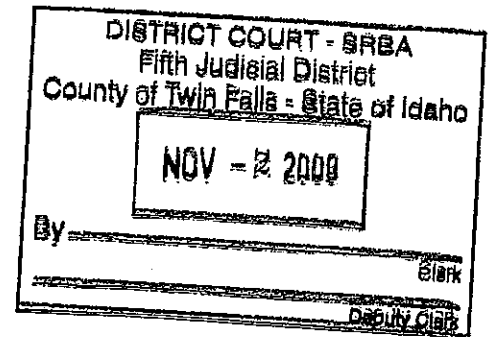


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NOV 03 2009

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 75-11614 (Morgan), 75-14063
	)	(Goodman) and 75-14267 (Petrick)
Case No. 39576	)	
	)	ORDER DENYING MOTION TO FILE LATE
	)	OBJECTIONS and SPECIAL MASTER
	)	REPORT

Findings of Fact

Director's Report

The Director of the Idaho Department of Water Resources filed his *Director's Report, Irrigation & Other Uses, Reporting Area 23, Basin 75* on January 11, 2007. The Director recommended the above 3 claims as follows:

75-11614 – Elisabeth and Stanley Morgan, 803 14th Street, Salmon, Idaho, 83467, for .02 cfs from Jessie Creek to irrigate .5 acre in Lemhi County from April 1 to October 31 with a priority date of April 1, 1971 based on beneficial use.

75-14063 – John and Sherri Goodman, 100 Pollard Creek Road, Salmon, Idaho, 83467, for .08 cfs from Pollard Canyon Creek to irrigate 4 acres in Lemhi County from April 1 to November 1 with a priority date of April 1, 1913, based on beneficial use.

75-14267 – Elma I. Petrick, 1903 Roosevelt, Salmon, Idaho, 83467, for .04 cfs from Jessie Creek for domestic use from March 15 to November 15 with a priority date of June 1, 1937, based on beneficial use.

Supplemental Director's Report

IDWR filed a *Supplemental Director's Report* on March 2, 2009, in the above 3 subcases, plus 16 other subcases, including split claims. The *Report* was prepared in anticipation of trial in 9 of the 19 subcases (75-14, *et al.*) which was held on July 16-17, 2009, in Salmon, Idaho. Robert L. Blackadar objected to the recommended source and point of diversion in those 9 subcases while IDWR identified the above 3 claims (75-11614, 75-14063 and 75-14063) as uncontested.¹ Hence, the above 3 claims were not included in the trial.

Trial and Report and Recommendation, Subcases 75-14, *et al.*

At trial in subcases 75-14, *et al.*, a central issue was confusion over the recommended sources – Jesse Creek and Pollard Canyon Creek. From IDWR's records and Mr. Blackadar's own research, we know that over the years the creeks have been called "Jessie Creek," "N.F. Jessie Creek," "French Creek," "Jessie Creek, Left and Right Forks," "Jesse Creek, Left and Right Hand Forks," "Jesse or Bridge creek," "Pollard Creek" and "Pollard Canyon".

Following the trial the Special Master entered a *Report and Recommendation* on September 23, 2009, concluding that IDWR correctly recommended the sources and points of diversion for the 9 contested claims, plus the 4 split claims and 1 claim tried separately on other issues.² More on point, the Special Master agreed that Pollard Canyon Creek is a tributary of Jesse Creek and the Farmer's Ditch diverts from Jesse Creek downstream from the confluence of Pollard Canyon Creek and Jesse Creek.

Late Objections

On July 21, 2009, 5 days after the trial in subcases 75-14, *et al.*, but well before the *Special Master Report and Recommendation* was entered, Mr. Blackadar lodged late objections in each of the above 3 previously unobjected to claims alleging as follows:

¹ It should be noted that claims 75-11614 and 75-14063 were partially decreed by the SRBA Court on November 17, 2008, but on February 11, 2009, the *Partial Decrees* were set aside when IDWR notified the Court that the claims were "uncontested overlapping rights that are linked to a series of objections to other water rights on Jesse Creek [75-14, *et al.*]."

² See September 28, 2009 *Special Master Report*, subcases 75-4471 and 75-10475 (Silver Peak Ranch Trust). There is one interesting parallel with the present subcases and Mr. Blackadar's concerns with untreated surface water used for domestic purposes and sanitation. In that *Special Master Report*, the Special Master wholly agreed with IDWR's conclusions in subcase 75-4471 that Mr. Blackadar's concern with ditch safety, "while always important, is outside the scope of this adjudication and must be addressed outside the SRBA." The same can be said here – water contamination and sanitation are outside the scope of this adjudication and should be addressed elsewhere.

75-11614 (Morgan)

Point of diversion is understood to be unauthorized. This water right should not exist. I have been associated with Jesse Creek water users and their budget for 30 years and these individuals are not recognized to be contributors. This objection is late because source was mis-spelled as Jessie Creek and it did not come up when I searched the claims for Jesse Creek. Are the Morgan's names spelled correctly?

