

RECEIVED
AUG 18 2009
DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
AUG 17 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 74-50A, 74-380A, 74-381A and 74-10146
	)	(Carlson)
Case No. 39576	)	2 nd SPECIAL MASTER REPORT
	)	
	)	

Findings of Fact

Report and Recommendation

On September 24, 2008, the Special Master entered a *Report and Recommendation* in the above four subcases recommended that Evelyn and Thomas Carlson are entitled to a partial decree in subcase 74-10146.¹ The Special Master concluded as a matter of law that “it would not be fair to deny their claim [74-10146] in the SRBA based on *res judicata* given the possibilities that in the Lemhi Adjudication 1) the claim was deemed to be a high flow claim and therefore excluded and 2) the claimed source was not considered tributary to the Lemhi River and therefore excluded.”

By way of background, IDWR filed a *Supplemental Director's Report* on July 11, 2008, finding that 74-10146 was not claimed in the Lemhi Adjudication commenced in 1970. Hence, “the legal doctrine of *res judicata* bars reconsideration of the nature and extent of all water rights previously adjudicated [citing I.C. §42-1420].” Most importantly, IDWR found that even though the Carlsons’ predecessor-in-interest (Coleman) was a party to the Lemhi Adjudication, “Adams

¹ IDWR identified subcases 74-50A, 74-380A and 74-381A as the Carlsons’ uncontested overlapping claims.

Creek, the source claimed for water right no. 74-10146, was not a listed or decreed source in the Lemhi Adjudication.”

IDWR concluded its *Supplemental Director's Report* by stating that, but for *res judicata*, it would recommend 74-10146 for .4 cfs from Adams Creek, tributary to sinks, with a priority date of March 15, 1934, based on statements of witnesses to historic beneficial use of water on the Coleman Ranch.

Order of Recommitment

On January 12, 2009, SRBA Presiding Judge John M. Melanson entered an *Order of Recommitment to Special Master for Specific Findings* because the Special Master's *Report and Recommendation* was inconclusive in two respects:

[I]f the claim is in fact a high flow claim, then it needs to be definitively identified and claimed as such. Alternatively, if the source for the claim (Adams Creek) was outside the scope of the Lemhi Adjudication, then the claim would also be permissible in the SRBA. However, the Special Master must make a specific finding that the source was either outside the scope of the Lemhi Adjudication or was otherwise omitted from the adjudication, either appropriately or in error [footnote omitted].

Motion to Participate

The United States filed a *Motion to Participate* on April 1, 2009, because the Carlsons' contested claim implicates the issue of “high flow claims” which are currently before the Special Master in test cases in the Lemhi Basin.

Status Conference

To give the Carlsons and IDWR an opportunity to comment on the *Order of Recommitment* and to consider the United States' *Motion to Participate*, a telephone status conference was held on April 16, 2009. Gregory W. Moeller appeared for the Carlsons, along with Thomas H. Carlson; Fredric W. Price spoke for the United States of America, Department of Justice; K. Heidi Gudgell appeared for the Nez Perce Tribe; and Chris M. Bromley appeared for IDWR, along with Monica Van Bussum. The Carlsons did not oppose the United States' *Motion*. The United States was granted leave to participate on April 21, 2009.

During the status conference, Mr. Bromley summarized his review of IDWR's records and audio tapes from the trial held July 24, 2008. He said the record shows Adams Creek was

not part of the Lemhi Adjudication – Adams Spring was included in the Lemhi Adjudication, but not Adams Creek. Adams Spring is not connected to Adams Creek. Mr. Price verified the distant legal descriptions of the sources. Mr. Bromley also said the Carlsons' SRBA claim for Adams Creek water was not a high flow claim because the Carlsons claimed a 1908 priority date based on beneficial use, not the usual 1966 priority date based on high flows.

Final Status Conference

A final telephone status conference was held on June 18, 2009. Jerry R. Rigby appeared for the Carlsons; David L. Negri and Bruce D. Bernard appeared for the United States, along with Fredric W. Price; K. Heidi Gudgell listened in for the Nez Perce Tribe; and Chris M. Bromley appeared for IDWR. Mr. Bromley affirmed his factual determinations that: 1) the Carlsons' claim 74-10146 was not a high flow claim in the Lemhi Adjudication and is not such in the SRBA; 2) their claimed source is not private water; and 3) their claimed source for 74-10146, Adams Creek, was not part of the Lemhi Adjudication. The Special Master adopts those determinations as part of his findings of fact. No one opposed the filing of a second special master report recommending the Carlsons' claims as first reported but with certain factual corrections.

