

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT
NO. 45-07745

USDA-FOREST SERVICE,
Applicant

EARL L. WARTHEN, FRED HAWKER
Protestants

ANDRWOOD, INC., LEO BELL,
Interveners

NOTICE OF HEARING

Source: Surface Water
County: Cassia

On September 3, 1999 the USDA-Forest Service filed with the Department of Water Resources an application to appropriate the public waters of the State of Idaho. In addition, on January 05, 1998 the USDA-Forest Service, applicant, filed with the Department of Water Resources an application to transfer the public waters of the State of Idaho, which was later withdrawn. The Department has received a protest against the approval of said applications from the above captioned protestants. An Order Granting Intervention was issued to Andrwood, Inc. on December 20, 1999. An Order Granting Intervention was issued to Leo Bell on April 2, 2002. The Pre-Hearing Conference held on April 18, 2002 did not resolve the matter of protests against the application.

THEREFORE, The Department has scheduled the matter for hearing on **Tuesday January 30, 2007 and to be continued on Wednesday January 31, 2007 in the Council Room, Burley City Hall, 1401 Overland, Burley ID commencing at 9:00 a.m.** The hearing will be held in accordance with provisions of chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, the adopted Rules of Procedure of the Department and Water Appropriation Rules 40 and 45. A copy of the rules may be obtained from the department upon request. The presiding officer at the hearing will be **Gary Spackman**.

In addition, on or before January 9, 2007 the parties shall make an exchange of witness lists, copies of documents and proposed exhibits to be offered at the hearing.

If you plan to offer exhibits for the record, note that IDAPA Rule of Procedure 37.01.01606 requires that you provide a copy of exhibits to each party and to the presiding officer.

The hearing will be conducted in a facility that meets the accessibility requirements of the Americans With Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within ten (10) days prior to the hearing.

All parties to the matter will have the opportunity to respond and present information and argument on all issues involved.

Dated this 29th day of November, 2006.

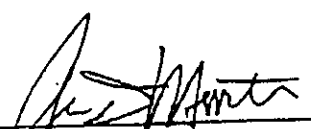

Allen D. Merritt
Southern Region Manager

EXHIBIT 9

CERTIFICATE OF MAILING

I hereby certify that on the 29th day November, 2006 a true and correct copy of the foregoing Notice of Hearing was forwarded with all required charges prepared, via U.S. Mail by the method indicated below, to the parties listed:

Mary A. Baldwin

Mary A. Baldwin
Administrative Assistant I

STEVE SPENCER
USDA-FOREST SERVICE
161 E MALLARD DR # 110
BOISE ID 83706-3974

U.S. Mail-Certified x

SCOTT C. NANNENGA
USDA-FOREST SERVICE
3650 S OVERLAND AVE
BURLEY ID 83318

U.S. Mail-Certified x

EARL L. WARTHEN
PO BOX 145
ALBION ID 83311

U.S. Mail-Certified x

NORMAN M. SEMANKO ESQ
ATTORNEY AT LAW
1010 W JEFFERSON ST., STE 101
BOISE ID 83702

U.S. Mail-Certified x

ROCHELLE MAUREEN DAVIS
BARKER ROSHOLT & SIMPSON LLP
PO BOX 2139
BOISE ID 83701-2139

U.S. Mail-Certified x

ATTN WOODY ANDERSON
ANDRWOOD, INC
PO BOX 158
ALBION ID 83311

U.S. Mail-Certified x

ROGER D. LING
LING NIELSEN & ROBINSON
PO BOX 396
RUPERT ID 83350

U.S. Mail-Certified x

LEO BELL
HC 36 BOX 26
ALBION ID 83311

U.S. Mail-Certified x

FRED HAWKER
361 W 400 S
BURLEY ID 83318

U.S. Mail-Certified x

CHARLES G. BROCKWAY P E
BROCKWAY ENGINEERING
2016 NORTH WASHINGTON ST-STE 4
TWIN FALLS ID 83301

U.S. Mail-Regular x

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR PERMIT ISSUES

Section 42-203A, Idaho Code, requires the department to consider the following issues in connection with an application for permit:

1. Will the proposed use reduce the quantity of water under existing water rights?
2. Is the proposed water supply insufficient for the purpose intended?
3. Is the application made in good faith or for delay or speculative purposes?
4. Has the applicant sufficient financial resources with which to complete the project?
5. Will the proposed use conflict with the local public interest?
6. Will the proposed use be contrary to the conservation of water resources within the State of Idaho?

