DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED
2004 APR 9 AM 10 44

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; FINDINGS OF FACT AND CONCLUSIONS OF LAW**
Case No. 39576	)	
	)	**WATER RIGHT NOS.: EXHIBIT A (Basin 74 PWR 107 Uncontested Federal)**

I. PROCEDURAL BACKGROUND

Claims were filed by the United States Bureau of Land Management for the water rights listed on Exhibit A. The United States originally claimed these rights under both state law and as a federal reservation. The state-based portion of each right was investigated by the Idaho Department of Water Resources ("IDWR") and reported in a *Director's Report*. IDWR did not investigate the federal reservation theory because those are based on federal law. I.C. § 42-1411A.

Objections were filed by the State of Idaho. Those *Objections* were withdrawn on September 26, 2003. *Report on Status of State of Idaho's Objections in Basin 63 and 73.* An evidentiary hearing was held on November 12, 2003. At the hearing, the United States Bureau of Land Management withdrew the state basis for these claims and opted to pursue these rights solely under a federal reservation pursuant to Public Water Reserve 107 ("PWR 107"). Therefore, these claims are now uncontested claims based on federal law and may proceed under I.C. § 42-1411A. The United States BLM submitted an *Affidavit of Alan R. Bittner, (*74-11014 *et. al.*) (hereafter *Bittner*)

II. STANDARD OF REVIEW

A. Federal Reserve Water Rights

A state has plenary control of water located within its territory. *Kansas v. Colorado,* 206

U.S. 46 (1907). A claim to a federal reserve water right is an exception to a state's plenary control of water. *United States v. Rio Grande Dam and Irrigation Co.,* 174 U.S. 690 (1899). Reserved water rights may be express or implied. *United States v. New Mexico,* 438 U.S. 696 (1978). An express reservation of water is created by the explicit language in the act creating the reservation. *Id.* An implied reserved water right must be based on a reservation of land, *Arizona v. California,* 373 U.S. 546 (1963), and may be granted if the following three criteria are satisfied:

(1) An implied reservation of water exists only if necessary to fulfill the primary, not the secondary, purpose for which the reservation of land was created, *United States v. New Mexico,* 438 U.S. at 702;

(2) Without water, the purposes of the reservation must be entirely defeated, *Id.*; and

(3) The water claimed must be the minimum amount necessary to achieve the purposes of the reservation, *Id.* at 700.

B. Federal Reserved Rights Under Public Water Reserve 107

The United States Bureau of Land Management filed these claims for stockwatering based on alternative legal theories of beneficial use (pursuant to state law) and on the executive order Public Water Reserve 107 (April 17, 1926) (pursuant to federal law). All the claims at issue are for stockwater claims not to exceed 13,000 gallons per day.

The issue of whether PWR 107 created a valid basis for a federal reserved water right was previously designated in the SRBA as Basin-Wide Issue 9. ***Order Designating Basin Wide Issue No. 9*** (March 8, 1996). Judge Daniel C. Hurlbutt, Jr., held that PWR 107 did not create an express or implied reservation of water by the United States. ***Memorandum Decision and Order Re: Basin Wide Issue***, (Subcase No. 91-00009, December 9, 1996) That decision was appealed to the Idaho Supreme Court. The Supreme Court reversed, holding that PWR 107 did create a valid basis for a federal reserved stock water right. *U.S. v. Idaho,* 131 Idaho 468, 959 P.2d 449 (1998) Although the opinion states that "PWR 107 evidences an *express* intention by Congress that reserves a water right in the United States" *Id.* at 471, 959 P.2d at 452 (emphasis added), the parties and the SRBA District Court understand the holding as determining that PWR 107 creates an implied federal reserved water right. ***Memorandum Decision and Order on Challenge***, at 3, fn.1 (Dec. 28, 2001).

After the Supreme Court held that PWR 107 did create a valid basis for a federal reserve

stockwater right, the SRBA District Court took up the scope of water rights pursuant to PWR 107. The issue was whether PWR 107 creates a federal reserved water right if the spring or waterhole is tributary to a perennial stream or river and whether PWR 107 creates a federal reserved water right if the spring or waterhole is tributary to an intermittent stream or river or flows for any distance in a defined stream channel. The SRBA District Court held that "nothing in the language of PWR 107 . . . suggest[s] that such withdrawals were . . . limited to non-tributary springs and water holes." ***Memorandum Decision and Order on Challenge*** at 19 (December 28, 2001).