Conclusions of Law

1. The Carlsons' claim 74-10146 is not barred by the doctrine of *res judicata* because the source was outside the scope of the Lemhi Adjudication; and
2. The Carlsons are entitled to partial decrees adjudicating water rights as recommended by IDWR (74-50A, 74-380A, 74-381A) and as described in Attachment B to IDWR's July 11, 2008 *Supplemental Director's Report* (74-10146), as amended at trial, and the attached *Special Master Recommendations for Partial Decrees for Water Rights 74-50A, 74-380A, 74-381A and 74-10146*.

DATED August 17, 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)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 74-00050A

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
AUG 17 2009	
By _____	Clerk
_____	Deputy Clerk

NAME AND ADDRESS: EVELYN R CARLSON
THOMAS H CARLSON
6220 ROAD 216
PINE BLUFF, WY 82082

SOURCE: LITTLE TIMBER CREEK TRIBUTARY: BIG TIMBER CREEK

QUANTITY: 2.75 CFS

PRIORITY DATE: 11/06/1908

POINT OF DIVERSION: T15N R25E S24 SWNW Within Lemhi County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-15 TO 11-15	2.75 CFS

PLACE OF USE:	Irrigation	Within Lemhi County
	T15N R25E S10	SESE 38.0
	S11	NESW 40.0
		SESW 40.0
	158.0 Acres Total	

USE OF THIS RIGHT WITH RIGHT NO. 74-380A AND 74-381A IS LIMITED
TO THE IRRIGATION OF A COMBINED TOTAL OF 158 ACRES IN A SINGLE
IRRIGATION SEASON.

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

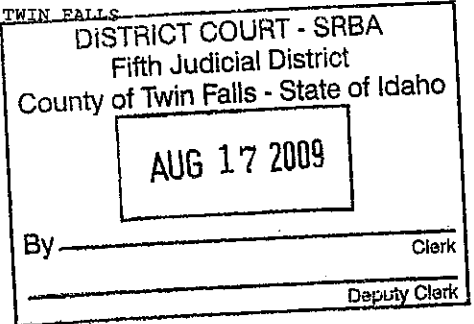
RECOMMENDATION
AUG 17 2009
<i>Thomas H. Carlson</i>

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 74-00380A



NAME AND ADDRESS: EVELYN R CARLSON
THOMAS H CARLSON
6220 ROAD 216
PINE BLUFF, WY 82082

SOURCE: MILK CREEK TRIBUTARY: SINKS

QUANTITY: 0.20 CFS

PRIORITY DATE: 11/06/1908

POINT OF DIVERSION: T15N R25E S22 NENE Within Lemhi County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-15 TO 11-15	0.20 CFS

PLACE OF USE:	Irrigation	Within Lemhi County
	T15N R25E S10 SESE 38.0	
	S11 NESW 40.0	SWSW 40.0
	SESW 40.0	
	158.0 Acres Total	

USE OF THIS RIGHT WITH RIGHT NO. 74-50A AND 74-381A IS LIMITED
TO THE IRRIGATION OF A COMBINED TOTAL OF 158 ACRES IN A SINGLE
IRRIGATION SEASON.

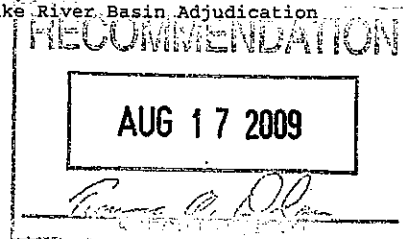
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John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication



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

In Re SRBA)
Case No. 39576)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 74-00381A

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

AUG 17 2009

By _____ Clerk

Deputy Clerk

NAME AND ADDRESS: EVELYN R CARLSON
THOMAS H CARLSON
6220 ROAD 216
PINE BLUFF, WY 82082

SOURCE: SPRINGS

QUANTITY: 0.15 CFS

PRIORITY DATE: 11/06/1908

POINT OF DIVERSION: T15N R25E S22 NENE Within Lemhi County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-15 TO 11-15	0.15 CFS

PLACE OF USE:	Irrigation	Within Lemhi County
	T15N R25E S10 SESE 38.0	
	S11 NESW 40.0	SWSW 40.0
	SESW 40.0	
	158.0 Acres Total	

USE OF THIS RIGHT WITH RIGHT NO. 74-380A AND 74-50A IS LIMITED
TO THE IRRIGATION OF A COMBINED TOTAL OF 158 ACRES IN A SINGLE
IRRIGATION SEASON.

