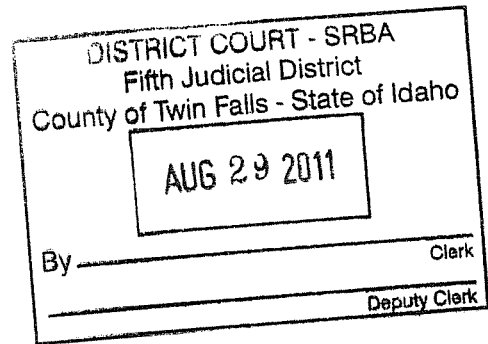


RECEIVED

AUG 30 2011

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	)	Subcase 75-14236
	)	(Tippett)
	)	
Case No. 39576	)	SPECIAL MASTER REPORT
	)	AND RECOMMENDATION
_____	)	

Findings of Fact

Recommendation and Final Order Disallowing

On January 11, 2007, the Director of the Idaho Department of Water Resources filed his *Director's Report, Irrigation & Other Uses, Reporting Area 23, Basin 75*. The Director recommended claim 75- 14236, filed by James and Cathleen Tippett, P.O. Box 15, Carmen, Idaho, 83462, be disallowed: "No beneficial use found." When no objections were filed, the Court entered a *Final Order Disallowing Water Right Claim* on November 13, 2009.

Motion to Set Aside

On February 8, 2011, the Tippetts wrote a letter to the Court stating:

Earlier in the SRBA process the above two rights (priority year 1915) [75-14236 and 75-14337] were disallowed. At that point in the process the several Department recommended overlapping rights for our properties were larger in the aggregate, and hence the Department did not consider our properties as requiring the additional "high water" 1915 right to bring our totals to two inches per acre. Adjustments in per acre amounts for overlapping rights, as well as the acreage calculations for our properties following the disallowance, have resulted in our individual aggregate totals dropping below two inches per acre. For that reason we feel the 1915 priority for our lands is now appropriate and should be provided. These rights are not contested.

Orders of Reference

On February 8, 2011, the matter was referred to the Special Master. On June 22, 2011, a second *Order of Reference* was entered in subcases 75-69F, 75-70F, 75-2025C, 75-10061J and 75-10062H.

Amended Recommendation

On June 20, 2011, counsel for IDWR wrote a letter to the Court stating:

Please find enclosed for filing a fully executed SF5 for the above-referenced subcase [75-14236]. Subcase 75-14236 was a previously disallowed high water claim and now, after further review, is being recommended.

...
[T]he Department and the claimant also respectfully request the Court set aside and amend the partial decrees previously entered in Subcase Nos. 75-69F, 75-70F, 75-2025C, 75-10061J, and 75-10062H to make a clerical change. It is necessary to amend the combined use condition condition for these other rights now that the previously disallowed right is being recommended. This clerical change is necessary to make the combined use condition for all six Tippetts rights consistent.

SF-5

On June 22, 2011, the Tippetts, with IDWR's concurrence, filed a "Previously Disallowed" *Standard Form 5* indicating IDWR's agreement the Tippetts are entitled to .02 cfs from Carmen Creek for stockwater use and to irrigate 4.1 acres in Lemhi County from April 1 to October 31 with a priority date of April 1, 1915, based on beneficial use.

Objection

On June 30, 2011, the United States of America, Department of Interior, Bureau of Land Management filed an *Objection* to point of diversion: "POD legal description should be in T23N rather than T22N."

Hearing

A hearing on the Tippetts' motion to set aside and modify the *Final Order Disallowing* in subcase 75-14236 was held by telephone conference on August 25, 2011. The Tippetts appeared

pro se; David L. Negri appeared for the United States, along with Scott Beezer; and Garrick L. Baxter appeared for IDWR.

In order to satisfy minimal due process, the parties and IDWR agreed these matters require multiple steps, first requiring a Special Master recommendation the ***Final Order Disallowing*** be set aside followed by an order of the Presiding Judge setting aside the ***Order***. Next, the Tippetts will have to file a motion to amend their claim 75-14236. If their motion to amend is granted, IDWR will file its recommendation of the amended claim correcting the POD error.

If no one objects to IDWR's recommendation, a partial decree on the amended claim can be entered. Finally, the Court will be able to enter partial decrees *nunc pro tunc* in subcases 75-69F, 75-70F, 75-2025C, 75-10061J, and 75-10062H to include IDWR's suggested combined use condition – there was agreement that last step will not expand the water rights and will not impact other water users.

Conclusions of Law

The Tippetts have shown good cause the have the ***Final Order Disallowing*** claim 75-14236 set aside.

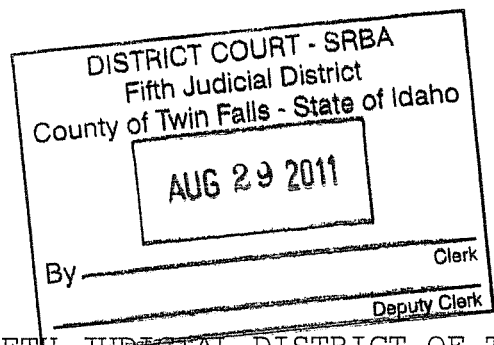
Recommendation

THEREFORE, IT IS RECOMMENDED that the ***Final Order Disallowing*** claim 75-14236 be set aside.

DATED August 29, 2011.



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)
)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

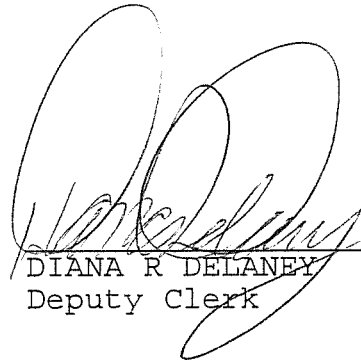
Water Right(s): 75-14236

On August 29, 2011, 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 August 29, 2011.



DIANA R DELANEY
Deputy Clerk

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

AUG 29 2011

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)
)

CERTIFICATE OF MAILING

Water Right(s): 75-14236

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 29, 2011, with sufficient first-class postage prepaid to the following:

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

UNITED STATES OF AMERICA
Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

CATHLEEN TIPPETT
JAMES R TIPPETT
PO BOX 15
CARMEN, ID 83462
Phone: 208-756-4594

CERTIFICATE OF MAILING


DIANA R DELANEY
Deputy Clerk