The ***Memorandum Decision and Order on Challenge*** also held that PWR 107 does not create a basis for rights based on stream segments which are not "springs" or "water holes." *Id.* at 22. The place of use for the water right is within the boundaries of the 40-acre section withdrawn. Water flowing from the spring or water hole outside the boundaries of the withdrawn land does not create another land withdrawal or accompanying reserved water right.

C. Uncontested Claims Based on Federal Law

Idaho Code Title 42 sets forth the SRBA procedures for both state-based and federal-based water right claims in the Snake River Basin Adjudication. Claims which are brought pursuant to Idaho state law are investigated by IDWR which recommends the elements in a *Director's Report*. Claims which are brought pursuant to federal law are not investigated by IDWR, and IDWR does not make any recommendation for federal-based claims. Instead, notice of the filing of federal-based claims is placed on the docket sheet and reported along with the *Director's Report*.

The statutory provisions for federal-law claims are found in I.C. § 42-1411A. The statute takes into account the absence of an independent investigation into federal-law claims and requires a hearing for uncontested claims. I.C. § 42-1411A(14). Since no independent review is conducted of federal-law claims, the claimant bears the burden of going forward and the burden of persuasion.

> Each claimant of a water right established under federal law has the ultimate burden of persuasion for each element of a water right. Since no independent review of the notice of claim has occurred as provided for water rights acquired under state law in a director's report, a claimant of a water right established under federal law has the burden of going forward with the evidence to establish a *prima facie* case for the water right established under federal law. All such proceedings shall be governed by the Idaho Rules of Civil Procedure and Idaho Rules of Evidence.

I.C. § 42-1411A(12).

D. Hearing Requirement and Affidavits

The hearings on these claims relied on sworn affidavits rather than on live testimony. This court has previously held that introduction of sworn affidavits complies with the hearing requirement. ***Order Accepting in Part, and Denying in Part, Special Master's Report and Recommendation*** (Subcase 36-15452, Oct. 10, 1997) (hereafter "Smith Springs") *overruled on other grounds, In Re SRBA Case No. 39576* (Minidoka Wildlife Refuge), 134 Idaho 106, 996 P.2d 806 (2000). The SRBA District Court has approved many ***Special Master's Reports and Recommendations*** for federal-based claims based on sworn affidavits rather than live testimony. The affidavits submitted by the United States meet the hearing requirement in I.C. § 42-1411A(14).

E. Quantum of Proof is "Substantial Evidence"

In ***Smith Springs***, the Court concluded that in default-type proceedings, "substantial evidence" must support each element of the claim. The analogy to default proceedings is appropriate for uncontested federal reserve rights. A claimant has the burden of proof and burden of persuasion for each element and must provide "substantial evidence" of each element.

III. FINDINGS OF FACT ON ELEMENTS

A. Ownership of the Water Right

The claims assert that the owner of these water rights is the U.S. B.L.M. The record contains the following evidence regarding ownership:

> The Master Title Plats are official business records of the United States that identify United States' property and its status. The MTP is the United States' official Record of Title. It is a graphic display of township survey data, and are (sic) drafted from information abstracted, compiled, and composed from the latest approved U.S. Government Survey Plats, survey field notes, and protraction diagrams. It describes the locations of United States property, aliquot parcels, and government surveyed "lots." I have reviewed these records and determined that the federal public domain containing the water sources asserted in the above captioned SRBA claims are located on unreserved federal public domain as of April 17, 1926; and this land currently remains under Department of Interior administration, except as described for 74-14831 below.

Bittner at 2-3, ¶ 4

There are no remaining objections to the claim of ownership by the U.S. Bureau of Land Management. There is "substantial evidence" that the United States is the owner of these rights.

B. Priority Date

These water rights were claimed based on PWR 107 with a claimed priority date of April 17, 1926. That is the day an executive order known as Public Water Reserve 107 was signed by the President of the United States. There is "substantial evidence" that the priority date is April 17, 1926.

C. Source

The claims assert various sources for these water rights. The *Affidavit of Alan R. Bittner* states that the sources for these rights are springs or water holes located at the claimed point of diversion. The sources were verified by field investigation. *Bittner* at 3-4, ¶¶ 5, 6, and 7.

