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

THIS RIGHT IS BASED UPON AN ENLARGEMENT OF RIGHT NOS. 74-2308,
74-337, 74-340A, 74-340B, AND 74-1829 PURSUANT TO SECTION
42-1426, IDAHO CODE.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT

SRBA Partial Decree Pursuant to I.R.C.P. 54(b) (continued)

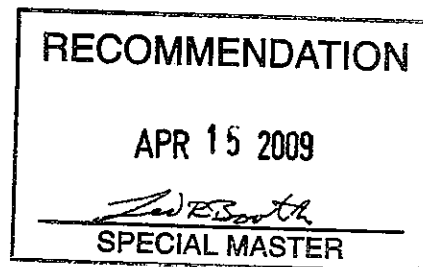
OTHER PROVISIONS (continued)

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



Fifth Judicial District County of Twin Falls - State of Idaho	
APR 15 2009	
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

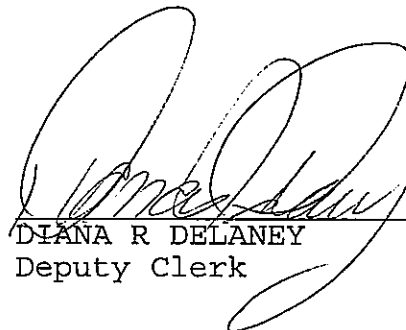
Water Right(s): 74-00340A
74-00340B 74-01829 74-15656

On April 15, 2009, 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 April 15, 2009.



DIANA R DELANEY
Deputy Clerk

DISTRICT COURT - SRBA	
Fifth Judicial District	
County of Twin Falls - State of Idaho	
APR 15 2009	
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): 74-00340A
74-00340B 74-01829 74-15656

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 April 15, 2009, with sufficient first-class postage prepaid to the following:

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

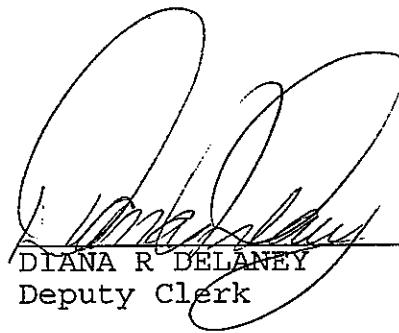
UNITED STATES OF AMERICA
Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

F JAMES WHITTAKER
PO BOX 240
LEADORE, ID 83464

CERTIFICATE OF MAILING

PAGE 1
04/14/09

F JAMES WHITTAKER
PAULA J WHITTAKER
83 BIG EIGHT MILE RD
PO BOX 240
LEADORE, ID 83464
Phone: 208-768-2491



DIANA R DELANEY
Deputy Clerk