

RECEIVED

APR 28 2010

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho
APR 27 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

	) Subcases
	) 75-14090 (Sneed)
	) 75-14092 (Gooby)
In Re SRBA	) 75-14093 (split)
	) 75-14512 (Odell)
	) 75-14513 (Barinaga / Williams)
	) 75-14100 (Waite)
	) 75-14302 (Bourdon / Vera M. Hartley Trust)
Case No. 39576	) ORDER GRANTING MOTION TO AMEND
	) CLAIM 75-14302
	) and
	) SPECIAL MASTER REPORT AND
	) RECOMMENDATION

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 following five beneficial use claims to divert water from Wallace Creek for irrigation in Lemhi County, all with a priority date of April 17, 1923:

75-14090

Russell and Michelle Sneed, 9449 Pershing Avenue, Orangevale, California,
95662
.04 cfs / 2 acres
April 1 to October 31

75-14092

Dale F. Gooby, 18 Savage Ranch Road, Salmon, Idaho, 83467
.19 cfs / 9.7 acres
April 1 to October 15

75-14093

David Yanoff
.16 cfs / 8 acres
April 1 to October 15

75-14100

Jeffrey V. Waite, P.O. Box 75, 60 Savage Ranch Road, Carmen, Idaho, 83462
.12 cfs / 6 acres
April 1 to November 1

75-14302

Greg and Sandy Bourdon / Vera M. Hartley Trust, 59 Savage Ranch Road,
Salmon, Idaho, 83467
.36 cfs / 18 acres
April 1 to October 31

Objections

75-14092 (Gooby), 75-14093 (Yanoff) and 75-14302 (Bourdon / Vera M. Hartley Trust)

On February 1 and 9, 2007, Mr. Waite and Dan Farley filed *Objections* alleging the water rights should not exist.

75-14100 (Waite)

On February 1, 2007, Mr. Waite filed an *Objection* objecting to quantity, priority date and place of use. On September 26, 2007, Mr. Bourdon filed his *Objection* alleging the water right should not exist.

IDWR identified claim 75-14090 (Sneed) as uncontested.

NCAPs & Split – 75-14093 (75-14512 and 75-14513)

On April 1, 2008, IDWR filed a *Notice of Completed Administrative Proceeding* in subcase 75-14093 for a substitution of party showing Linda Barinaga and Dick Williams, 2655 Linder Road, Kuna, Idaho, 83634, as the new owners. IDWR filed *Amended NCAPs* on April 14 and June 5, 2008, for substitution of party splitting 75-14093 (disallow) into 75-14512 (Yanoff) and 75-14513 (Barinaga / Williams). Finally, on September 8, 2008, IDWR filed an *NCAP* in

subcase 75-14512 for substitution of party naming David J. Odell, 2742 Alpenglowl Road, Stevensville, Montana, 59870, as the new owner. The two claims split from 75-14093 were finally recommended as follows:

75-14512 – Odell
.04 cfs / 2.1 acres
April 1 to October 15

75-14513 – Barinaga / Williams
.12 cfs / 5.9 acres
April 1 to October 15

Trial

Trial on the *Objections* was held in Salmon, Idaho, on September 30, 2009. Mr. Gooby and Mr. Waite appeared *pro se*; Milton A. “Jock” Slavin appeared for Mr. Farley; Jerry R. Rigby appeared for Ms. Barinaga, Mr. Williams and the Bourdons; and Garrick L. Baxter appeared for IDWR, along with Monica P. Van Bussum, Bob Foster and Suzy Cooley-Denney. Mr. Odell did not appear.

Ms. Van Bussum, a senior water resource agent for IDWR, presented the basis for IDWR’s recommendations of these Upper Wallace Creek claims. All the parcels were once part of the Joseph Sanderson Homestead patented on April 17, 1923. IDWR Exhibit 2; also see Waite Exhibit E (for illustration of boundary). She said the water is diverted from Wallace Creek and conveyed to the parties’ lands via the Upper Wallace Creek Ditch (also called the Sanderson Ditch or Montgomery Ditch), so they were all recommended with the same 1923 priority date.¹

Ms. Van Bussum said she would not have recommended a 1923 priority date for the claims, but instead a later date – perhaps as late as 1968. But because the IDWR agent who first investigated the claims chose 1923, and some of the uncontested claims on the ditch have already been partially decreed with that priority date,² she felt it would be unfair to change the system. Besides, she saw no potential injury to other water users in the area. The only circumstance

¹ There was some uncertainty over the recommended priority date, possibly because Mr. Waite recalled there was a ditch or ditches built to supply placer mines in the area before significant irrigation began. Perhaps all or parts of them became the Upper Wallace Creek Ditch.