75-14063 (Goodman)

Source should be Pollard Creek. I object because this water right should not exist. I believe there may be an abandonment issue associated with this water right. Has it (the water right) contributed to the Jesse Creek water users budget? Objection is late because the source is listed as Pollard Canyon Creek and did not come up when searching the applications listed as Pollard Creek.

75-14267 (Petrick)

I object because this water right should not exist. This water right has not contributed to the budget for the Jesse Creek water users (75-A) and is questionable because they are using untreated surface water known to possess gardia [giardiasis or giardia lamblia?] for domestic purposes that may include drinking. Sanitation will be an issue as well. Objection is late because application listed Jessie Creek as the source and did not come up on the search for Jesse Creek applications.

Hearing

A hearing on Mr. Blackadar's motion to file late objections was held on October 22, 2009. Mr. Blackadar appeared *pro se* and Nicholas B. Spencer appeared for IDWR, along with Monica Van Bussum and Suzy Coley-Denney.

Mr. Blackadar repeated his arguments concerning points of diversion which were raised and addressed in the earlier trial in subcases 75-14, *et al.* He reminded the Special Master that the issue may still be viable pending his appeal rights. He also suggested the water rights should not exist because the claimants are not recognized as Jesse Creek water users. Finally, he argued that his objections were late because the claimed sources, Jessie Creek and Pollard Canyon Creek, were misspelled – the spellings should have been Jesse Creek and Pollard Creek where he searched for claims.

Mr. Spencer pointed out that in the March 2, 2009 *Supplemental Director's Report*, footnote 1, IDWR said the recommended source for water rights 75-11614 (Morgan) and 75-14267 (Petrick) was incorrect. Instead of "Jessie Creek", the source should be "Jesse Creek."

Mr. Spencer then reminded everyone that *Report* was filed with the SRBA Court and mailed to Mr. Blackadar over 4 months before the trial in subcases 75-14, *et al.*, and 5 days more before he lodged his late objections here. For that reason, Mr. Spencer suggested that Mr. Blackadar's claim of surprise lacks credibility and further, nothing would be gained by proceeding further with his late objections because the issues were or should have been raised during the earlier trial.

Conclusions of Law

The Special Master agrees with IDWR that allowing Mr. Blackadar to pursue his late objections in the present 3 subcases would be a waste of time. In other words, the issues Mr. Blackadar raises now were or should have been raised in the earlier trial and are now barred by the doctrine of *res judicata*.

Under the doctrine of "res judicata," or "claim preclusion," a final adjudication upon a claim or demand precludes the parties to the first action, and their privies, from later relitigating against the same parties not only the same claim or demand but in addition all claims arising out of the transaction which was the subject matter of the litigation and which could have been made in the first action.

D. Craig Lewis, *Idaho Trial Handbook*, § 11:13, 196 (2nd ed., Thomson/West 2005).

We think the correct rule to be that in an action between the same parties upon the same claim or demand, the former adjudication concludes parties and privies not only as to every matter offered and received to sustain or defeat the claim but also as to every matter which might and should have been litigated in the first suit. . . . The law of *res judicata* now reflects the expectation that parties who are given the capacity to present their "entire controversies" shall in fact do so [internal citations omitted].

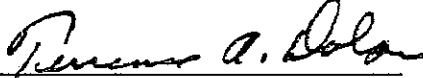
Diamond v. Farmers Group, Inc., 119 Idaho 146, 148, 804 P.2d 319 (1990).

The Morgans, the Goodmans and Ms. Petrick are entitled to partial decrees adjudicating water rights as recommended by IDWR and as described in the attached *Special Master Recommendations for Partial Decrees for Water Rights 75-11614, 75-14063 and 75-14267*.

Order

THEREFORE, IT IS ORDERED that Mr. Blackadar's motion to file late objections in subcases 75-11614, 75-14063 and 75-14267 is **denied**.

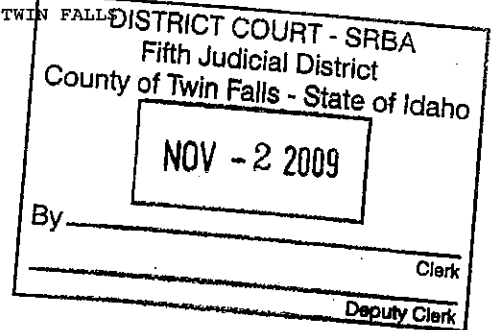
DATED November 2, 2009.