BURDEN OF PROOF

The applicant has the initial burden of proof for issues 1, 2, 3, 4, and 6 above and must provide evidence for the department to evaluate these criteria. The initial burden of proof on issue 5 above lies with both the applicant and protestant as to factors of which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for this issue.

PROCEDURE

The department generally conducts an informal conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held the department will issue a written decision based on the hearing record.

CONFERENCE

The purpose of a pre-hearing conference is to provide the opportunity for the parties and the department to familiarize themselves with a contested matter and to attempt to resolve the matter. At the conference, the department may also formulate and simplify the issues, identify documents to avoid unnecessary proof, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement or make settlement offers, schedule hearings, establish procedure at hearing and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement. The department may issue a "pre-conference statement order" which requires response to the inquiries.

HEARING

The department will tape record the hearing. Copies of a hearing tape are available upon request and the payment of the cost of reproducing the tape. The hearing likely will be conducted by a hearing officer appointed by the Director rather than by the Director himself. If so, the hearing officer will prepare a recommended order for the Director's consideration. Parties can file exceptions to a recommended order, briefs in support of the exceptions or may request oral argument. Parties may seek judicial review of any final order issued by the Director. Parties may by written stipulation waive the right to a recommended order, particularly when a shortened decision process is desirable or necessary. Such a waiver does not eliminate any rights of the parties in connection with the final order of the Director and judicial review of the order.

EXHIBITS

A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer. As part of the conference a date may be set by which exchange of exhibits and witness lists must occur.

EFFECT OF FAILURE TO APPEAR AT A CONFERENCE OR HEARING

Failure to appear at the time and place set for a conference or hearing by the applicant or protestant(s) may allow the department to dismiss without prejudice the protest(s) or the application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing party.

AMERICANS WITH DISABILITIES ACT

Any hearing scheduled will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within (10) days prior to the hearing.

RECEIVED

JUN 28 2006

DEPARTMENT OF
WATER RESOURCES

2006 JUN 27 PM 1:20

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

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 45-411 and 45-13795
)
)

Case No. 39576
_____)

) SPECIAL MASTER REPORT AND
) RECOMMENDATION

Findings of Fact

45-4114

The Director of the Idaho Department of Water Resources filed his *Director's Report, Domestic & Stock, Reporting Area 10 (IDWR Basin 45)* on March 2, 1998. The Director recommended that claim 45-4114 be disallowed: "Claim incomplete." The United States filed an *Objection* in multiple subcases, including subcase 45-4114, on July 6, 1998, objecting to the claim not being recommended as claimed.

The Director filed his *Part I Director's Report for Late Claims* on April 22, 2005, and recommended claim 45-4114 to the United States of America, Department of Agriculture, Forest Service, 550 W. Fort Street, MSC 033, Boise, Idaho, 83724, for .06 cfs from springs for commercial use from November 1 to April 30 with a priority date of May 1, 1965, based on beneficial use. Earl Warthen filed an *Objection* on June 10, 2005, objecting to nearly all elements and alleging the water right should not exist

45-13795

The Director filed his *Director's Report for Irrigation and Other, Reporting Area 10, IDWR Basin 45* on September 7, 2004. The Director recommended claim 45-13795 to the United States of America, Department of Agriculture, Forest Service for .06 cfs from springs for year-'round diversion to storage, domestic, domestic storage and domestic from storage uses in

Cassia County with a priority date of June 1, 1962, based on beneficial use. On January 3, 2005, Earl Warthen filed an *Objection* in subcase 45-13795 objecting to source, quantity, priority date, point of diversion, purpose of use, period of year and place of use and alleging the water right should not exist.

Stipulation

On June 19, 2006, the United States and Mr. Warthen filed a *Stipulation to Resolve Objections* in both subcases agreeing that the water rights should be decreed as recommended by IDWR.

Conclusions of Law

The United States is entitled to partial decrees for claims 45-4114 and 45-13795 as recommended by IDWR and as described in the attached *Special Master Recommendations for Partial Decrees for Water Rights 45-4114 and 45-13795*.

DATED June 27, 2006.