² Water rights 75-4385D (Olsen), 75-14099 (Maulem) and 75-14303 (Geidell) were partially decreed on November 17, 2008, and March 30, 2009, after no objections were filed.

under which IDWR might change its recommended priority date for the contested Upper Wallace Creek claims would be if the three partially decreed rights were set aside, but IDWR did not suggest that.

A neighbor, William R. Maxwell, whose parents once owned the Sanderson Homestead, said a small part was being irrigated when his parents bought the Homestead in 1951. All the lands were watered at various times between 1951 and 1978 as the supply lines were extended and rotated. Mr. Maxwell marked IDWR Exhibit 3 (1987 aerial imagery) with detailed outlines of what he considered the currently irrigated acreage for each claim.

Kenneth "Bud" Lesley, a resident of Salmon for 29 years, leased most of the Sanderson Homestead between 1981 and 1985 for grazing horses and mules. He agreed with Mr. Maxwell's testimony about the irrigated acreage and said the lands were mostly sprinkler irrigated. He maintained the ditches and continued the same irrigation as before. The only flood irrigation was on what is now Mr. Waite's parcel which Mr. Waite purchased in 1985.

75-14100 (Waite)

Ms. Van Bussum reiterated IDWR's original recommendations in each of the contested claims, including quantities and irrigated acreage, except for Mr. Waite's claim. Ms. Van Bussum said IDWR amended its recommended acreage for Mr. Waite's claim from 6 acres (.12 cfs) to 22.5 acres (.45 cfs) based on the 1968 and 1987 aerial imagery she presented at trial. IDWR Exhibit 3. Mr. Waite agreed with that change and IDWR's recommended priority date for his claim as well as the other Upper Wallace Creek claims.

75-14302 (Bourdon / Vera M. Hartley Trust)³

The original SRBA claim was for 28 acres and IDWR recommended 18 acres (.36 cfs), but based on the aerial photos, Ms. Van Bussum would now recommend 25 acres (.5 cfs) *if* the claimants had objected. But the claimants did not object to quantity or acreage. Based on this testimony, the claimants moved to amend their claim under I.R.C.P. 15(c) to conform with the evidence. Counsel for Mr. Farley agreed with the motion and the motion was taken under advisement.

³ At trial, there was discussion the Vera M. Hartley Trust had been removed as co-owner in subcase 75-14302, but the Court's records show no such change.

There was considerable discussion about the exact number of irrigable acres because sometime in 1987, part of the land slid downhill and there was a dispute whether the entire 25 acres were currently irrigable. Ms. Van Bussum maintained her recommendation of 25 acres is still accurate based on the latest (1987) aerial imagery, the ARC mapping procedure she used and her own field exam. In addition, she said there was no evidence of forfeiture before the SRBA claim was filed in 1990.

75-14093 (split)

75-14512 (Odell)

75-14513 (Barinaga / Williams)

75-14092 (Gooby)

Ms. Van Bussum said these three claims should be decreed as recommended because aerial photos indicate irrigation in 1968 and 1987. Like the other Upper Wallace Creek claims – for consistency sake and fairness – IDWR would stand by its recommendations of the same 1923 priority date.

Draft Report and Recommendation

On April 5, 2010, the Special Master entered a *Request for Suggestions Re: Draft Special Master Report and Recommendation* for the purpose of receiving the parties' suggestions, particularly to request that IDWR submit draft partial decrees of all six water rights with the elements as determined at trial. IDWR submitted its draft partial decrees on April 23, 2010, "with the total number of irrigated acres for each water right . . . based upon the boundaries drawn on IDWR Exhibit 3 by Bill Maxwell."

