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AUG 27 2010

DEPARTMENT OF
WATER RESOURCES

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

AUG 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

Case No. 39576

) Subcase 02-2318A

) (Wilkerson)

) ORDER DENYING MOTION TO STRIKE,
) GRANTING MOTION FOR SUMMARY
) JUDGMENT AND VACATING TRIAL

) 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 Basin 02* on December 29, 2006. The Director recommended claim 02-2318A to William and Imogene Wilkerson, 2520 S. Powerline Road, Nampa, Idaho, 83686, for .27 cfs from the Snake River to irrigate 13.3 acres in Owyhee County from March 15 to November 15 with a priority date of June 5, 1964, based on a license.¹

Objections

On January 26, 2007, Diane and Charles Kritz and Raymond C. Barker, Jr., filed an *Objection* alleging the water right should not exist: "Abandonment/Non-use." The objectors attached an *Affidavit of William R. Wilkerson, Jr.*, son of William R. Wilkerson, Sr., co-claimant

¹ See attached aerial photograph depicting the claimed point of diversion from the Snake River for both the 13 acre place of use for 02-2318A (Wilkersons) and 37 acre place of use for 02-2318B (objectors Kritz and Barker). A former Union Pacific Railroad right of way bisects the properties. The parcels are actually 13.3 acres and 36.7 acres, but for convenience they will be referred to as the "13 acre parcel" and "37 acre parcel."

of 02-2318A. On November 7, 2006, the son said he resides on land adjacent to the 13-acre parcel owned by his father on the south side of the Snake River RV Park. He then wrote:

During the approximately nine years that I lived next to my father's property, I never observed or otherwise became aware of any water from the Snake River being diverted into any conduits or pipelines on the Snake River RV Park property to be conveyed to my father's adjacent 13 acre parcel to the south. During this period of time, no water was used to irrigate my father's 13 acre parcel on the southern side of the Snake River RV park property.

Motion for Summary Judgment

On June 10, 2010, William R. Wilkerson, Sr., filed his *Claimant's Motion for Summary Judgment*, along with a *Brief in Support*, and *Affidavits* by William R. Wilkerson, Sr. and Jon C. Gould.² Mr. Wilkerson argued the *Objection* has no merit and the licensed water right should be decreed as recommended by IDWR. Mr. Wilkerson said that a water right for 50 acres (13 acres plus 37 acres) was licensed by IDWR in 1972; James C. Jackson swore that he pumped water from the Snake River for 12 years and diverted it through a farm ditch to the 13 acres now owned by the Wilkersons; and Peggy J. Jackson filed a claim in the SRBA for the entire 50 acres in 1990.

Mr. Wilkerson said the 50 acre parcel was partitioned in 1991,³ and the water right split: 02-2318A to Loren and Pamela Wittrock for 13 acres (.27 cfs to irrigate 13.3 acres) and 02-2318B to James and Peggy Jackson for 37 acres (.73 cfs to irrigate 36.7 acres). Mr. Wittrock irrigated the 13 acres from 1991 to 1994, and Launie T. Mashburn irrigated the 13 acres from 1994 to 1996.

Mr. Wilkerson then wrote that he purchased the 13 acres in 1998, but his "repeated attempts to divert and put water under water right no. 02-2318A to use have been thwarted by the Snake River RV Park's refusal to grant him access to his point of diversion so that he can divert water." Finally, he argued there is no proof of intent to abandon the water right and no forfeiture

² Jon C. Gould, attorney for claimant William R. Wilkerson, Sr., submitted *Affidavits* by Loren Wittrock and Laurie T. Mashburn, plus a deed filed in 2007, filed in a pending Owyhee County District Court civil matter (Case No. CV 06-05541) entitled *Wilkerson v. Snake River R.V. Resort, et al.*. Counsel agreed that easement case is on hold before Judge Thomas J. Ryan pending resolution of water right 02-2318A in the SRBA Court. See Ellers *Affidavit*, Exhibit J.

