

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 36-15240

RECEIVED
JAN 20 1998
DISTRICT COURT - SRBA
TWIN FALLS, IDAHO

NAME & ADDRESS: RUBY SPRINGS WATER CO
C/O RODERICK R HOWARD
2638 ACCESS ROAD N
HAGERMAN ID 83332

Department of Water Resources

SOURCE: RUBY SPRINGS TRIBUTARY: BILLINGSLEY CREEK

QUANTITY: 0.23 CFS

USE OF THIS RIGHT WITH RIGHT NO. 36-07092A IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 0.58 CFS.

PRIORITY DATE: 08/16/1976

POINT OF DIVERSION: T07S R13E S13 NENENE Within GOODING County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	DOMESTIC 23 HOME SITES	01-01 12-31	0.23 CFS

PLACE OF USE: DOMESTIC Within GOODING County
T07S R13E S13 SWNE SENE

PROPERTY IS ALSO KNOWN AS LOTS 1-15 NORWOOD SUBDIVISION AND
TAX LOTS 29, 46, 47, 54-58 LOCATED IN THE S1/2NE1/4, SEC. 13,
T 07S, R 13E, BM, GOODING COUNTY, IDAHO.

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.



DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

1997 DEC 11 PM 4:13
DISTRICT COURT-5TH JUDICIAL
TWIN FALLS COUNTY, 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

) Subcase 36-15240
)
)

Case No. 39576

) **ORDER ADOPTING SPECIAL**
) **MASTER'S REPORT AND**
) **RECOMMENDATION**
)

**Challenge to Special Masters Report and Recommendation.
Report and Recommendation Adopted. Partial Decree of Disallowance Ordered.**

Attorney:

Ronald H. Adams, Francis Adams, pro se, Challengers

I.

FACTS AND PROCEDURAL HISTORY

This is a *Challenge* to the *Report and Recommendation* issued by the Special Master for water right claim 36-15240 filed by Norwood Subdivision, Ruby Springs Water Co. This right was recommended in the *Director's Report for Reporting Area 3 (Basin 36)*.

The Claimant, Norwood Subdivision, Ruby Springs Water Co., did not file an objection to the Director's Recommendation for 36-15240. The Adamses filed a *Motion to File a Late Claim* in 36-15240, which was granted by the Special Master. Trial on this subcase was held before the Special Master. The Claimant Norwood Subdivision, Ruby Springs Water Co., chose not to appear at trial. Ronald and Francis Adams appeared *pro se*. A *Preliminary Special Master's*

Report and Recommendation was filed, recommending that the Adamses not be granted a partial decree based on claim 36-15240. The Adamses filed a *Challenge to the Special Master's Report and Recommendation*. A hearing on the matter was held before the Presiding Judge.

The Adamses' *Challenge* arises out of the same factual circumstances as their challenge to claim 36-07092A. Claim 36-07092A was based on a license issued to Norwood Subdivision, Ruby Springs Water Co., for the irrigation of 55 acres. IDWR investigated claim 36-07092A and determined that Norwood Subdivision, Ruby Springs Water Co., was a municipal provider. As a municipal provider, Norwood Subdivision, Ruby Springs Water Co., was allowed to use a portion of water right 36-07092A for domestic purposes. IDWR assigned a new claim number for the water used by Norwood Subdivision, Ruby Springs Water Co., for domestic purposes, claim 36-15240. Claim 36-15240 was quantified by granting an allowance of .01 cfs per household lot which resulted in a quantity of .23 cfs. The irrigation portion of 36-07092A retained the original number and was recommended in favor of Norwood Subdivision, Ruby Springs Water Co.

II.

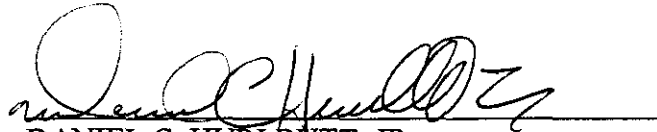
ANALYSIS

The history of License 36-07092A is set forth in this court's ***Order Adopting Special Master's Report and Recommendation*** for Subcase 36-07092A attached as Exhibit A. The Adamses provided identical legal arguments in their *Challenges* to both 36-07092A and 36-15240. Resolution of the Adamses' *Challenge* to claim 36-15240 is based on the same analysis under the same principles of law as their challenge to 36-07092A. Adamses essentially seek inclusion of two lots they own in the domestic right recommended to Norwood Subdivision Ruby Springs Water Co. The only difference between the *Challenge* in this subcase and the *Challenge* in Subcase 36-07092A is the purpose of use. In this subcase, the purpose of use is domestic. Water used by municipalities for domestic purposes is subject to the same "stubbed in" policy regarding lots as the irrigation claim in Subcase 36-07092A. Therefore, for the reasons set out in this court's opinion in Subcase 36-07092A, the Adamses' *challenge* in Subcase 36-15240 fails to overcome the prima facie effect of the Director's Report. The ***Special Master's Report***

and Recommendation is ADOPTED; the Adamses' *challenge* is DENIED, and right no. 36-15240 shall be decreed as recommended.

IT IS SO ORDERED.

DATED December 11, 1997

A handwritten signature in black ink, appearing to read "Daniel C. Hurlbutt, Jr.", written over a horizontal line.

DANIEL C. HURLBUTT, JR.

Presiding Judge

Snake River Basin Adjudication

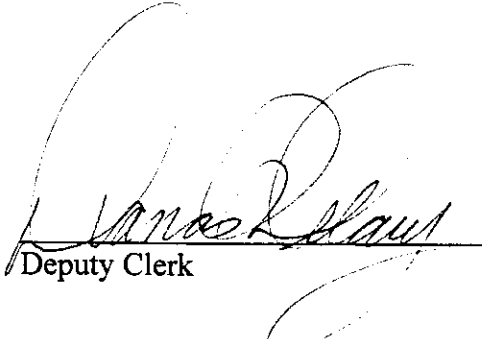
CERTIFICATE OF MAILING

I certify that a true and correct copy of this ***ORDER ADOPTING SPECIAL MASTER'S REPORT AND RECOMMENDATION*** was mailed on December 10, 1997, with sufficient first-class postage to the following:

Norwood Subdivision
Ruby Springs Water Co
2638 Access Road N
Hagerman, ID 83332

Ronald and Francis Adams
3028 Chisholm Drive
Hagerman, Id 83332

IDWR
Adjudication Bureau
PO Box 83720
Boise, ID 83720-0098



Deputy Clerk