

JUN 21 PM 1:03

FILED T-SR9A
JUN 21 2004 IDAHO**Names of Parties Filing Document:**

UNITED STATES OF AMERICA

Attorneys' Names and Addresses:

THOMAS L. SANSONETTI
 Assistant Attorney General
 Environment and Natural Resources Division

R. LEE LEININGER
 Attorney, Department of Justice
 General Litigation Section
 Environment and Natural Resources Division
 P.O. Box 663
 Washington, D.C. 20044-0663
 (202) 305-0242

**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	)	Subcase Nos.: 25-13635, 25-13637, 25-13653,
	)	65-19960, and 65-19962
	)	
Case No. 39576	)	NOTICE OF CHALLENGE

Descriptive Summary

This notice of challenge is filed by the United States with respect to the Special Master's recommendations issued in the above captioned subcases.

NOTICE

The above referenced water rights were claimed by the United States on behalf of the Bureau of Land Management based upon alternative theories of law. These water right

claims were filed under a state law based beneficial use theory and a federal law based reservation theory. At issue in this challenge notice are the decisions of the Special Master regarding the federal reservation of these water sources pursuant to Public Water Reserve No. 107 (PWR 107).

The Special Master issued separate Master's Reports and Recommendations for these water rights recommending that the federal reservation of water be denied and that the rights be decreed under the alternative state law basis. The United States filed an Amended Motion to Alter or Amend the Special Master's Report and Recommendation on May 2, 2003 requesting the master reconsider his ruling. This motion was denied in the *Order Denying Amended Motion to Alter or Amend*, dated May 24, 2004 ("Order").

Pursuant to SRBA Administrative Order No. 1 (Amended 10/16/97), ¶ 13, the United States hereby gives notice of its intent to challenge the Special Master's recommendations in these subcases.

I. Issue Challenged.

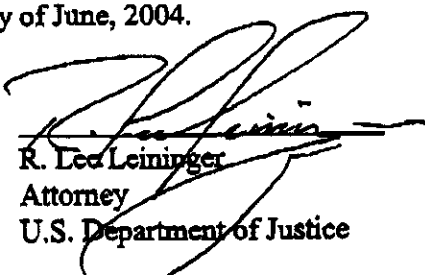
The United States gives notice of its intent to raise the following issue for review by the Presiding Judge:

- A. Did the Special Master err in ruling that the United States is not entitled to a federal reserved water right pursuant to Public Water Reserve no. 107 if there was a homestead entry application pending at the time of the reservation on the land containing the spring or waterhole?**

PWR 107 is a blanket reservation of all "vacant, unappropriated, unreserved, public land [containing] a spring or waterhole." 43 C.F.R. § 2321.1-1 (1967). The claims subject to this challenge motion involve lands containing springs or waterholes where

homestead entries were pending at the time of the PWR 107 federal reservation on April 17, 1926. The homestead entry attempts failed and the lands containing the springs or waterholes remained in federal ownership. The Special Master has concluded that "[b]ecause there was a pending homestead entry at the time of the PWR 107 withdrawal, these lands were not 'vacant, unappropriated, unreserved' lands containing a water hole." Order at 2. The United States respectfully challenges the Special Master's recommendation and will seek a ruling that Public Water Reserve No. 107 reserves water at springs and waterholes on the public domain regardless of the existence of homestead entry applications pending on the date of the reservation.

Respectfully submitted this 21st day of June, 2004.



R. Lee Leininger
Attorney
U.S. Department of Justice

CERTIFICATE OF MAILING

I certify that on June 21, 2004, a true and correct copy of the United States' Notice of Challenge, Re: Subcases 25-13635, 25-13637, 25-13653, 65-19960, and 65-19962 was served via facsimile transmission to the following persons:

U.S. Department of Justice
General Litigation Section
Environment and Natural Resources
Division
550 West Fort Street, MSC 033
Boise, ID 83724
(208) 387-0842

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098
(208) 327-7866

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83720-0098
(208) 334-2690