³ The 50 acres were split by *Warranty Deed*, dated July 16, 1991, when James and Peggy Jackson sold the 13.3 acre parcel to Loren and Pamela Wittrock and the Jacksons retained 36.7 acres. There is no evidence any portion of the appurtenant water right was reserved by the Jacksons. Gould *Affidavit*, Exhibit G.

because: 1) the alleged five year period of non-use was tolled when the SRBA claim was filed; 2) use of the water was resumed in 1991; and 3) the owners of the Snake River RV Park have denied access to the point of diversion since 1998.

Mr. Wilkerson concluded that since the objectors only provided evidence of non-use from 1997 to 2007, forfeiture was tolled when the SRBA claim was filed (1988), use of the water was resumed in 1991, no one instituted proceedings to declare a forfeiture until the *Objections* were filed in 2007, and the parties now asserting forfeiture or abandonment prevented the right from being used during the period of alleged forfeiture or abandonment.

Motion to Strike and Brief in Opposition

On June 24, 2010, objectors Diane and Charles Kritz and Raymond C. Barker, Jr., filed their *Motion to Strike* and *Memorandum in Support*. The objectors also lodged their *Brief in Opposition to Claimants' Motion for Summary Judgment*, along with a *Memorandum in Support* and *Affidavits* by Diane Kritz, Norman C. Young and Debra K. Ellers.

The objectors moved to strike inadmissible portions of *Affidavits* by Mr. Wilkerson and Mr. Mashburn because some of their statements contain hearsay, violate the best evidence rule against oral testimony of writings, are conclusory and lack foundation and personal knowledge.

In their *Brief in Opposition*, the objectors argued that since water right 02-2318 was licensed in 1972 for 50 acres, there have been substantial changes in use, a subdivision and changes in ownership. They argued the original owners, James and Peggy Jackson, intended to change the source and point of diversion for the 13 acres now owned by the Wilkersons and the extended period of non-use of water on those 13 acres is evidence of abandonment, forfeiture, waiver and laches. The objectors argued that since there exist genuine issues of material fact, summary judgment must be denied.

History of Water Right 02-2318

The objectors provided extensive history behind the Wilkersons' claim. They wrote that when the Jacksons bought the 50 acres in 1964, it was irrigated with water from the Gem Irrigation District. A few years later, Mr. Jackson ran a concrete conduit under the railroad right of way to apply water from the Snake River to the 13 acres south of the railroad. The Jacksons irrigated the 13 acre parcel for a season or two until the mid 1970s. Sometime in the late 1970s, the Jacksons' son, Doug Larzelier and his wife, Mary Jo, took over the property and none of the 13 acres were irrigated with Snake River water between 1982 and 1987.

The Jacksons took back the 50 acres from the Larzeliers in the late 1980s and developed the Snake River RV Resort on the 37 acre parcel adjacent to the Snake River. Mrs. Jackson recalled her husband pumped water out of Jump Creek two or three times a month for one season to irrigate the 13 acre parcel.

Split of 50 Acres

Before Loren and Pamela Wittrock bought the 13 acre parcel from the Jacksons in 1991, they requested a right of way to use the conduit under the railroad track. Mrs. Jackson said she agreed to that arrangement for three years after which the Wittrocks would have to divert water from Jump Creek. Their July 2, 1991 *Real Estate Purchase and Sales Agreement* included language concerning personal property included in the sale: "16 HP Pump and Motor & split 13 acres of water - Snake River -- Each to pay ½ power for 3 years use and then to terminate." *Ellers Affidavit*, Exhibit B. The Wittrocks acquired title to the 13 acre parcel from the Jacksons by *Warranty Deed* dated July 16, 1991.