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)
_____)

AMENDED
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 75-11614



NAME AND ADDRESS: ELISABETH MORGAN
STANNLEY MORGAN
803 14TH ST
SALMON, ID 83467

SOURCE: JESSE CREEK TRIBUTARY: SALMON RIVER

QUANTITY: 0.02 CFS

PRIORITY DATE: 04/01/1961

POINT OF DIVERSION: T21N R21E S01 NENE Within Lemhi County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	0.02 CFS

PLACE OF USE: Irrigation Within Lemhi County
T21N R21E S01 LOT 2 (NWNE) 0.5
0.5 Acres Total

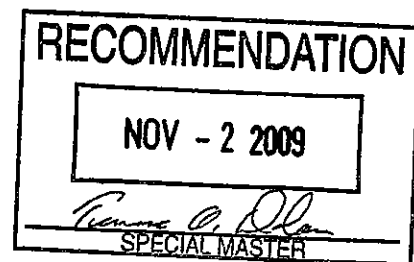
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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



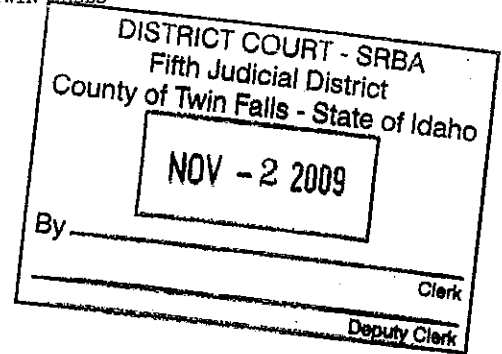
IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AMENDED

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

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

Water Right 75-14063



NAME AND ADDRESS: JOHN GOODMAN
SHERRI GOODMAN
100 POLLARD CREEK RD
SALMON, ID 83467

SOURCE: POLLARD CANYON CREEK TRIBUTARY: JESSE CREEK

QUANTITY: 0.08 CFS

PRIORITY DATE: 04/01/1913

POINT OF DIVERSION: T21N R21E S02 NESE Within Lemhi County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 11-01	0.08 CFS

PLACE OF USE: Irrigation Within Lemhi County
T21N R21E S02 NESE 4.0
4.0 Acres Total

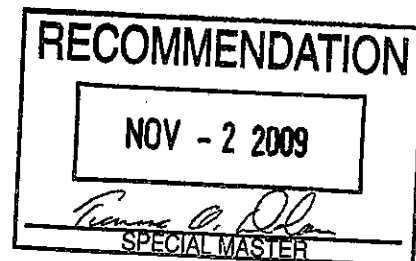
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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).

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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)
) PARTIAL DECREE PURSUANT TO
Case No. 39576) I.R.C.P. 54(b) FOR
)
) Water Right 75-14267

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
NOV - 2 2009	
By _____	Clerk
Deputy Clerk	

NAME AND ADDRESS: ELMA I PETRICK
1903 ROOSEVELT
SALMON, ID 83467

SOURCE: JESSE CREEK TRIBUTARY: SALMON RIVER

QUANTITY: 0.04 CFS

The quantity of water under this right shall not exceed 13,000
gallons per day.

PRIORITY DATE: 06/01/1937

POINT OF DIVERSION: T21N R21E S01 LOT 4 (SENNW) Within Lemhi County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Domestic	03-15 TO 11-15	0.04 CFS

PLACE OF USE: Domestic Within Lemhi County
T21N R21E S01 LOT 3 (NENW)

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

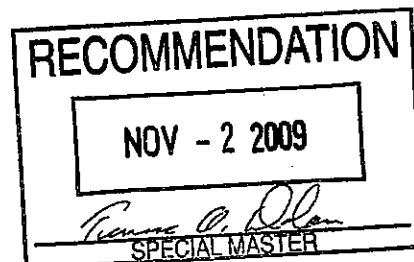
The quantity of water decreed for this water right is not a
determination of historical beneficial use.

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)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

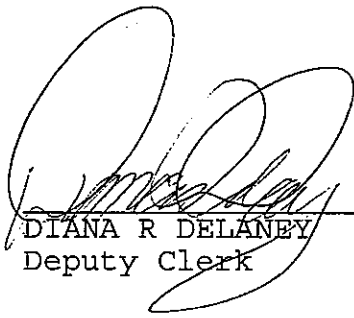
Water Right(s): 75-11614
75-14063 75-14267

On November 02, 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 November 02, 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): 75-11614
75-14063 75-14267

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 November 02, 2009, with sufficient first-class postage prepaid to the following:

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

ROBERT L BLACKADAR
10 N CHEROKEE RD
SALMON, ID 83467
Phone: 208-756-4967

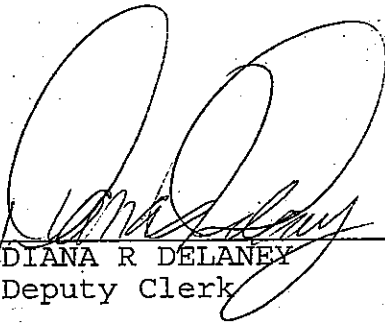
JOHN GOODMAN
SHERRI GOODMAN
100 POLLARD CREEK RD
SALMON, ID 83467
Phone: 208-756-4385

CERTIFICATE OF MAILING

PAGE 1
11/02/09

ELMA I PETRICK
1903 ROOSEVELT
SALMON, ID 83467
Phone: 208-756-1933

ELISABETH MORGAN
STANNLEY MORGAN
803 14TH ST
SALMON, ID 83467
Phone: 208-756-3786



DIANA R DELANEY
Deputy Clerk