

2004 MAR 24 PM 3 02

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

|                       |   |                                           |
|-----------------------|---|-------------------------------------------|
| <b>In Re SRBA</b>     | ) | <b>Subcases 47-16044, <i>et al.</i></b>   |
|                       | ) | <b>(see list of 28 subcases attached)</b> |
| <b>Case No. 39576</b> | ) | <b>(USDI / BLM)</b>                       |
|                       | ) |                                           |
| _____                 | ) | <b>SPECIAL MASTER REPORT</b>              |

**Findings of Fact**

The Director of the Idaho Department of Water Resources filed his *Director's Report for Domestic and Stockwater, Reporting Area 12 (IDWR Basin 47)* on August 14, 1998. The Director recommended all of the above 28 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 various springs in Twin Falls County for year-'round stockwater use with a priority date of January 1, 1875, based on beneficial use. The Director also noted under 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 Reserve 107.

On February 10, 1999, the State of Idaho filed an *Objection* to priority date for each claim: "If this water right exists, the State Law based portion of this right should have a priority date no earlier than June 28, 1934." The State also alleged that the water rights should not exist.

On May 12, 2003, the United States and the State filed a *Joint Motion to Vacate Hearing on Dispositive Motions and to Proceed with Hearing under I.C. § 42-1411(a)* in multiple subcases, including the above 28 subcases. On February 24, 2004, the State filed its *Report on*

*Status of Idaho's Objections for Selected Subcases in Basins 35 and 47.* The Report noted that the State's objections in 27 of the above 28 subcases have been withdrawn.<sup>1</sup>

On March 12, 2004, the United States filed an *Affidavit of Eric V. Mayes* in 34 subcases, including the above 28 subcases.<sup>2</sup> Mr. Mayes, a natural resource specialist with the USDI / BLM in its Burley field office, stated that the claims are: 1) located on unreserved federal public domain as of April 17, 1926; 2) the lands currently remain under Department of Interior administration; 3) the water sources were confirmed by field investigation; 4) there is sufficient surface water at the sites for consumption by livestock; and 5) the sources of water are springs located at the claimed points of diversion and places of use.

### Conclusions of Law

1. The *Affidavit of Eric V. Mayes* satisfies the requirements of I.C. §42-1411A for the United States to demonstrate a *prima facie* case of the existence of the water rights established under federal law; and
2. The United States of America is entitled to partial decrees adjudicating federal reserved water rights for the above 28 claims as described in the attached *Special Master Recommendations for Partial Decrees for Water Rights*.

DATED March 24, 2004.

  
TERRENCE A. DOLAN  
Special Master  
Snake River Basin Adjudication

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<sup>1</sup> Subcase 47-16132 was not included in the State's *Report* because a *Partial Decree* in that subcase was set aside on January 12, 2004, based on the parties' *Stipulation* that a state-law based priority date was erroneous and that the subcase should proceed in accordance with I.C. § 42-1411A (a water right established under federal law).

<sup>2</sup> Mr. Mayes' *Affidavit* included subcases not yet ready for reporting by the Special Master:

47-16062 – the *Affidavit* states the priority date should be November 7, 1930, while the State's February 24, 2004 *Report* says it should be June 28, 1934. The subcase remains at issue.

47-16082, 47-16084 and 47-16086 – the *Affidavit* states the priority dates should be December 16, 1895 (state-law based), while the State's *Report* says the priority date for 47-16082 should be June 28, 1934. That suggests that the State would assert the same priority date for 47-16084 and 47-16086. Hence, the subcases remain at issue.

47-16114 and 47-16116 – the State's *Report* says that its objections continue.

47-16044  
47-16056  
47-16078  
47-16118  
47-16132  
47-16148  
47-16150  
47-16245  
47-16247  
47-16259  
47-16261  
47-16263  
47-16267  
47-16273  
47-16277  
47-16279  
47-16281  
47-16287  
47-16313  
47-16614  
47-16615  
47-16633  
47-16634  
47-16635  
47-16636  
47-16637  
47-16638  
47-16639

DISTRICT COURT-SRBA  
TWIN FALLS CO., IDAHO  
FILED \_\_\_\_\_

2004 MAR 24 PM 3 04

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

In Re SRBA )  
 )  
Case No. 39576 )  
\_\_\_\_\_ )

CERTIFICATE OF MAILING

Water Right(s): 47-16044  
(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 March 24, 2004, with sufficient first-class postage prepaid to the following:

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

CERTIFICATE OF MAILING

PAGE 1  
03/24/04

STATE OF IDAHO

Represented by:

NATURAL RESOURCES DIV CHIEF

STATE OF IDAHO

ATTORNEY GENERAL'S OFFICE

PO BOX 44449

BOISE, ID 83711-4449

USDI BLM

Represented by:

US DEPARTMENT OF JUSTICE

ENVIRONMENT & NATL' RESOURCES

550 WEST FORT STREET, MSC 033

BOISE, ID 83724

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

Exhibit A

Subcase Nos:

47-16044  
47-16056  
47-16078  
47-16118  
47-16132  
47-16148  
47-16150  
47-16245  
47-16247  
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In Re SRBA )  
Case No. 39576 )  
\_\_\_\_\_ )

NOTICE OF ISSUANCE OF  
SPECIAL MASTER'S  
RECOMMENDATION

Water Right(s): 47-16044  
(SEE ATTACHED EXHIBIT A)

On March 24, 2004, 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 March 24, 2004.

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

Exhibit A.

Subcase Nos:

47-16044  
47-16056  
47-16078  
47-16118  
47-16132  
47-16148  
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47-16245  
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47-16639

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

DISTRICT COURT - SRBA  
TWIN FALLS CO., IDAHO

FILED

2004 MAR 24 PM 3 03

In Re SRBA )  
Case No. 39576 )  
PARTIAL DECREE PURSUANT TO  
I.R.C.P. 54(b) FOR  
Water Right 47-16263

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

SOURCE: SPRING TRIBUTARY: SHOSHONE 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 DECREED 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: T16S R17E S21 SWNESW Within Twin Falls 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 Twin Falls County  
T16S R17E S21 NESW

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

RECOMMENDATION

MAR 24 2004

*Thomas A. Blum*  
SPECIAL MASTER