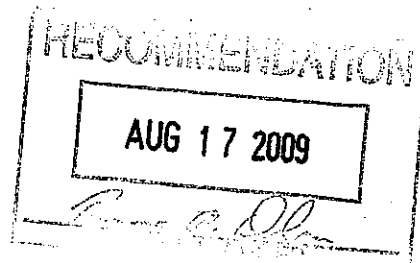
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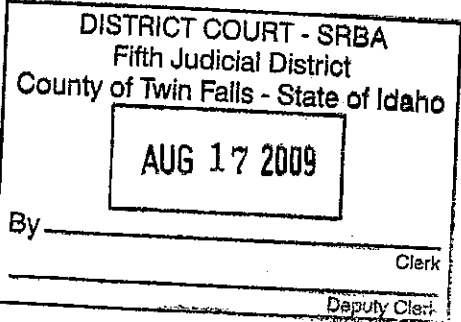
John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication



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

In Re SRBA)
Case No. 39576)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 74-10146



NAME AND ADDRESS: EVELYN R CARLSON
THOMAS H CARLSON
PO BOX 206
LEADORE, ID 83464

SOURCE: ADAMS CREEK TRIBUTARY: SINKS

QUANTITY: 0.40 CFS

PRIORITY DATE: 03/15/1927

POINT OF DIVERSION: T15N R25E S15 NWSW Within Lemhi County

RIGHT NOS. 74-50A, 74-380A, 74-381A AND 74-10146 ARE LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 3.16 CFS.

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Irrigation	03-15 TO 11-15	0.40 CFS
Stockwater	01-01 TO 12-31	0.03 CFS
Domestic	01-01 TO 12-31	0.04 CFS

PLACE OF USE:

Irrigation		Within Lemhi County
T15N R25E S10	SESE 38.0	
S11	NESW 40.0	SWSW 40.0
	SESW 40.0	
158.0 Acres Total		
Stockwater		Within Lemhi County
T15N R25E S10	SESE	
Domestic		Within Lemhi County
T15N R25E S10	SESE	

USE OF THIS RIGHT WITH RIGHT NOS. 74-50A, 74-380A, AND 74-381A IS
LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 158 ACRES IN A
SINGLE IRRIGATION SEASON.

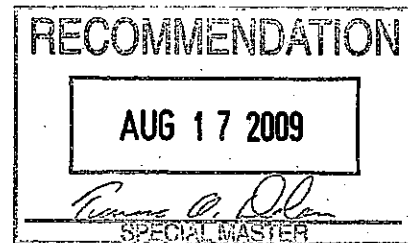
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John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication



DISTRICT COURT - SRBA	
Fifth Judicial District	
County of Twin Falls - State of Idaho	
AUG 17 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): 74-00050A
74-00380A 74-00381A 74-10146

On August 17, 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.

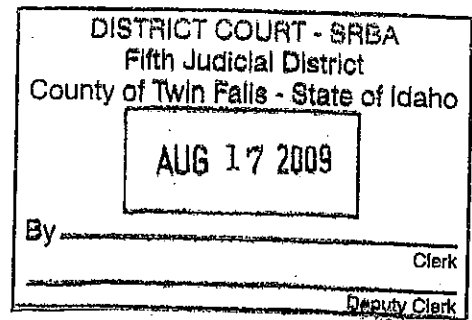
Pursuant to SRBA Administrative Order 1, Section 13a, any party to the adjudication including parties to the subcase, may file a Motion to Alter or Amend on or before the 28th day of the next month.

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 August 17, 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): 74-00050A
74-00380A 74-00381A 74-10146

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 August 17, 2009, with sufficient first-class postage prepaid to the following:

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

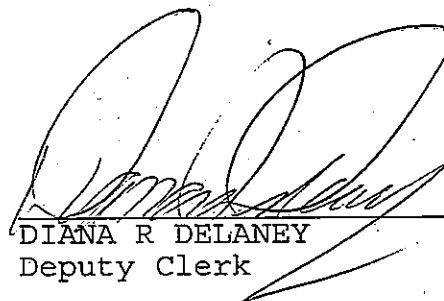
EVELYN R CARLSON
THOMAS H & EVELYN R CARLSON
THOMAS H CARLSON

Represented by:
RAY W. RIGBY
25 N 2ND E
PO BOX 250
REXBURG, ID 83440-0250
Phone: 208-356-3633

CERTIFICATE OF MAILING

PAGE 1
08/17/09

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



DIANA R DELANEY
Deputy Clerk