In addition, IDWR investigated the source element for each right under the state basis and submitted a *Director's Report* with specific sources determined for each water right. There is "substantial evidence" of the individual sources for each right.

D. Quantity

The quantity claimed for these water rights is 13,000 gallons or less per day. The *Affidavit of Alan R. Bittner* states that for each water right there is sufficient surface water for consumptive use by livestock. *Bittner* at 4, ¶7. In addition, IDWR investigated the quantity element for each right and submitted a *Director's Report* with specific quantities determined for each water right. There is "substantial evidence" of the quantity for each right.

E. Point of Diversion

Each claim asserted a point of diversion that was expressed with a legal description. In addition, IDWR investigated the point of diversion element for each right under the state basis and submitted a *Director's Report*. The *Director's Report* for these rights contained determinations of the claimed points of diversion. There is "substantial evidence" of the points of diversion for each right.

F. Purpose of Use

The claimed purpose of use for each of these rights is "stockwater." The United States asserted that a field investigation conducted by the U.S. confirmed that sufficient surface water exists for consumptive use by livestock. *Bittner* at 4, ¶7. There is "substantial evidence" that the purpose of use is "stockwater."

G. Period of Use

The claimed period of use for each of these stockwater rights is January 1st to December

31st of each year. The United States did not assert that these claims had been used for stockwatering, merely that "there is sufficient water at this site for consumptive use by livestock." However, these claims are not now based on beneficial use, but are based on a federal reservation under PWR 107. The purpose of PWR 107 was to reserve land to avoid monopolization of the springs or water holes.

IDWR also investigated the period of use element and submitted a *Director's Report* with a determination that period of use was year round. There is "substantial evidence" of the period of use for each water right.

H. Place of Use

Each claim asserted a place of use that was described by a legal description. In addition, IDWR did investigate these rights under the state basis. The *Director's Report* for these rights concluded that the claimed places of use were correct. There is "substantial evidence" of the claimed places of use.

IV. CONCLUSION

Therefore, based on the files for these subcases and the record contained therein, IT IS RECOMMENDED that these water rights be **decreed** with the elements set forth in the attached ***Special Master's Recommendations for Partial Decree.***

DATED: April 9, 2004

BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

EXHIBIT A

Subcase Nos:

74-11014	74-11172	74-11383	74-11599	74-11825	74-12078
74-11016	74-11174	74-11397	74-11603	74-11827	74-12080
74-11018	74-11180	74-11401	74-11605	74-11829	74-12094
74-11020	74-11186	74-11403	74-11611	74-11849	74-12100
74-11022	74-11190	74-11405	74-11613	74-11857	74-12102
74-11028	74-11192	74-11409	74-11615	74-11881	74-12104
74-11030	74-11196	74-11415	74-11617	74-11903	74-12112
74-11032	74-11198	74-11439	74-11621	74-11905	74-12114
74-11034	74-11202	74-11441	74-11625	74-11907	74-12122
74-11036	74-11206	74-11445	74-11627	74-11910	74-12126
74-11048	74-11208	74-11447	74-11629	74-11914	74-12136
74-11052	74-11210	74-11449	74-11631	74-11920	74-12144
74-11054	74-11222	74-11451	74-11641	74-11924	74-12148
74-11056	74-11224	74-11453	74-11643	74-11926	74-12152
74-11058	74-11226	74-11455	74-11645	74-11928	74-12162
74-11060	74-11228	74-11459	74-11647	74-11930	74-12164
74-11062	74-11232	74-11461	74-11649	74-11936	74-12166
74-11064	74-11234	74-11463	74-11651	74-11938	74-12168
74-11066	74-11242	74-11467	74-11655	74-11940	74-12170
74-11068	74-11244	74-11469	74-11663	74-11942	74-12172
74-11070	74-11248	74-11471	74-11665	74-11944	74-12174
74-11072	74-11250	74-11477	74-11677	74-11946	74-12176
74-11074	74-11252	74-11479	74-11679	74-11948	74-12178
74-11076	74-11264	74-11481	74-11687	74-11950	74-12180
74-11078	74-11270	74-11483	74-11697	74-11952	74-12186
74-11080	74-11272	74-11485	74-11699	74-11954	74-12188
74-11082	74-11276	74-11487	74-11701	74-11962	74-12190
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74-11124	74-11341	74-11583	74-11793	74-12058	74-12248
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74-11148	74-11371	74-11593	74-11819	74-12066	74-12258
74-11160	74-11377	74-11595	74-11821	74-12068	74-12260
74-11168	74-11381	74-11597	74-11823	74-12074	74-12262

