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Department of Water Resources

2003 NOV -5 PM 3: 23

DISTRICT COURT - SRBA  
TWIN FALLS CO., IDAHO  
FILED *RL*

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 82-10841, <i>et al.</i>   |
|                | ) (see list of 50 subcases attached) |
| Case No. 39576 | ) (USDI/BLM)                         |
|                | )                                    |
| _____          | ) SPECIAL MASTER REPORT              |

**Findings of Fact**

The Director of the Idaho Department of Water Resources filed his *Director's Report for Domestic and Stockwater, Reporting Area 22 (IDWR Basin 82)* on March 19, 1999. The Director recommended the above 50 claims to the United States of America, Department of Interior, Bureau of Land Management, Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho, 83709-1657, for .02 cfs from springs for year-'round stockwater use in Idaho County with a priority date of January 1, 1861, based on beneficial use. For each claim, the Director also noted: "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."

On June 2, 1999, the State of Idaho filed *Objections* to priority date ("If this water right exists, the State Law based portion of this right should have a priority date no earlier than June 28, 1934.") and alleging that the water right should not exist.

On August 29, 2002, the United States and certain private parties filed a *Stipulation* in multiple subcases, including the above 50 subcases, and an ***Order Granting Withdrawal of Objections and Responses*** was entered on September 5, 2002. On April 21, 2003, an ***Order Dismissing State of Idaho Objections*** was entered based on the parties' *Stipulation to Resolve Objections*. On June 10, 2003, the United States filed a *Notice Regarding Priority Date* stating the claimed priority date should be April 17, 1926, and requesting an evidentiary hearing.

An I.C. §42-1411A hearing was held on September 25, 2003, for the United States to demonstrate a *prima facie* case of the existence of the water rights established under federal law (even though objections to the claims were filed). On the date of the hearing, the United States submitted an affidavit by Frederic W. Price (a BLM water rights specialist) who said the land surrounding the claims was unreserved federal public land as of April 17, 1926, the water sources were confirmed by field investigation and there is sufficient surface water at the sites for consumption by livestock.

#### **Conclusions of Law**

The United States of America is entitled to partial decrees adjudicating federal reserved water rights under the above 50 claims as described in the attached *Special Master Recommendations for Partial Decrees for Water Rights*.

DATED November 5, 2003.

  
TERRENCE A. DOLAN  
Special Master  
Snake River Basin Adjudication

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STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA )

CERTIFICATE OF MAILING

Case No. 39576 )

Water Right(s): 82-10841  
(SEE ATTACHED EXHIBIT A)

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 November 05, 2003, with sufficient first-class postage prepaid to the following:

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

USDI BLM

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

Robbin Hall  
ROBBIN HALL  
Deputy Clerk

CERTIFICATE OF MAILING

PAGE 1  
11/05/03

Exhibit A

Subcase Nos:

82-10841  
82-10842  
82-10843  
82-10844  
82-10845  
82-10846  
82-10847  
82-10848  
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82-10892

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DISTRICT COURT - SRBA  
TWIN FALLS CO., IDAHO

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): 82-10841  
(SEE ATTACHED EXHIBIT A)

On November 05, 2003, 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 November 05, 2003.

  
\_\_\_\_\_  
ROBBIN HALL  
Deputy Clerk

Exhibit A

Subcase Nos:

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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

DISTRICT COURT-SRBA

Fifth Judicial District  
County of Twin Falls - State of Idaho

NOV - 5 2003

By \_\_\_\_\_ Clerk  
Deputy Clerk

In Re SRBA )  
Case No. 39576 )  
PARTIAL DECREE PURSUANT TO  
I.R.C.P. 54(b) FOR  
Water Right 82-10878

NAME AND ADDRESS: USDI BLM  
IDAHO STATE OFFICE  
1387 S VINNELL WAY  
BOISE, ID 83709-1657

SOURCE: SPRING TRIBUTARY: BIG ELK CREEK

QUANTITY: 0.02 CFS

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

PRIORITY DATE: 04/17/1926

THIS WATER RIGHT IS ISSUED 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: T29N R08E S21 SENENE Within Idaho County

| PURPOSE AND<br>PERIOD OF USE: | PURPOSE OF USE | PERIOD OF USE  | QUANTITY |
|-------------------------------|----------------|----------------|----------|
|                               | Stockwater     | 01-01 TO 12-31 | 0.02 CFS |

PLACE OF USE: Stockwater Within Idaho County  
T29N R08E S21 NENE

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.

RECOMMENDATION

NOV 5 2003

Presiding Judge of the  
Snake River Basin Adjudication