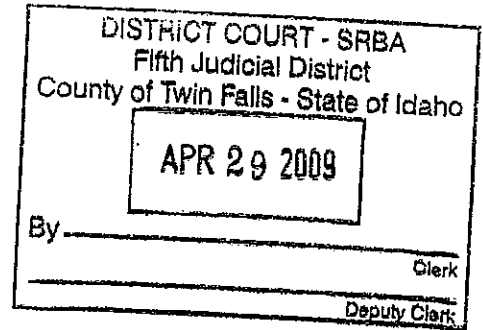


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APR 30 2009

DEPARTMENT OF
WATER RESOURCES



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
	)	(Mahaffey)
Case No. 39576	)	
	)	SPECIAL MASTER REPORT
	)	ON RECOMMITMENT

Findings of Fact

2nd Special Master Report and Recommendations

The Special Master entered a 2nd *Special Master Report and Recommendations* on September 17, 2008, concluding as a matter of law that it would not be fair to deny Velma Mahaffey's amended beneficial use claim 74-15537 "given the likelihood that her claimed sources were excluded from consideration in the Lemhi Adjudication."¹ That legal conclusion was primarily based on IDWR senior water resource agent Nathaniel Arave's testimony at trial:

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."

2nd *Special Master Report* at 3.

Background

IDWR concluded that Ms. Mahaffey's beneficial use claim 74-15537 was barred by the doctrine of *res judicata*. But Mr. Arave noted the amended place of use is on the east side of the Lemhi River opposite from her other water rights which were decreed in the Lemhi

¹ IDWR identified 74-1080 as Ms. Mahaffey's uncontested overlapping claim.

Adjudication. He said there is no evidence that any water right appurtenant to Ms. Mahaffey's property east of the river were decreed.

In its July 2, 2008 *Supplemental Director's Report Regarding Subcase No. 74-15537*, IDWR noted the following:

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.

Supplemental Director's Report, at 5.

In IDWR's "draft" recommendation of Ms. Mahaffey's amended claim 74-15537, attached to its *Supplemental Director's Report, Attachment D*, IDWR recommended the claim 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. Again, that was its recommendation in the event the Court concludes the claim is not barred by *res judicata*.

Order of Recommitment

On January 12, 2009, SRBA Presiding Judge John M. Melanson entered an *Order of Recommitment to Special Master for Specific Finding*:

The *Special Master's Report and Recommendation* was not conclusive in one respect, which the Court finds to be decisive in this matter. If the waste water and spring sources for 74-15537 were considered at the time to be "private water" or the location of the claim was outside the scope of the Lemhi Adjudication, then the claim would not be precluded in the SRBA. However, the Special Master must make a specific finding that the sources were either outside the scope of the Lemhi Adjudication or were otherwise omitted from the scope of the adjudication, either appropriately or in error. Additionally, if the use was omitted from the Director's initial investigation, then the claimant would not be on notice that he or she was required to file a claim as to the particular water right, despite being joined based on other claims [footnote omitted].

Status Conference

To give the claimant and IDWR the opportunity to comment on the *Order of Recommitment*, a telephone status conference was held on April 16, 2009. Ms. Mahaffey appeared *pro se*, along with her daughter, June Playfair, and Chris M. Bromley appeared for IDWR. Ms. Mahaffey confirmed that the claimed water sources – waste water and springs – is private water; that is, the water rises and sinks on her property.

Mr. Bromley said that in the 1970's, IDWR considered water that rises and sinks on private property not to be hydrologically connected to other water sources and therefore, private water. He also said that IDWR viewed private water as exempt from general adjudications in the 1970's. At trial, it was Mr. Arave² who speculated that was the reason IDWR exempted Ms. Mahaffey's amended claim from the Lemhi Adjudication and deferred consideration to "future proceedings."

During the status conference, Ms. Mahaffey agreed with the IDWR's recommendation of her amended claim described in the *Supplemental Director's Report*. However, following the status conference, the Special Master noticed that IDWR's "draft" recommendation attached to its *Supplemental Director's Report* and the *Special Master Recommendation for Partial Decree for Water Right 74-15537* attached to the 2nd *Special Master Report* described the source as "springs, waste water, tributary: Lemhi River." On April 22, 2009, Mr. Bromley confirmed that was an error; the source should be "springs, waste water, tributary to sinks."

Specific Findings on Recommitment

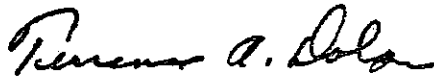
Neither Mr. Arave nor Mr. Bromley worked for IDWR in the 1970's when the Lemhi Adjudication was commenced, so they were reluctant to state with certainty that Ms. Mahaffey's amended claim 74-15537 was exempted from the Lemhi Adjudication because it was considered private water. However, the weight of evidence convinces the Special Master of the following: 1) Ms. Mahaffey's claimed sources of waste water and springs is private water that rises and sinks on her property and is not tributary to the Lemhi River; 2) private water claims were excluded from the Lemhi Adjudication; 3) Ms. Mahaffey's amended claim was not adjudicated in the Lemhi Adjudication.

² Mr. Arave left working for IDWR the month or two before the status conference.

Conclusions of Law

1. Ms. Mahaffey's amended beneficial use claim 74-15537 is **not** barred from adjudication in the SRBA by the doctrine of *res judicata*; and
2. Ms. Mahaffey is entitled to partial decrees adjudicating water rights as recommended by IDWR (74-01080), and as described in Attachment D to IDWR's *Supplemental Director's Report*, as amended, (74-15537) and the attached *Special Master Recommendation for Partial Decree for Water Right 74-01080* and *Amended Special Master Recommendation for Partial Decree for Water Right 74-15537*.