IDWR's draft partial decrees included its recommendations amended before trial (75-14512 and 75-14513) and at trial (75-14100 and 75-14302), plus its amended recommendation of claim 75-14092 (Gooby) and uncontested claim 75-14090 (Sneed):

75-14090 (Sneed)

.04 cfs / 2 acres

75-14092 (Gooby)

~~.19 cfs / 9.7 acres~~ ► .12 cfs / 6.1 acres

75-14100 (Waite)

~~.12 cfs / 6 acres~~ ► ~~.45 cfs / 22.5 acres~~ ► .41 cfs / 20.3 acres

75-14302 (Bourdon / Vera M. Hartley Trust)

~~.36 cfs / 18 acres~~ ► ~~.5 cfs / 25 acres~~ ► .23 cfs / 11.6 acres

75-14512 (Odell)

~~.04 cfs / 2.1 acres~~ ► .03 cfs / 1.4 acres

75-14513 (Barinaga / Williams)

~~.12 cfs / 5.9 acres~~ ► .09 cfs / 4.4 acres

The same date, Mr. Waite submitted his letter with eight pages of attachments – none of which were offered at trial. No one else submitted suggestions.

Conclusions of Law

The Idaho legislature has appointed the IDWR Director as “an independent expert and technical assistant to assure that claims to water rights acquired under state law are accurately reported.” I.C. § 42-1401B(1). The *Director’s Report* “shall constitute prima facie evidence of the nature and extent of the water rights acquired under state law.” I.C. § 42-1411(4). “Any party filing an objection to any portion of the director’s report shall have the burden of going forward with the evidence to rebut the director’s report as to all issues raised by the objection.” I.C. § 42-1411(5).

The evidence presented at trial, while conflicting and confusing at times, supports IDWR’s recommendations of the Upper Wallace Creek claims as described in the draft partial decrees submitted by IDWR April 23, 2010. Ms. Van Bussum’s expertise in mapping, together with Mr. Maxwell’s knowledgeable and impartial testimony, presented the best evidence available of the current irrigable acreage.

The uniform priority date of 1923 recommended for all claims from the same ditch, including partially decreed and uncontested water rights, makes sense from a fairness standpoint and from the perspective of the water rights administrators. Additionally, the Court will avoid lengthy proceedings involving notice and future litigation of the partially decreed and uncontested water rights. After all, several Upper Wallace Creek water users were not part of this trial because their claims were uncontested.

Throughout the testimony, it was evident that most of the land was not irrigated as early as 1923, but instead the lands were irrigated as the water delivery system was developed and expanded over the years. According to Mr. Waite, some undetermined lands on or near the Sanderson Homestead were possibly irrigated as early as 1918 from placer mining ditches. It would not be a stretch to imagine small plots along those ditches crossing the Homestead and beyond having gardens to grow subsistence crops. In these circumstances, it is reasonable that IDWR should have the discretion and authority to recommend a uniform priority date, particularly where no other water users will be harmed.

Ms. Van Bussum's expertise in mapping is sufficient to support the irrigated acreage and quantities recommended by IDWR for the contested claims. Mr. Maxwell's testimony certainly informed her findings and given their *prima facie* weight, the claims should be partially decreed as such. While Mr. Maxwell was not identified as a mapping expert, the boundaries he marked helped Ms. Van Bussum to better locate the number of acres she now recommends. Based on the evidence presented at trial, the motion to amend claim 75-14302 is warranted.

For the above reasons, the claimants 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 75-14090 (Sneed), 75-14092 (Gooby), 75-14100 (Waite), 75-14302 (Bourdon / Vera M. Hartley Trust), 75-14512 (Odell) and 75-14513 (Barinaga / Williams)*. Claim 75-14093 should be **disallowed** because of the split.

Order

THEREFORE, IT IS ORDERED that the motion to amend claim 75-14302 pursuant to I.R.C.P. 15(b) filed by claimants Bourdon / Vera M. Hartley Trust is **granted**.

Recommendation

THEREFORE, IT IS RECOMMENDED that claim 75-14093 be **disallowed**.

DATED April 27, 2010.



