RECEIVED
AUG 17 2004
DEPARTMENT OF
WATER RESOURCES

2004 AUG 16 PM 1:32
FILED
TWIN FALLS CO., IDAHO
F-SRBA

**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 47-15417** |
| **Case No. 39576** | ) | **ORDER SETTING ASIDE PARTIAL DECREE I.R.C.P. 60(a) and ORDER OF REFERENCE TO SPECIAL MASTER TERRENCE A. DOLAN** |

A ***Partial Decree*** was entered on May 4, 2004, for water right 47-15417. On August 11, 2004, the United States of America filed a *Motion to Set Aside Partial Decree and Refer Subcase to the Special Master*. The *Motion* was made pursuant to I.R.C.P. 60 (a), and alleged that a clerical error had occurred in the March 29, 2004 ***Special Master's Report*** and, consequently, the subsequent ***Partial Decree***.

The United States, Department of Interior, Bureau of Land Management (United States) claimed the above right on a "dual basis," meaning the right was claimed as a state-based, beneficial use claim and alternately as a Federal Reserve Water Right based on Public Water Reserve 107 (PWR 107). The State of Idaho and the United States filed objections to the claim as reported by the Idaho Department of Water Resources. On February 11, 2004, the parties filed a *Standard Form 5/Amended Claim* that retained the PWR 107 basis, amended the state-law based priority date to 1934 and amended elements of the legal description. The ***Special Master's Report and Recommendation*** was based on the *SF5*, but it included only the 1934 priority date, as did the ***Partial Decree***.

Because both the PWR 107 language and the State-based priority date remained on the *SF5*, an evidentiary hearing pursuant to I.C. § 42-1411A (12) was still necessary to determine the

whether a valid Federal Reserve water right existed. The Court finds that the ***Master's Report*** and ***Partial Decree*** were the result of a clerical error.

THEREFORE, IT IS ORDERED that the May 4, 2004, ***Partial Decree*** for water right 47-15417 is **set aside** pursuant to I.R.C.P. 60(a).

IT IS FURTHER ORDERED that Terrence A. Dolan is appointed special master for this subcase for the purpose of holding an evidentiary hearing pursuant to I.C. § 42-1411A(12). Special Master Dolan shall proceed under the terms of the ***Order of Reference Appointing Terrence A. Dolan Special Master for Domestic and Stockwater Claims in Reporting Area 12 (Basin 47)***, issued September 11, 1998.

IT IS SO ORDERED.

DATED August 16, 2004:

JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

**CERTIFICATE OF MAILING**

I certify that a true and correct copy of the ORDER SETTING ASIDE PARTIAL DECREE AND ORDER OF REFERENCE TO SPECIAL MASTER TERRENCE A. DOLAN was mailed on August 16, 2004, with sufficient first-class postage to the following:

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

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

Julie Murphy
Deputy Clerk