RV Resort / 37 Acre Parcel

After the split of the 50 acres and licensed water right, the Jacksons sold their 37 acres and RV Resort to the Harlans in 1992, who in turn sold to Ronald Brumley and his family in 1993. Beginning in 1994 through the present, the owners of the RV Resort refused access to the Snake River point of diversion on RV Resort land to irrigate the 13 acre parcel.

Mr. Brumley rebuilt the pump platform or pier on the Snake River after the existing one washed away in 1995 or 1996. Shortly thereafter, one of the owners of the 13 acre parcel, Launie Mashburn and his in-laws, the Spellmans, asked to install their own pump or use Mr. Brumley's pump for irrigation but were refused. In 1999, Mr. Brumley sold the RV Resort to the Benton Family who sold it to the current owners and objectors, Diane and Charles Kritz and Raymond C. Barker, Jr., in 2003.

13 Acre Parcel

The Wittrocks sold their 13 acres to William and Charlene Spellman in 1994, who then quitclaimed it to their in-laws, Launie and Kristina Mashburn, in 1995. Launie Mashburn (and presumably his then-ex-wife) quitclaimed his interest back to the Spellmans in 1996. In 1998, the Spellmans conveyed the 13 acres by *Warranty Deed* to the current owners, the Wilkersons.

Owyhee County Easement Case

William Wilkerson filed an easement complaint against the Snake River R.V. Resort, Mr. Barker and the Kritzes on May 24, 2006, in Owyhee County District Court to establish an easement through the Resort, for an injunction and for attorney fees and costs. In that case, on October 12, 2007, Judge Ryan entered his 13 page *Memorandum Decision and Order upon Motions for Summary Judgment* denying Mr. Wilkerson's claims for an easement by implication or prescription. *Ellers Affidavit*, Exhibit M. Left undecided is Mr. Wilkerson's claim of a statutory right of way pursuant to I.C. § 42-1102.

Objectors' Conclusions

The objectors wrapped up their arguments of abandonment, forfeiture, waiver and laches in opposition to the Wilkersons' claim by stating: "no water from the Snake River was used to irrigate the 13 Acre Parcel from at least 1982 until after the Wittrocks' purchase in July, 1991." They added that "no water has been diverted from the Snake River to the 13 Acre Parcel since mid-1994 through 1999." The objectors concluded:

The evidence supports that there was only a brief delivery of water to the 13 Acre Parcel from the Snake River point of diversion permissively in accordance with the limited three year contractual agreement between the Jacksons and the Wittrocks from July 1991 to mid-1994. The permissive use of the Snake River point of diversion and Water Right No. 02-2318 expired after that three year period. No water has been used on the 13 Acre Parcel under these facts from mid-1994 through the present.

Brief in Opposition, at 12.

Summary Judgment Hearing

A hearing on Mr. Wilkerson's *Motion for Summary Judgment* and the *Motion to Strike* filed by the Kritzes and Mr. Barker was held on July 8, 2010. Jon C. Gould appeared for claimant Mr. Wilkerson; Debra K. Ellers appeared for objectors the Kritzes and Mr. Barker; and Andrea L. Courtney appeared for IDWR.

Discussion

At first glance, the subcase presents a complex history of an unequal split of a 50 acre parcel and later transfers in ownership of the two parcels – the 13 acre parcel now owned by the Wilkersons and the 37 acre parcel now owned by the Kritzes and Mr. Barker – and appurtenant

water rights. Throughout that history, the key is the single point of diversion from the Snake River for both parcels.

From IDWR records, on the April 6, 1970 *Proof*, James C. Jackson wrote that he had been pumping water out of the Snake River for 12 years with a 15 horsepower “Parma Pump” to irrigate 60 acres. The *Report of Examiner* included a diagram of a wooden platform over the river with a 10” pipe connected to a “concrete head-gate box.” On March 23, 1972, water right 02-2318 was issued to J.C. Jackson & Sons, Inc., to irrigate 50 acres with a priority date of June 5, 1964.