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

2006 JUN 27 PM 1:20

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

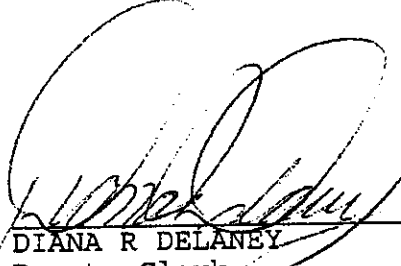
Water Right(s): 45-04114
45-13795

On June 27, 2006, 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 June 27, 2006.


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

2006 JUN 27 PM 1:20

In Re SRBA
Case No. 39576

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 45-13795

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

NAME AND ADDRESS: UNITED STATES OF AMERICA
USDA FOREST SERVICE
550 W FORT ST MSC 033
BOISE, ID 83724

SOURCE: SPRINGS TRIBUTARY: HOWELL CREEK

QUANTITY: 0.06 CFS

The quantity of water under this right shall not exceed 13,000
gallons per day.
USE OF THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED
DIVERSION RATE OF 0.06 CFS . COMBINED RIGHT NOS. 45-4114 and
45-13795

PRIORITY DATE: 06/01/1962

POINT OF DIVERSION: T13S R24E S01 LOT 3 (NWNENW) Within Cassia County
S11 NWNENE

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Domestic	01-01 TO 12-31	0.06 CFS
	Domestic Storage	01-01 TO 12-31	0.18 AFY
	Domestic from Storage	01-01 TO 12-31	0.18 AFY
	Diversions to Storage	01-01 TO 12-31	0.06 CFS

PLACE OF USE:	Domestic		Within Cassia County
	T13S R24E S01	NWSW	
	Domestic Storage		Within Cassia County
	T13S R24E S02	SESE	
	Domestic from Storage		Within Cassia County
	Same as Domestic		

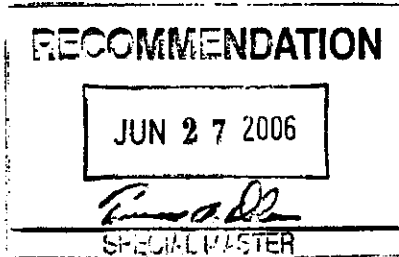
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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(5).

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)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 45-04114

2006 JUN 27 PM 1:20
DISTRICT COURT, SRBA
TWIN FALLS CO., IDAHO
FILED

NAME AND ADDRESS: UNITED STATES OF AMERICA
USDA FOREST SERVICE
550 W FORT ST, MSC 033
BOISE, ID 83724

SOURCE: SPRINGS TRIBUTARY: HOWELL CREEK

RIGHT INCLUDES ACCOMPLISHED CHANGE IN SOURCE PURSUANT TO SECTION
42-1425, IDAHO CODE.

QUANTITY: 0.06 CFS

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED
DIVERSION RATE OF 0.06 CFS. COMBINED RIGHT NOS. 45-4114 AND
43-13795.

PRIORITY DATE: 05/01/1965

POINT OF DIVERSION: T13S R24E S01 LOT 3 (NWNENW) Within Cassia County
S11 NWNENE

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Commercial	11-01 TO 04-30	0.06 CFS

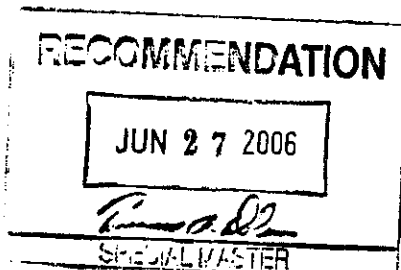
PLACE OF USE: Commercial Within Cassia County
T13S R24E S01 NWSW

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

2006 JUN 27 PM 1:20

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

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): 45-04114
45-13795

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 June 27, 2006, with sufficient first-class postage prepaid to the following:

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

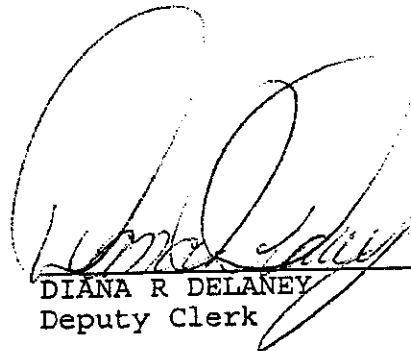
EARL WARTHEN

Represented by:
SHELLEY M. DAVIS
205 N 10TH ST, STE 520
PO BOX 2139
BOISE, ID 83701-2139
Phone: 208-336-0700

UNITED STATES OF AMERICA

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

CERTIFICATE OF MAILING



DIANA R DELANEY
Deputy Clerk

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06/27/06