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 75-14090

NAME AND ADDRESS: MICHELLE SNEED
RUSSELL SNEED
9449 PERSHING AVE
ORANGEVALE, CA 95662

SOURCE: WALLACE CREEK TRIBUTARY: SALMON RIVER

QUANTITY: 0.04 CFS

PRIORITY DATE: 04/17/1923

POINT OF DIVERSION: T22N R21E S01 NESW Within Lemhi County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	0.04 CFS

PLACE OF USE: Irrigation Within Lemhi County
T22N R22E S06 SENW 2.0
2.0 Acres Total

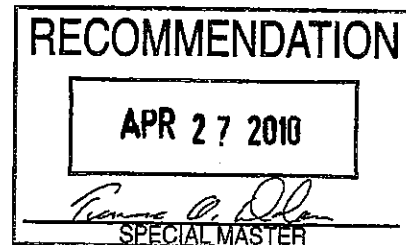
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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).

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.

Eric J. Wildman
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 75-14092

NAME AND ADDRESS: DALE F GOOBY
18 SAVAGE RANCH RD
SALMON, ID 83467

SOURCE: WALLACE CREEK TRIBUTARY: SALMON RIVER

QUANTITY: 0.12 CFS

PRIORITY DATE: 04/17/1923

POINT OF DIVERSION: T22N R21E S01 NENESW Within Lemhi County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	0.12 CFS

PLACE OF USE:	Irrigation	Within Lemhi County
	T22N R22E S06 LOT 4 (NENW) 4.9	SENW 1.2
	6.1 Acres Total	

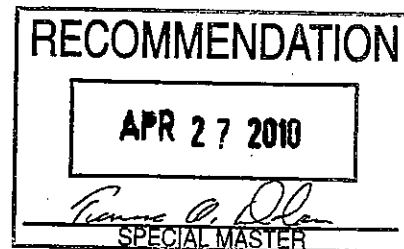
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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
Case No. 39576)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 75-14100

NAME AND ADDRESS: JEFFREY V WAITE
PO BOX 75
CARMEN, ID 83462

SOURCE: WALLACE CREEK TRIBUTARY: SALMON RIVER

QUANTITY: 0.41 CFS

PRIORITY DATE: 04/17/1923

POINT OF DIVERSION: T22N R21E S01 NESW Within Lemhi County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	0.41 CFS

PLACE OF USE: Irrigation Within Lemhi County
T22N R22E S06 LOT 5 (NWNW) 17.0
S31 LOT 10 (SWSW) 3.3
20.3 Acres Total

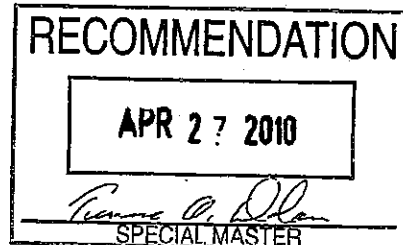
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Eric J. Wildman
Presiding Judge of the
Snake River Basin Adjudication



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 75-14302

NAME AND ADDRESS: GREG BOURDON
SANDY BOURDON
VERA M HARTLEY TRUST
59 SAVAGE RANCH RD
SALMON, ID 83467

SOURCE: WALLACE CREEK TRIBUTARY: SALMON RIVER

QUANTITY: 0.23 CFS

PRIORITY DATE: 04/17/1923

POINT OF DIVERSION: T22N R21E S01 NESW Within Lemhi County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	0.23 CFS

PLACE OF USE: Irrigation Within Lemhi County
T22N R22E S06 LOT 4 (NENW) 4.3 LOT 5 (NWNW) 0.5
T23N R22E S31 LOT 10 (SWSW) 2.6 LOT 11 (SESW) 4.2
11.6 Acres Total

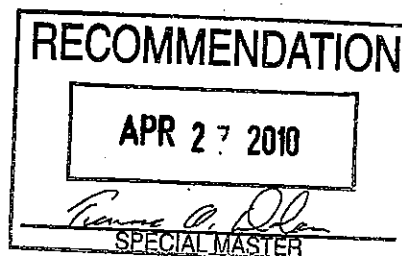
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Eric J. Wildman
Presiding Judge of the
Snake River Basin Adjudication



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 75-14512

NAME AND ADDRESS: DAVID JEFFREY ODELL
2742 ALPENGLOW RD
STEVENSVILLE, MT 59870

SOURCE: WALLACE CREEK TRIBUTARY: SALMON RIVER

QUANTITY: 0.03 CFS

PRIORITY DATE: 04/17/1923

POINT OF DIVERSION: T22N R21E S01 NENESW Within Lemhi County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	0.03 CFS