The SRBA *Notice of Claim* for water right 02-2318 was actually filed on October 7, 1988, by “Douglas D. Larzelier or Mary Jo Larzelier or Peggy J. Jackson.”⁴ In the *Notice*, Ms. Jackson described the diverting works as “2 pumps on platform w/ pipeline to POU. Large pump puts water to ditch for irrigation and a small pump supplies water to sprinkler system. Water runs back to Jump Creek and eventually back to Snake River.”

The remaining question now before Judge Ryan in the Owyhee County District Court is whether Mr. Wilkerson is entitled to a statutory right of way pursuant to I.C. § 42-1102 to divert water from the Snake River across land owned by the Kritzes and Mr. Barker to irrigate his 13 acres. The question before the SRBA Court is whether the Wilkersons have a valid right to divert water from the Snake River to irrigate their 13 acre parcel.

IDWR has recommended the Wilkersons’ point of diversion from the Snake River – the same point of diversion it recommended for the Kritz and Barker claim. There is no evidence the recommended point of diversion for either claim has been changed since the license to irrigate the whole 50 acres was issued in 1972. Any suggestion that the Wilkersons can divert water from another source, such as Jump Creek, raises a whole host of issues normally addressed in administrative transfer proceedings with IDWR, not the SRBA Court. That being said, the simple question now is whether the Wilkersons’ water right claim 02-2318A has been forfeited or abandoned.

To answer that question, the discussion must begin with two premises. First, the objectors have nothing to support an argument of forfeiture or abandonment before October 7,

⁴ A “Memo to File” attached to the SRBA *Notice of Claim* indicates the claim was originally filed “under the name of Douglas & Mary Jo Larzelier. Peggy Jackson filed for them and I believe this claim had to be taken back to them for their signature and notary. Something happened to the claim between then [October 7, 1988] and now [January 19, 1990].” That would explain why Peggy J. Jackson did not sign the *Notice of Claim* until January 19, 1990.

1988, when Ms. Jackson and the Lazeliers filed their claim 02-2318 in the SRBA for 1 cfs from the Snake River to irrigate entire 50 acres. Any discussion of non-use before that date is superfluous.

Second, the filing of the SRBA claim in 1988, tolled the running of the five year statutory forfeiture period (I.C. § 42-222(2)) *until a partial decree is entered*. This law of the SRBA case was first established by former SRBA Judge Barry Wood:

Since forfeiture is a species of adverse possession and prescription, it follows that once a claimant files a claim in the SRBA, for a particular water right, the forfeiture provisions of I.C. § 42-222(2) are also tolled for purposes of establishing forfeiture, so long as the claimant continues to prosecute the claim to partial decree. . . . Therefore, pursuant to this reasoning, unless a claimant ultimately abandons their claim within the SRBA (which could result in failure of the entire water right), any alleged period of non-use subsequent to the filing of the notice of claim cannot be used to establish forfeiture.

Order on Challenge (Consolidated Issues) of "Facility Volume" Issue and "Additional Evidence" Issue, subcases 36-2708, *et al.*, December 29, 1999, at 27-28.

That law of the SRBA case was later affirmed by former SRBA Judge Roger S. Burdick in his *Memorandum Decision and Order on Challenge*, subcase 65-5663B, May 9, 2002:

[T]he Court affirms the prior ruling of the *Facility Volume Decision* holding that the running of the statutory forfeiture provision of Idaho Code section 42-222 tolls upon the filing of a claim in the SRBA until a partial decree is entered. After the partial decree is entered the statutory period begins to run anew.

Order on Challenge, at 22.

To be clear, the Wilkersons' claim 02-2318A has not yet been partially decreed by the SRBA Court since the claim was filed and the Wilkersons continue to prosecute the claim.

