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DISTRICT COURT - SRBA JUL 28 2004
TWIN FALLS CO., IDAHO
FILED DEPARTMENT OF
WATER RESOURCES

2004 JUL 27 AM 11 47

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 47-15538
Case No. 39576) (split subcases 47-17145 and 47-17146)
) (USDI / BLM)
)
) SPECIAL MASTER REPORT and
) RECOMMENDATION

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 claim 47-15538 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 Bear Creek in Twin Falls County for year-'round instream 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: "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 right 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 subcase 47-15538. 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 in subcase 47-15538: "Objection continues to instream flow under PWR 28. The legal description contains land not within the legal description within PWR 28."

On April 8, 2004, the United States filed an *Affidavit of John R. Ash* in 119 subcases (47-15285, *et al.*), including subcase 47-15538. Mr. Ash, a natural resource specialist with the USDI / BLM in the Jarbidge field office located in Twin Falls, stated the following in several subcases, including 47-15538:

As these subcases describe claims to streams, the lands described in these subcases would **only** be subject to a federal reserve pursuant to PWR 28. This reservation is **not** limited to certain water source types. As these subcases do not describe springs or waterholes, PWR 107 would not apply to these subcases. . . . I was able to determine that those subcases were **also** located on unreserved deferral public domain as of May 31, 1915, which was the date of PWR 28.

On July 23, 2004, the United States and the State, with IDWR's concurrence, filed *Standard Form 5's* agreeing to split 47-15538 into 47-17145 (state law) and 47-17146 (PWR 28). An I.C. § 42-1411A hearing was held by telephone on July 22, 2004. R. Lee Leininger appeared for the United States, along with Frederic W. Price; David J. Barber appeared for the State of Idaho; and Roxanne Brown spoke for IDWR.

Conclusions of Law

1. The United States of America is entitled to partial decrees adjudicating water rights for subcases 47-17145 and 47-17146 as described in the *SF-5's* and the attached *Special Master Recommendations for Partial Decrees for Water Rights 47-17145 and 47-17146*, and
2. The United States is **not** entitled to a partial decree for 47-15538, the claim having been split into 47-17145 and 47-17146.

Recommendation

THEREFORE, IT IS RECOMMENDED that claim 47-15538 **not** be decreed and that the claim should be dismissed with prejudice.

DATED July 27, 2004.


TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

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

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

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In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
) Water Right 47-17145

NAME AND ADDRESS: UNITED STATES OF AMERICA
USDI BUREAU OF LAND MANAGEMENT
IDAHO STATE OFFICE
1387 S VINNELL WAY
BOISE, ID 83709-1657

SOURCE: BEAR CREEK TRIBUTARY: SALMON FALLS CREEK, NORTH FORK

QUANTITY: 0.02 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT AND 47-17146 SHALL NOT
EXCEED 13,000 GALLONS PER DAY.

PRIORITY DATE: 06/28/1934

POINT OF DIVERSION: T16S R13E S28 NWNENE (Instream Beginning Point) Within Twin Falls County
SWSENE (Instream Ending Point)

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 Twin Falls County
	T16S R13E S28	NENE	SENE

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

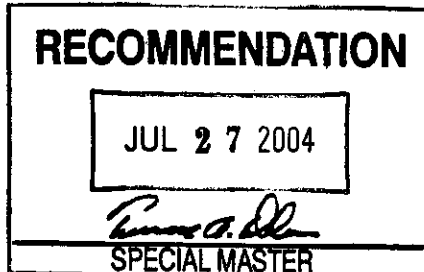
THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

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.

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



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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)

CERTIFICATE OF MAILING

Case No. 39576)
_____)

Water Right(s): 47-15538
47-17145 47-17146

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 July 27, 2004, with sufficient first-class postage prepaid to the following:

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

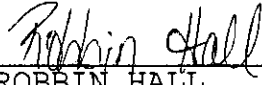
STATE OF IDAHO

Represented by:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
PO BOX 44449
BOISE, ID 83711-4449

UNITED STATES OF AMERICA
USDI BLM

Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

CERTIFICATE OF MAILING


ROBBIN HALL
Deputy Clerk

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
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In Re SRBA)
Case No. 39576)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

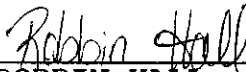
Water Right(s): 47-15538
47-17145 47-17146

On July 27, 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 July 27, 2004.



ROBBIN HALL
Deputy Clerk