

2003 DEC -9 PM 4: 23

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 82-10677, <i>et al</i>        |
|                | ) | (see list of 18 subcases in Basins 82, |
| Case No. 39576 | ) | 83, 84, 85 and 86 attached)            |
|                | ) | (USDI/BLM)                             |
| _____          | ) | <b>ORDER SETTING HEARING</b>           |

On December 5, 2003, Fredric W. Price, with the BLM-Idaho State Office, contacted the SRBA Court to inquire about 18 subcases in IDWR Basins 82-86 that were recently reviewed and recommended by the Special Master for state-law based partial decrees. Mr. Price inquired whether issues concerning the recommended basis of the claims could be resolved *sua sponte* by the Special Master or by BLM motions to alter or amend.

Mr. Price pointed out that the claims were "dual-based" (state law and PWR 107) and that *Standard Forms 5* filed for each claim did not elect a state-law basis even though each *SF-5* listed a June 28, 1934, priority date. Mr. Price said that 1934 priority date was included so that the State of Idaho, as an objector, would sign the *SF-5* for changes to other elements, such as points of diversion and places of use. Mr. Price wrote that even though the BLM filed these *Amended Claim SF-5s*, the BLM preserved its federal reserve basis (PWR 107) by including in each *SF-5* the following language after the "06/28/1934" priority date:

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.

The above language was not included in the partial decree recommended by the Special Master because the agreed priority date of June 28, 1934, indicated a state-law basis. There is no

indication that the BLM claimed federal reserved water rights based on the 1934 Taylor Grazing Act.

THEREFORE, IT IS ORDERED that a hearing on the BLM's inquiry concerning the recommended basis and priority date for the above 18 claims shall be held on **Thursday, January 15, 2004, 11:00 a.m.**, at the SRBA Courthouse, 253 3rd Avenue North, Twin Falls, Idaho.

DATED December 9, 2003.



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TERRENCE A. DOLAN  
Special Master  
Snake River Basin Adjudication

82-10677  
82-10678  
82-10729  
82-10740  
82-10749  
82-10831  
82-10865  
82-12000

83-10370  
83-10636  
83-10654

84-11925  
84-11958  
84-12045

85-15241  
85-15267  
85-15394

86-10860

## CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER SETTING HEARING was mailed on December 9, 2003, with sufficient first-class postage prepaid to the following:

Director of IDWR  
PO Box 83720  
Boise, ID 83720-0098

United States of America  
USDI BLM  
Represented by:  
US Department of Justice  
Environment & Natl' Resources  
550 West Fort Street, MSC 033  
Boise, Idaho 83724

State of Idaho  
Represented by:  
Natural Resources Div Chief  
State of Idaho  
Attorney General's Office  
PO Box 44449  
Boise, Idaho 83711-4449

Fax copies to: Larry Brown  
David Barber  
Susan Hamlin Nygard

  
Deputy Clerk