That leaves the Objectors' argument that the Wilkersons' claim has been abandoned. There is a long tradition in Idaho water law that abandonment and forfeiture of water rights are not favored and all intendments are to be indulged in against a forfeiture. *Zezi v. Lightfoot*, 57 Idaho 707, 68 P.2d 50 (1937) and *Hodges v. Trail Creek Irrigation Co.*, 78 Idaho 10, 297 P.2d 524 (1956). Another tradition in Idaho water law is that the two concepts have been used interchangeably. For instance, the Idaho Supreme Court has held that an *abandonment* of a water right must have been continuous for *five consecutive years*. *Carrington v. Crandall*, 65 Idaho 525, 147 P.2d 1009 (1944).

Most states consider rights to use water established by prior appropriation abandoned and lost if they are not used for an extended time. Mere nonuse is not enough, however. One must intend to abandon the rights. The burden of proving an intent to abandon is on the person attempting to establish abandonment, but an unreasonable period of nonuse will create a rebuttable presumption of intent to abandon. In some states the period giving rise to the presumption is set by statute. Once the presumption arises the rights holder may rebut it by showing facts or conditions justifying the nonuse [citation omitted].

David H. Getches, *Water Law in a Nutshell*, 178 (2d ed., West 1990).

The Idaho Supreme Court has held that intent to abandon is a question of fact to be decided by the trier of fact and where the record shows only nonuse, disclosing no intent to abandon, the property owner did not lose his water right by common-law abandonment. *Jenkins v. State, Dep't of Water Resources*, 103 Idaho 384, 647 P.2d 1256 (1982). Regardless of the terms used, there can be no forfeiture or abandonment if the nonuser is prevented from exercising his rights by circumstances over which he has no control. *Hodges, supra*.

When the Jacksons sold the 13 acre parcel to the Wittrocks and retained the 37 acre parcel in 1991, the appurtenant water right 02-2318 was split proportionately – .27 cfs to irrigate 13.3 acres (02-2318A) and .73 cfs to water to irrigate 36.7 acres (02-2318B). That is how IDWR has recommended the two claims and no one has contested those figures.⁵ Neither have the objectors argued that the 13 acre parcel once had a water right, only that it has since been forfeited or abandoned for non use since the split. As part of the sale and split, the objectors' predecessors-in-interest sole concern was the arrangement of sharing the diverting works, but that raises easement issues properly addressed before Judge Ryan in Owyhee County, not the SRBA Court.

Those being the facts, SRBA case law firmly establishes that the water right appurtenant to the 13 acre parcel has not been forfeited – the SRBA claim was filed in 1988, three years *before* the sale and split and hence, the running of any statutory forfeiture was tolled. After all, it was Ms. Jackson who signed the SRBA *Notice of Claim* stating the entire 50 acre parcel had a 1 cfs water right in 1988. It would not be fair for her successors-in-interest to claim forfeiture or abandonment before that date and SRBA case law clearly bars any claim of forfeiture after the *Notice of Claim* was filed so long as the Wilkersons prosecute their SRBA claim.

⁵ On July 20, 2009, the Special Master entered a *Report and Recommendation* in the Kritz and Barker claim (2318B). Those claimants have filed a *Motion to Alter or Amend* to submit an amended *Standard Form 5* to include quarter-quarter descriptions in the place of use instead of government lot descriptions. The matter is set for a status conference August 26, 2010.

After the sale and split, the evidence is abundantly clear that the successive owners of the 13 acres – the Wittrocks, the Spellmans, the Mashburns and finally the Wilkersons – did not intend to abandon their right to divert water from the Snake River. The Wilkersons clearly demonstrated that fact when they filed their lawsuit in Owyhee County to establish an easement to their point of diversion.

Regardless of some periods of nonuse, the successive owners of the 37 acre parcel – the Jacksons, the Harlans, the Brumleys, the Bentons and finally the Kritzes and Mr. Barker – prevented anyone else from using the point of diversion on their land. By their own *Affidavits*, the objectors demonstrated their consistent and unyielding efforts to bar anyone else access to the Snake River point of diversion, even when Launie Mashburn and the Spellmans asked to install their own pump. The law in Idaho is clear in these circumstances – the objectors cannot claim forfeiture or abandonment of the Wilkersons' water right for nonuse when they prevented its use.