DATED April 29, 2009.



TERRENCE A. DOLAN

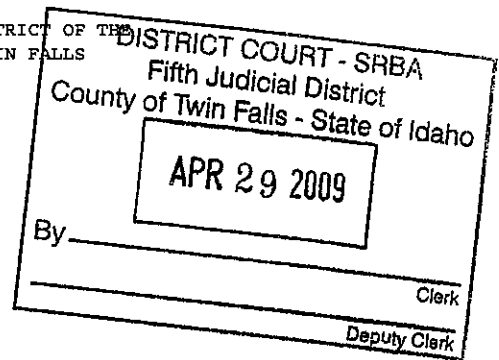
Special master

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

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

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 74-01080



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

SOURCE: LEMHI RIVER TRIBUTARY: SALMON RIVER

QUANTITY: 0.30 CFS

PRIORITY DATE: 02/12/1875

POINT OF DIVERSION: T18N R24E S33 SWNW Within Lemhi County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-15 TO 11-15	0.30 CFS

PLACE OF USE:	Irrigation	Within Lemhi County
	T18N R24E S33 LOT 4 (NWNW) 1.0	SWNW 9.0
	10.0 Acres Total	

This right authorizes the irrigation of 9.7 total acres.

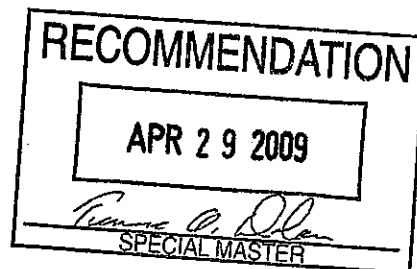
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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

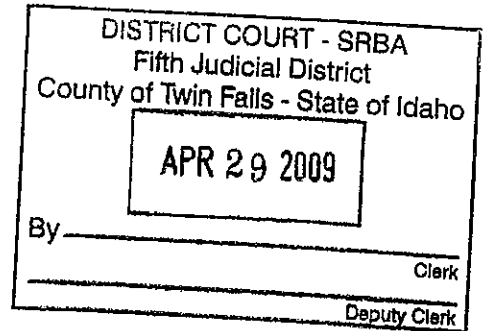


IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
Case No. 39576)
_____)

AMENDED
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: SINKS
WASTE WATER TRIBUTARY: SINKS

QUANTITY: 0.14 CFS

PRIORITY DATE: 03/15/1949

POINT OF DIVERSION: T18N R24E S33 NWSWNW 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).

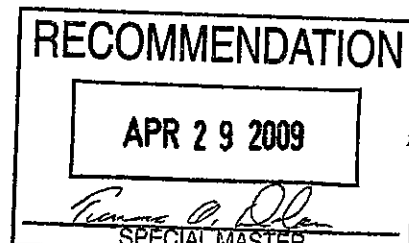
RULE 54(b) CERTIFICATE

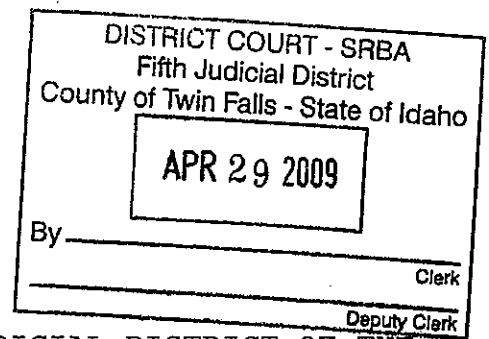
With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment 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.

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

SRBA PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 74-15537 File Number: 00104

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Apr-22-2009





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

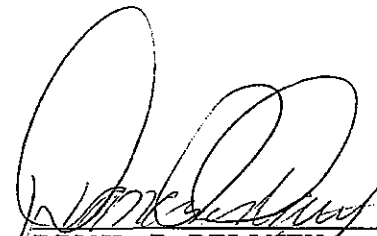
Water Right(s): 74-01080
74-15537

On April 29, 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.

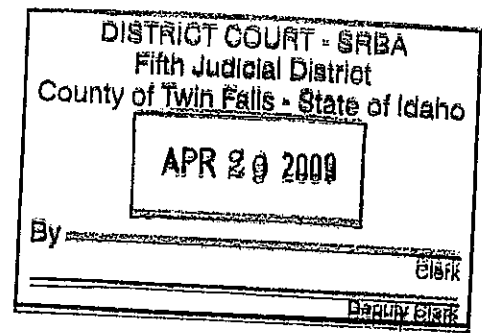
Pursuant to SRBA Administrative Order 1, Section 13a, any party to the adjudication including parties to the subcase, may file a Motion to Alter or Amend on or before the 28th day of the next month.

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 29, 2009.



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

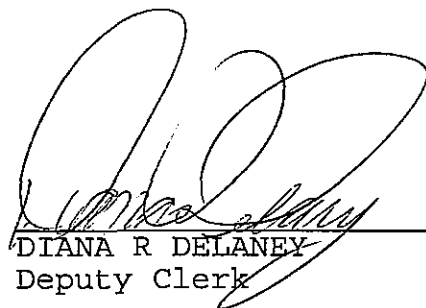
Water Right(s): 74-01080
74-15537

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 April 29, 2009, 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



DIANA R DELANEY
Deputy Clerk

CERTIFICATE OF MAILING

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04/29/09