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Department of Water Resources

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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

Case No. 39576

) State-Law Based Water Rights: 57-2357, 57-2375,
) 57-1053, 57-7166, and 57-7168
)
) Federal Reserve Water Rights (PWR 107):
) 57-11286, 57-11284, 57-11195, 57-11220, and
) 57-11210
)
) ORDER SETTING HEARING ON WATER
) RIGHTS CLAIMED AND DECREED
) PURSUANT TO BOTH STATE AND
) FEDERAL LAW

Partial Decrees were issued for all of the above-captioned water rights. The notice of claim for each federal reserve water rights states that a "state license (previously) obtained on this water" and lists a corresponding state-law based water right. In other words, all of these water rights appear to have been claimed as "dual based" claims.

In his opinion in Basin-Wide Issue 12, Special Master Haemmerle stated that "[i]f the court finds that a federal reserve right exists, then the subsequent state-based claim should be dismissed as a matter of law." *Special Master's Second Amended Recommendation Re: Basin-Wide Issue 12*, subcase 91-00012 (August 12, 1996), *Affirmed* by Judge Hurlbutt, *Memorandum Decision and Order Re: Basin-Wide Issue 12* (April 25, 1997). All of the above-captioned state-law based water rights have priority dates later than the corresponding federal reserve water rights, which are based on PWR 107 and thus have a priority date of April 17, 1926. Accordingly, it appears that the state-law based water rights should have been disallowed rather than having been decreed. The United States should be prepared to address this issue at the hearing on this matter.

Additionally, the Court will ask the parties to address the discrepancy on the source element on two of the subject dual based claims (57-2375/57-11220 and 57-2357/57-11210). On these claims, the state-law based claim states that the water source is tributary to another creek, while the federal reserve claim states that the source is tributary to "sinks." The Court needs to ensure that the claims are, in fact, for the same water source, albeit under alternative legal theories.

Accordingly, IT IS HEREBY ORDERED that this matter will be heard on **December 17, 2002, at 1:30 p.m.** at the Snake River Basin Adjudication Courthouse, 253 - 3rd Avenue North, Twin Falls, Idaho. Any party wishing to participate by telephone may do so by calling 1-918-583-3445 and when prompted entering 406128.

Dated August 23, 2002.

A handwritten signature in black ink, appearing to read "R. Burdick", is written over a horizontal line.

ROGER BURDICK
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER SETTING HEARING ON WATER RIGHTS CLAIMED AND DECREED PURSUANT TO BOTH STATE AND FEDERAL LAW was mailed on August 26, 2002, with sufficient first-class postage to the following:

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