

JUN - 2 2003

Department of Water Resources

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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	)	Subcase No.: 37-20041
	)	
Case No. 39576	)	MOTION FOR AN ORDER
	)	DIRECTING IDWR TO ISSUE A
	)	CORRECTED DIRECTOR'S REPORT
_____	)	

On July 31, 1998, the United States Department of Interior, Bureau of Land Management ("BLM"), filed its claim for water right 37-20041 with the Idaho Department of Water Resources ("IDWR"). On March 3, 1999, IDWR issued the Director's Report for domestic and stockwater claims in Basin 37 (hereinafter "Director's Report"), which included IDWR's recommendation in Subcase No. 37-20041. The Director's Report incorrectly reported the claimed Point of Diversion ("POD") and the Place of Use ("POU"). On September 10, 1999, BLM filed an Objection to the Director's Report with the SRBA Court. In that Objection BLM gave notice that the Point of Diversion (hereinafter "POD") and the Place of Use (hereinafter "POU") for

water right 37-20041 were incorrect as recommended.^{1/}

Since IDWR is not a party to the adjudication, the department was not in a position to respond to the BLM Objection. Moreover, none of the parties who objected to the BLM claim raised issues that affected either the POD or the POU. Furthermore, because the other parties to the subcase have all withdrawn their objections, BLM also does not have available any of the normal avenues wherein the disparity between the original claim and the Director's Report recommendation would be addressed and resolved, such as settlement or trial on the merits. Also, because there are no other parties remaining in the subcase, it is our understanding that an SF-5 Stipulated Elements of a Water Right is not the correct procedural mechanism to correct the error.^{2/}

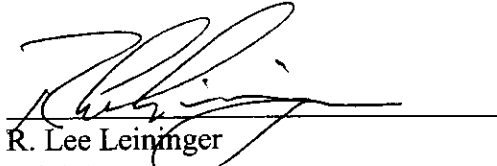
Because the BLM the POD and POU that have been recommended by IDWR for water right 37-20041 are reported incorrectly, and in view of the fact that other means of correcting the error are unavailable, the United States respectfully requests that the Court order IDWR to produce an amended Director's Report which accurately reflect the locations of the point of diversion and place of use as originally claimed. A proposed Amended Director's Report is attached.

DATED this 28th day of May, 2003.

^{1/} Because Notices of Error to IDWR are not available for *de minimis* claims, the SF-1 Objection form was the only means available to BLM for giving notice that the POD and POU described in the Director's Report did not match the information that BLM had submitted in the water right claim. BLM attached a copy of the original claim to the Objection form, along with diagrams that identified the correct locations of the POD and POU.

^{2/} Even if an SF-5 were filed, IDWR still would not sign off on the correction because the department does not give concurrence on federal reserved water rights.

Respectfully submitted,



R. Lee Leininger
Trial Attorney
United States Department of Justice

CERTIFICATE OF SERVICE

I certify that on this 28th day of May, 2003, I served a true and correct copy of foregoing Motion upon the following individuals by serving as indicated, postage pre-paid, addressed as follows:

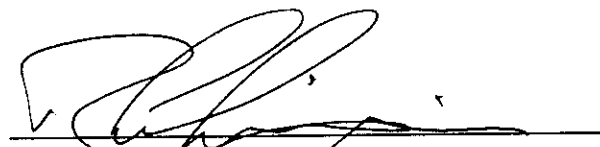
via Facsimile:

Diana R. Delaney, Chief Deputy Clerk (Original)
Snake River Basin Adjudication
DISTRICT COURT
253 Third Ave., North
Twin Falls, ID 83301

via First-Class Mail:

U.S. Department of Justice
Environment and Natural Resources
550 W. Fort Street, MSC 033
Boise, ID 83724

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098



R. Lee Leininger, Esq.

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW
PROPOSED AMENDED RECOMMENDATION

RIGHTS FROM: SOURCE: SPRING TRIBUTARY: QUIGLEY CREEK

RIGHT NUMBER: 37-20041

NAME AND ADDRESS: UNITED STATES OF AMERICA ACTING THROUGH
USDI BUREAU OF LAND MANAGEMENT
IDAHO STATE OFFICE
1387 S VINNELL WAY
BOISE ID 83709-1657

SOURCE: SPRING TRIBUTARY: QUIGLEY CREEK

QUANTITY: 0.02 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED
13,000 GALLONS PER DAY.

PRIORITY DATE: ~~01/01/1979~~ 06/28/1934

* 4/17/1926 CLAIMED UNDER FEDERAL RESERVED WATER RIGHT. *
* *
* THIS WATER RIGHT IS ALSO CLAIMED BASED ON FEDERAL LAW *
* WITH AN APRIL 17, 1926, DATE OF PRIORITY PURSUANT TO AN *
* EXECUTIVE ORDER SIGNED THE SAME DATE AND KNOWN AS PUBLIC *
* WATER RESERVE 107. *

POINT OF DIVERSION: T03N R19E S27 NWSENW Within BLAINE County
NWSWNW

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	STOCKWATER	01-01 TO 12-31	0.02 CFS

PLACE OF USE: STOCKWATER T01S R04W S23 SENW Within BLAINE County
SWNW

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - BENEFICIAL USE
BLM RECORD ID = 3705489011