(Subcase list: B74SPLIT)
4/09/04

EXHIBIT A

Subcase Nos:

74-12264	74-12428	74-12598	74-12780	74-13132	74-13384
74-12266	74-12430	74-12600	74-12792	74-13134	74-13386
74-12268	74-12436	74-12604	74-12794	74-13136	74-13390
74-12270	74-12444	74-12608	74-12798	74-13156	74-13392
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74-12286	74-12458	74-12634	74-12830	74-13200	74-13406
74-12288	74-12466	74-12636	74-12834	74-13202	74-13408
74-12290	74-12468	74-12638	74-12838	74-13206	74-13410
74-12292	74-12472	74-12648	74-12842	74-13208	74-13412
74-12294	74-12474	74-12650	74-12850	74-13224	74-13414
74-12296	74-12478	74-12652	74-12852	74-13226	74-13420
74-12298	74-12480	74-12654	74-12858	74-13228	74-13422
74-12300	74-12482	74-12656	74-12862	74-13246	74-13438
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74-12304	74-12490	74-12662	74-12872	74-13262	74-13452
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74-12422	74-12586	74-12770	74-13108	74-13378	74-13666
74-12424	74-12588	74-12776	74-13112	74-13380	74-13668
74-12426	74-12590	74-12778	74-13130	74-13382	74-13670

(Subcase list: B74SPLIT)
4/09/04

EXHIBIT A

Subcase Nos:

74-13674	74-13838	74-14012	74-14778	74-14846	74-14905
74-13676	74-13842	74-14014	74-14779	74-14847	74-14906
74-13678	74-13848	74-14016	74-14781	74-14848	74-14907
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74-13682	74-13858	74-14020	74-14787	74-14850	74-14909
74-13686	74-13860	74-14024	74-14788	74-14851	74-14910
74-13688	74-13878	74-14026	74-14790	74-14852	74-14911
74-13694	74-13880	74-14028	74-14791	74-14853	74-14913
74-13696	74-13888	74-14030	74-14792	74-14854	74-14915
74-13698	74-13890	74-14032	74-14793	74-14855	74-14916
74-13704	74-13898	74-14034	74-14794	74-14856	74-14917
74-13708	74-13912	74-14036	74-14795	74-14857	74-14918
74-13710	74-13916	74-14038	74-14796	74-14858	74-14919
74-13712	74-13918	74-14040	74-14797	74-14859	74-14920
74-13714	74-13922	74-14046	74-14798	74-14860	74-14921
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74-13766	74-13950	74-14076	74-14819	74-14877	
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74-13780	74-13958	74-14088	74-14822	74-14882	
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74-13790	74-13968	74-14098	74-14826	74-14885	
74-13792	74-13974	74-14100	74-14827	74-14886	
74-13794	74-13976	74-14104	74-14828	74-14887	
74-13798	74-13978	74-14106	74-14829	74-14888	
74-13800	74-13980	74-14112	74-14830	74-14889	
74-13804	74-13982	74-14116	74-14832	74-14890	
74-13806	74-13984	74-14120	74-14833	74-14891	
74-13808	74-13986	74-14122	74-14834	74-14892	
74-13810	74-13988	74-14124	74-14835	74-14893	
74-13812	74-13990	74-14126	74-14836	74-14894	
74-13814	74-13992	74-14128	74-14837	74-14896	
74-13818	74-13998	74-14130	74-14838	74-14897	
74-13820	74-14000	74-14132	74-14840	74-14899	
74-13822	74-14002	74-14136	74-14841	74-14900	
74-13824	74-14004	74-14142	74-14842	74-14901	
74-13826	74-14006	74-14773	74-14843	74-14902	
74-13828	74-14008	74-14776	74-14844	74-14903	
74-13830	74-14010	74-14777	74-14845	74-14904	

(Subcase list: B74SPLIT)
4/09/04

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
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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 Case No. 39576	)))))	NOTICE OF ISSUANCE OF SPECIAL MASTER'S RECOMMENDATION Water Right(s): 74-11014 (SEE ATTACHED EXHIBIT A)

On April 09, 2004, Special Master BRIGETTE BILYEU 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 April 09, 2004.

