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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho
JAN 25 2010
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) Subcase 67-11416
Case No. 39576) SPECIAL MASTER'S REPORT AND
RECOMMENDATION RE: MOTION
TO SET ASIDE PARTIAL DECREE
_____)

I. BACKGROUND

A *Partial Decree* was issued for the above-captioned water right on December 4, 2008, decreeing the water right in the name of the East Fork Ditch Co., Ltd. On August 25, 2009, Kevin Madsen filed a *Motion to Set Aside the Partial Decree*. On November 4, 2009, Kevin Madsen filed a document explaining the basis for his motion. Based upon Mr. Madsen's filings, it is apparent that his assertion is that the place of use (i.e. service area) for the East Fork Ditch Co., Ltd., water right 67-11416 should include land owned by Mr. Madsen. A hearing on the matter was held on November 10, 2009. Appearing at the hearing were Dick Thompson, President, and Kenneth Ward, Director of the East Fork Ditch Company. Mrs. Chester Madsen also participated in the hearing. Deputy Attorney General Chris Bromley and Water Rights Agent Craig Saxton also participated in the Hearing. Kevin Madsen did not appear.

II. LEGAL STANDARD

In the SRBA, a motion to set aside a partial decree is governed by the criteria of Rule 60(b) of the Idaho Rules of Civil Procedure. *Memorandum Decision and Order on Motion to Set Aside Partial Decrees*, subcases 55-02373, et al. *LU Ranching*, (May 1, 2001) *aff'd* 138 Idaho 606, 67 P.3d 285 (2003). Under Rule 60(b), a court can set aside a final judgment if there is (1) mistake, inadvertence, surprise, or excusable neglect, (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial, (3) fraud, misrepresentation, or other misconduct of an adverse party, (4) the judgment is void, (5) the

judgment has been satisfied, released, or discharged, or (6) any other reason justifying relief from the operation of the judgment. In addition to satisfying one of the above-enumerated reasons, a party seeking to set aside a judgment must also establish facts to constitute a meritorious position. *Id.*

III. FINDINGS AND CONCLUSIONS

Based upon the documents filed by Kevin Madsen, and further based upon the comments of the participants at the hearing, this Special Master finds and concludes that the movant has failed to satisfy the criteria of Rule 60(b), I.R.C.P. Mr. Madsen has not stated which basis under Rule 60(b) he is proceeding upon. This Special Master cannot find, however, anything in the record that would support any of the criteria set for in Rule 60(b). Furthermore, Mr. Madsen has not set forth a meritorious position. At the hearing, the representatives from the East Fork Ditch Company stated that they had reviewed their records and have determined that Kevin Madsen is not a shareholder of said Ditch Company, and therefore the Ditch Company could not deliver water to Mr. Madsen's land.

IV. RECOMMENDATION

Therefore, in accordance with the foregoing, and based on the file and record herein, IT IS RECOMMENDED that the SRBA District Court enter an order dismissing Mr. Madsen's motion to set aside the partial decree for water right 67-11416.

Dated Jun 25, 2010


Theodore R. Booth
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)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

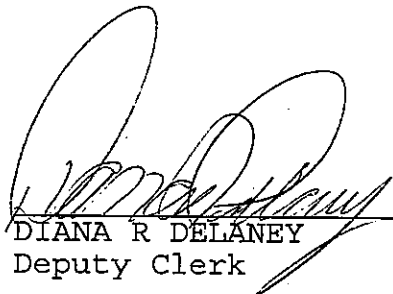
Water Right(s): 67-11416

On January 25, 2010, Special Master THEODORE R. BOOTH 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 January 25, 2010.


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): 67-11416

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 January 25, 2010, with sufficient first-class postage prepaid to the following:

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

EAST FORK DITCH CO LTD
C/O DEE STARNIRI
2405 ORCHARD RD
COUNCIL, ID 83612

KEVIN MADSEN
2073 N GALENA RD
COUNCIL, ID 83612



DIANA R DELANEY
Deputy Clerk

CERTIFICATE OF MAILING

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