Conclusions of Law

1. The pleadings, depositions and affidavits on file show there are no genuine issues as to any material facts and Mr. Wilkerson is entitled to summary judgment as a matter of law;
2. The objectors' *Motion to Strike* is no longer relevant in light of the above findings of material facts wholly supported by the objectors' own pleadings and affidavits; and
3. The Wilkersons are entitled to a partial decree adjudicating a water right as recommended by IDWR and as described in the attached *Special Master Recommendation for Partial Decree for Water Right 02-2318A*.

Order

THEREFORE, IT IS ORDERED that:

1. Mr. Wilkerson's *Motion for Summary Judgment* is **granted**;
2. The *Motion to Strike* filed by objectors Kritz and Barker is **denied**; and
3. The trial set for September 9, 2010, is **vacated**.

DATED August 25, 2010.



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

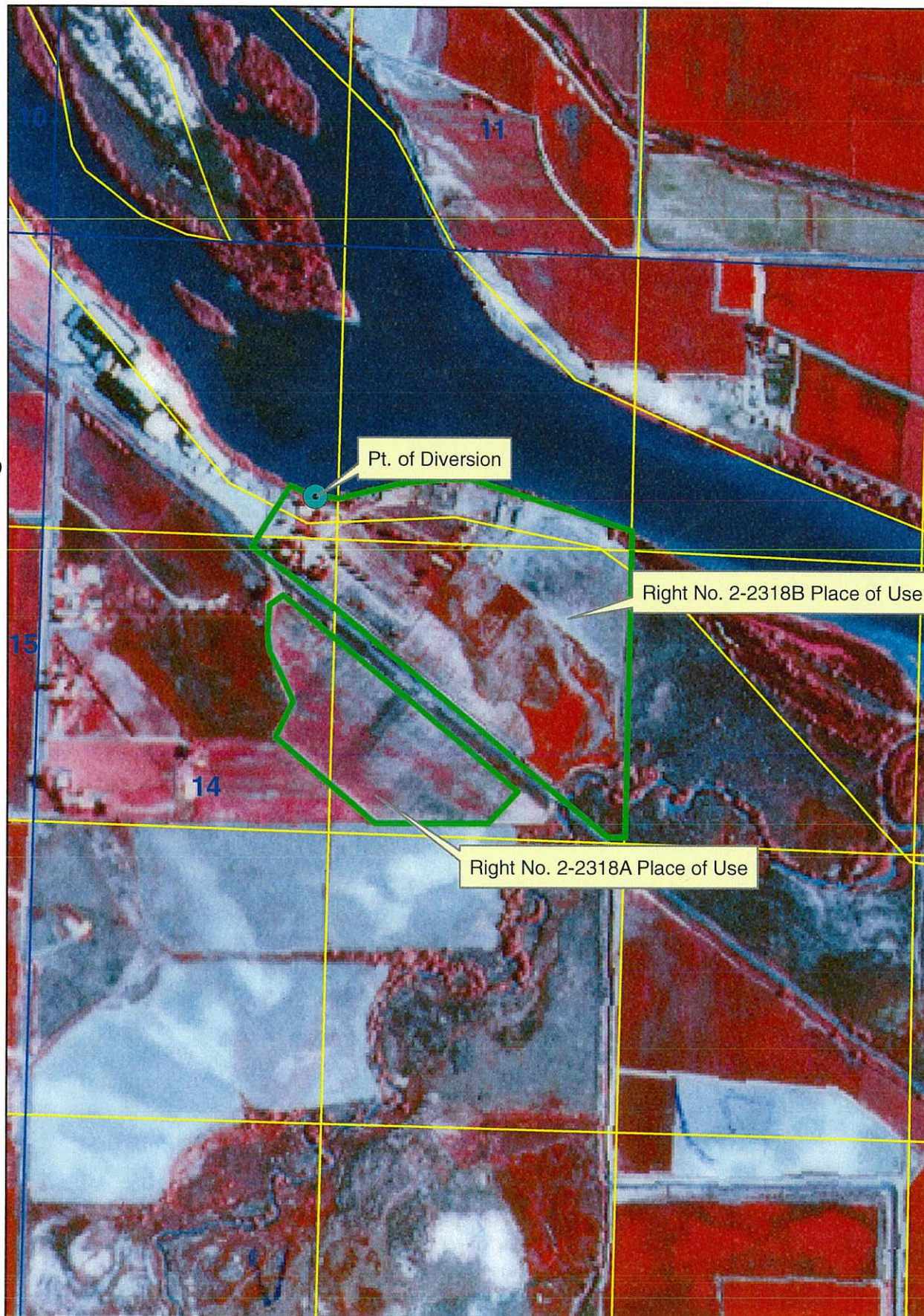
Idaho Dept of Water Resources

Water Right Nos. 2-2318A and 2-2318B



Legend

- 2-2318A_B_POD
- Township/Range
- Sections
- QQ



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 02-02318A

NAME AND ADDRESS: IMOGENE E WILKERSON
WILLIAM R WILKERSON SR
2520 S POWERLINE RD
NAMPA, ID 83686

SOURCE: SNAKE RIVER TRIBUTARY: COLUMBIA RIVER

QUANTITY: 0.27 CFS

PRIORITY DATE: 06/05/1964

POINT OF DIVERSION: T03N R05W S14 LOT 6 (NWNW) Within Owyhee County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-15 TO 11-15	0.27 CFS

