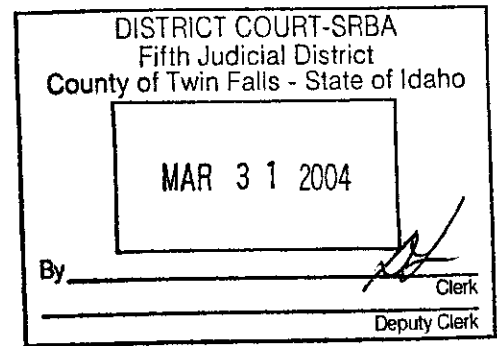




**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA	)	SPECIAL MASTER'S REPORT AND
	)	RECOMMENDATION; RECOMMENDING
	)	MODIFICATION OF STATE-BASED
	)	WATER RIGHT 57-07230 IN PART AND
	)	RECOMMENDING FEDERAL WATER
	)	RIGHT 57-11287 BE DISALLOWED
Case No. 39576	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW;
	)	FOR WATER RIGHTS 57-07230 and 57-11287
	)	

I. PROCEDURAL BACKGROUND AND FACTUAL FINDINGS

- A. The above-captioned water rights were claimed by the United States Acting Through the United States Department of Interior, Bureau of Land Management. Both water rights are claimed on the same spring source.
- B. Water right 57-07230 is based on a state issued license. A partial decree for water right 57-07230 was issued on February 9, 1998. The water right was decreed for a "stockwater" and "wildlife" purpose of use with a 1972 priority date.
- C. Water right 57-11287 is a federal reserved water right claim to the same spring source based on Public Water Reserve (PWR) 107. The two claims essentially comprise a "dual-based" water right claim which is a claim to the same source based on both state-law beneficial use and on a federal reservation.
- D. Early on in the SRBA proceedings in the three "test basins," "dual-based" water right claims were claimed and/or reported by the Idaho Department of Water Resources (IDWR) under separate water right numbers. In *Memorandum Decision and Order Re: Basin-Wide Issue 12, SRBA Case No. 91-00012* (April 25, 1997), Judge Hurlbutt ruled that although the United States could file claims as both

state-law based claims and federal reserved water right claims, only one basis for the claim could be decreed. This ruling was not appealed and continues to be the governing law-of-the-case. Several thousand of the United States' water rights have already been decreed taking into account this rule of law.

E. Subsequently, IDWR has assigned "dual-based" claims a single water right number to avoid the inadvertent issuance of two partial decrees for the same water right.

F. On August 30, 2002, with respect to water right 57-11287 and other similarly situated water rights, this Special Master issued an *Order Setting Hearing on Water Rights Claimed Pursuant to Both State and Federal Law*, which addressed the issue of how to proceed with the federal basis for the claim when a partial decree had already been issued for the state law basis.

G. On February 14, 2003, the United States filed a *Motion to Reopen Partial Decree* in 57-07230, seeking to have the Partial Decree amended to correct up an inaccurate description of the source and to have "stockwater" removed as a purpose of use. The stated purpose of removing "stockwater" is to attempt to conform to the pending PWR 107 claim with the decreed state-law based water right.

H. On April 8, 2003, pursuant to a request made by this Special Master, IDWR filed a *Competing Claims Analysis, Subcase No. 's 57-1059 et al.* describing inter alia, the relationship between water rights 57-07230 and 57-11287. IDWR's review indicated that the source for both water rights is a different spring. However, this Special Master finds the conclusion to be in error. IDWR's analysis states that the location of the spring for 57-11287 is T05S, R03W, S13, NWSW. The conclusion is based on a *Special Master's Report and Recommendation* issued for water right 57-11287 on December 9, 1996. However the location for the spring in the Special Master's Recommendation is T05S, R03W, S13, SWNW, which is the same legal description for water right 57-07230. This is also consistent with the representation made in the United States' February 14, 2003, *Motion*. This Special Master attributes IDWR's error to a clerical error.

II. CONCLUSIONS OF LAW

A. This Special Master views the two claims as alternative claims for the same water right source or rather a "dual-based" claim under separate water right numbers. Issuing two partial decrees for the same spring source is inconsistent with the ruling in Basin-Wide Issue 12. Simply removing "stockwater" as a purpose of use for the state-law based water right will not reconcile issuing two decrees for the same water source consistent with the ruling in Basin-Wide Issue 12, as only one partial decree can be issued.

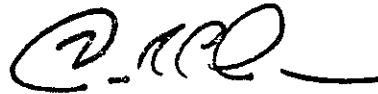
III. RECOMMENDATION

Based on the foregoing, IT IS THEREFORE RECOMMENDED, pursuant to I.R.C.P. 60(a) that the *Motion to Reopen Partial Decree* be **granted** in part to amend the Partial Decree to correct the description for the source as recommended in the attached *Special Master Recommendation for Amended Partial Decree*.

IT IS FURTHER RECOMMENDED, that the purpose of use not be amended to drop "stockwater" as a purpose of use as this will not achieve its intended purpose.

IT IS FURTHER RECOMMENDED, that the *Special Master's Report and Recommendation* issued on December 9, 1996 for water right 57-11287 be withdrawn and based on the ruling in Basin-Wide Issue 12 that water right 57-11287 be **decreed disallowed** with prejudice, subject to the following. Because the United States can elect to either have the state-law basis or the federal basis decreed for a water right, on a Motion to Alter or Amend the United States may seek to have the state-law based partial decree set aside and disallowed and seek to have a partial decree issued for water right 57-11287 based on PWR 107 for "stockwater" purpose.

DATE March 23, 2004.



THOMAS R CUSHMAN
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTERS REPORT AND RECOMMENDATION was mailed on March 31, 2004, with sufficient first-class postage to the following:

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Represented by:

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