

RECEIVED

OCT 01 2009

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
SEP 28 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 75-27D (Capps), 75-27F (Rice)
	)	and 75-4062 (Rainbow Farms Ditch Co.)
Case No. 39576	)	
_____	)	ORDER DISMISSING MOTIONS AND
	)	REQUESTING DRAFT PARTIAL DECREES

On March 20, 2008, SRBA Presiding Judge John M. Melanson entered a *Partial Decree* for water right 75-4062 to Rainbow Farms Ditch Company for 26 cfs from the Salmon River to irrigate 575 acres in Lemhi County between April 1 and October 31 with a priority date of April 1, 1937.

On October 8 and 10, 2008, Kevin Rice and Randy Capps lodged nearly identical *Objections* in subcase 75-4062 objecting to name and address, source, priority date, point of diversion, purpose of use and period of year stating: "The need of another diversion out of Williams Creek to SEC 12 SE NE SE – point of diversion Williams Creek intersects Rainbow Ditch." On October 8, 2008, the Presiding Judge entered an *Order of Reference Appointing Special Master Terrence A. Dolan* "to conduct all proceedings necessary to issue a recommendation . . . as to the *Motion* and to the underlying merits as to how the *Partial Decree* should be amended, if it is determined that said *Partial Decree* should be set aside or amended." Objector the United States of America, Department of Interior, Bureau of Land Management lodged a *Memorandum in Opposition to Motions to Set Aside Partial Decree* because it previously settled its objection with the claimant by filing a *Standard Form 5*.

A hearing on the motions to set aside the *Partial Decree* in subcase 75-4062 was held on September 24, 2009. Messrs Rice and Capps appeared *pro se*; no one appeared for Rainbow

Farms; Fredric W. Price represented the United States; and Garrick L. Baxter appeared for IDWR, along with Monica Van Bussum and Suzy Cooley-Denney.

The parties and IDWR agreed the best solution to resolve the motions would be for Messrs Rice and Capps to orally withdraw their motions to set aside the *Partial Decree* in subcase 75-4062; request IDWR to lodge draft partial decrees of how it would recommend partial decrees in subcases 75-27D and 75-27F *if* they are set aside; and then request the Special Master to enter a report and recommendation that those *Partial Decrees* be set aside and amended.

THEREFORE, IT IS ORDERED that:

1. The motions to set aside the *Partial Decree* in subcase 75-4062 filed by Messrs Rice and Capps are **dismissed** upon their oral motions made in open court; and
2. IDWR is requested to lodge with the SRBA Court no later than **October 30, 2009**, draft partial decrees of how it would now recommend the water rights in subcases 75-27D and 75-27F *if* the *Partial Decrees* are set aside.

DATED September 28, 2009.


TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER DISMISSING MOTIONS AND REQUESTING DRAFT PARTIAL DECREES was mailed on September 28, 2009, with sufficient first-class postage to the following:

UNITED STATES OF AMERICA

Represented by:

US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

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

RAINBOW FARMS DITCH CO
RT 1 BOX 243-A
SALMON, ID 83467
Phone: 208-756-3704

KEVIN A RICE
KEVIN RICE
127 CORBETT LN
SALMON, ID 83467
Phone: 208-756-2669

TAMARA RICE
127 CORBETT LN
SALMON, ID 83467-5073
Phone: 208-756-2669

RANDY CAPPS
87 CORBETT LANE
SALMON, ID 83467
Phone: 208-756-2997

RANDY M CAPPS
87 CORBETT LN
SALMON, ID 83467
Phone: 208-756-2997