The use of water for irrigation under this right may begin as early as March 1 provided other elements of the right are not exceeded. The use of water before March 15 under this remark is subordinate to all water rights having no subordinated early irrigation use and a priority date earlier than the date a partial decree is entered for this right.

PLACE OF USE: Irrigation Within Owyhee County
T03N R05W S14 LOT 6 (SWNW) 4.3 LOT 5 (SENW) 9.0
13.3 Acres Total

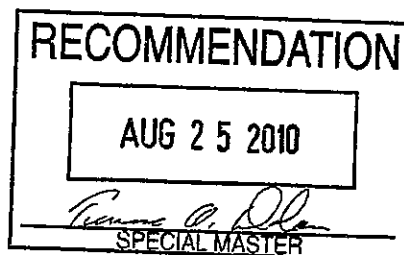
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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



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

AUG 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

Case No. 39576

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

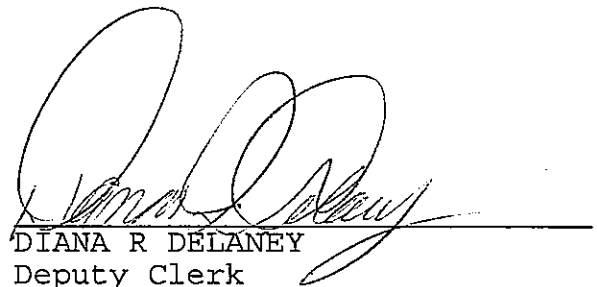
Water Right(s): 02-02318A

On August 25, 2010, Special Master ERIC J WILDMAN 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 25, 2010.


DIANA R DELANEY
Deputy Clerk

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
AUG 25 2010	
By _____	Clerk

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

In Re SRBA)
Case No. 39576)
_____)

CERTIFICATE OF MAILING

Water Right(s): 02-02318A

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

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

CHARLES J KRITZ JR
DIANE B KRITZ
RAYMOND C BARKER JR
Represented by:
DANA L. HOFSTETTER
608 WEST FRANKLIN STREET
BOISE, ID 83702
Phone: 208-424-7800

CERTIFICATE OF MAILING

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08/25/10