PLACE OF USE: Irrigation Within Lemhi County
T22N R22E S06 SENW 1.4
1.4 Acres Total

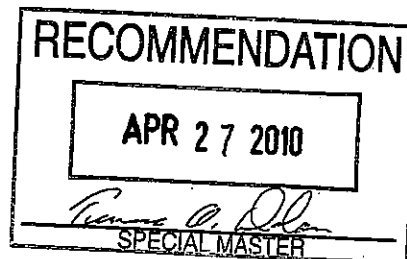
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Eric J. Wildman
Presiding Judge of the
Snake River Basin Adjudication



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
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 75-14513

NAME AND ADDRESS: DICK WILLIAMS
LINDA BARINAGA
2655 LINDER RD
KUNA, ID 83634

SOURCE: WALLACE CREEK TRIBUTARY: SALMON RIVER

QUANTITY: 0.09 CFS

PRIORITY DATE: 04/17/1923

POINT OF DIVERSION: T22N R21E S01 NENESW Within Lemhi County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	0.09 CFS

PLACE OF USE: Irrigation Within Lemhi County
T22N R22E S06 SENW 4.4
4.4 Acres Total

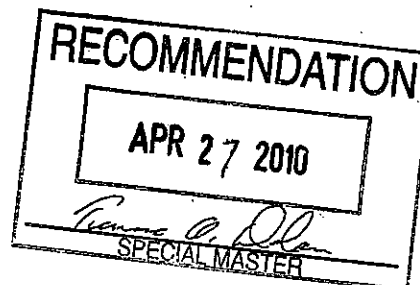
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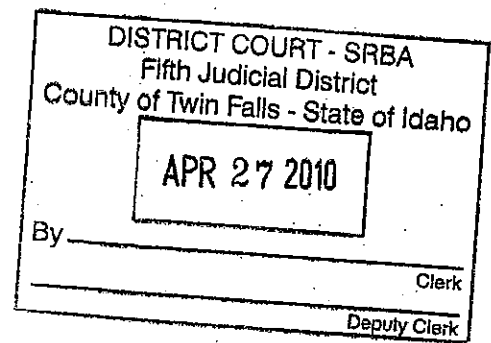
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Eric J. Wildman
Presiding Judge of the
Snake River Basin Adjudication





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

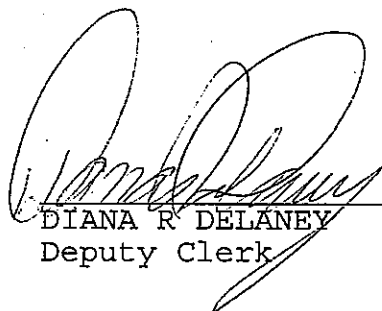
Water Right(s): 75-14090
75-14092 75-14093 75-14100
75-14302 75-14512 75-14513

On April 27, 2010, 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 27, 2010.



DIANA R. DELANEY
Deputy Clerk

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
APR 27 2010	
By _____	Clark
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): 75-14090
75-14092 75-14093 75-14100
75-14302 75-14512 75-14513

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 27, 2010, with sufficient first-class postage prepaid to the following:

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

DICK WILLIAMS
GREG BOURDON
LINDA BARINAGA
SANDY BOURDON
Represented by:
JERRY R. RIGBY
25 N 2ND E
PO BOX 250
REXBURG, ID 83440-0250
Phone: 208-356-3633

CERTIFICATE OF MAILING

PAGE 1
04/27/10

DAN F FARLEY

Represented by:

MILTON A. SLAVIN

ATTORNEY AT LAW

116 N CENTER ST.

SALMON, ID 83467

Phone: 208-756-2030

JEFFREY V WAITE

PO BOX 75

CARMEN, ID 83462

Phone: 208-303-0153

DALE F GOOBY

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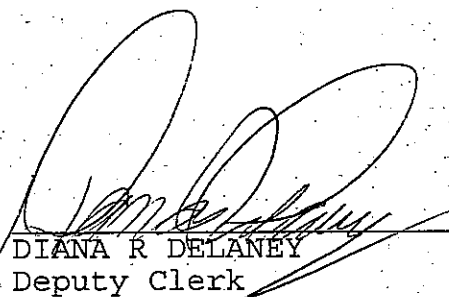
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