Janet Connell
JANET CONNELL
Deputy Clerk

Exhibit A

Subcase Nos:

74-11014	74-11172	74-11383	74-11599	74-11825	74-12078
74-11016	74-11174	74-11397	74-11603	74-11827	74-12080
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74-11020	74-11186	74-11403	74-11611	74-11849	74-12100
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74-11028	74-11192	74-11409	74-11615	74-11881	74-12104
74-11030	74-11196	74-11415	74-11617	74-11903	74-12112
74-11032	74-11198	74-11439	74-11621	74-11905	74-12114
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Exhibit A

Subcase Nos:

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Exhibit A

Subcase Nos:

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74-13830	74-14010	74-14777	74-14845	74-14904	

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

2004 APR 9 AM 10 44

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	CERTIFICATE OF MAILING Water Right(s): 74-11014 (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 April 09, 2004, 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

Janet Connell
JANET CONNELL
Deputy Clerk

Exhibit A

Subcase Nos:

74-11014	74-11172	74-11383	74-11599	74-11825	74-12078
74-11016	74-11174	74-11397	74-11603	74-11827	74-12080
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Subcase Nos:

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Subcase Nos:

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74-13710	74-13916	74-14038	74-14796	74-14858	74-14919
74-13712	74-13918	74-14040	74-14797	74-14859	74-14920
74-13714	74-13922	74-14046	74-14798	74-14860	74-14921
74-13716	74-13926	74-14048	74-14799	74-14861	74-14922
74-13718	74-13928	74-14050	74-14800	74-14862	74-14924
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74-13722	74-13932	74-14054	74-14802	74-14864	74-14927
74-13724	74-13934	74-14056	74-14803	74-14866	74-14928
74-13728	74-13936	74-14062	74-14805	74-14867	74-14929
74-13748	74-13940	74-14064	74-14806	74-14868	74-14931
74-13750	74-13942	74-14066	74-14814	74-14869	
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74-13766	74-13950	74-14076	74-14819	74-14877	
74-13770	74-13954	74-14080	74-14820	74-14878	
74-13778	74-13956	74-14086	74-14821	74-14880	
74-13780	74-13958	74-14088	74-14822	74-14882	
74-13782	74-13960	74-14090	74-14824	74-14883	
74-13786	74-13962	74-14094	74-14825	74-14884	
74-13790	74-13968	74-14098	74-14826	74-14885	
74-13792	74-13974	74-14100	74-14827	74-14886	
74-13794	74-13976	74-14104	74-14828	74-14887	
74-13798	74-13978	74-14106	74-14829	74-14888	
74-13800	74-13980	74-14112	74-14830	74-14889	
74-13804	74-13982	74-14116	74-14832	74-14890	
74-13806	74-13984	74-14120	74-14833	74-14891	
74-13808	74-13986	74-14122	74-14834	74-14892	
74-13810	74-13988	74-14124	74-14835	74-14893	
74-13812	74-13990	74-14126	74-14836	74-14894	
74-13814	74-13992	74-14128	74-14837	74-14896	
74-13818	74-13998	74-14130	74-14838	74-14897	
74-13820	74-14000	74-14132	74-14840	74-14899	
74-13822	74-14002	74-14136	74-14841	74-14900	
74-13824	74-14004	74-14142	74-14842	74-14901	
74-13826	74-14006	74-14773	74-14843	74-14902	
74-13828	74-14008	74-14776	74-14844	74-14903	
74-13830	74-14010	74-14777	74-14845	74-14904	

2004 APR 09 PM 02:00
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	)	PARTIAL DECREE PURSUANT TO
	)	I.R.C.P. 54(b) FOR
Case No. 39576	)	
	)	Water Right 74-13420

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

SOURCE: SPRING TRIBUTARY: REESE 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: T18N R25E S33 SESWSW Within Lemhi County

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 Within Lemhi County
T18N R25E S33 SWSW

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.

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
APR 0 9 2004
SPECIAL MASTER

_____
John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication