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Department of Water Resources

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN
February 14, 2003

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

Re: Correction of Subcase No. 25-13653

Dear Diana Delaney:

Enclosed, please find a copy of the corrected first page of the State of Idaho's Notice of Intent to Participate in relation to the above-mentioned subcase. A copy of this has also been faxed to you for conforming to today's fax file date. In addition, I am sending copies of the same to all parties.

Thanks for your assistance.

Very Truly Yours,

A handwritten signature in dark ink, appearing to read "Olga", followed by a long horizontal flourish.

Olga L. Valdivia
Natural Resources Division

/olv
Enclosures

Cc: R. Lee Leininger
IDWR Document Depository
United States Department of Justice

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB # 2597)
Deputy Attorney General
P.O. Box 44449
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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	)	Subcase Nos. 25-13635, 25-13637, 25-13653,
	)	65-19960, and 65-19962
	)	
	)	NOTICE OF INTENT TO PARTICIPATE
Case No. 39576	)	
	)	
	)	
	)	

A. PARTY'S NAME THAT INTENDS TO PARTICIPATE

Name: Idaho Department of Lands
Address: 954 West Jefferson Street
PO Box 83720
Boise, Idaho 83720-0050

Daytime Phone: (208) 334-0200

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COPY

B. NAMED, ADDRESS, AND TELEPHONE NUMBER OF THE ATTORNEY:

Attorney Name: LAWRENCE G. WASDEN
Attorney General
CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division
DAVID J. BARBER
Deputy Attorney General
Idaho Department of Lands
Attorney Address: 700 W. Jefferson, Room 210
P.O. Box 44449
Boise, ID 83711-4449
Attorney Phone No. (208) 334-2400
Idaho State Bar # 2597

C. SHORT STATEMENT OF THE PARTY'S POSITION ON THE ISSUES PRESENTED

I. SPECIAL MASTER CUSHMAN'S RECOMMENDATION SIMPLY FOLLOWS THE INHERENT LIMITATIONS OF PWR 107.

The United States argues that the existence of a pending homestead application is "immaterial to and does not defeat a federal reserved water right." United States' MOTION TO ALTER OR AMEND, at 2. The United States' argument ignores the plain language of PWR 107. Public Water Reserve No. 107 provides as follows:

Every smallest legal subdivision of public land surveys which is **vacant, unappropriated, unreserved public land** and contains a spring or waterhole and all land within one quarter mile of every spring or waterhole, located on unsurveyed public land, be and the same is hereby withdrawn from settlement

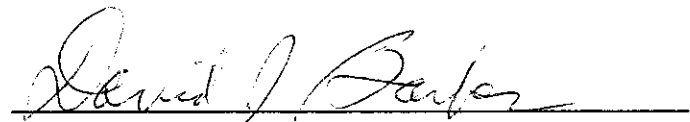
43 C.F.R. 292.1 (1938) (emphasis added). Thus, if the land where the spring was found was not "vacant, unappropriated, unreserved public land," then that spring did not satisfy the requirements of PWR 107. Fundamentally, the special master's decision in this matter simply follows the inherent limitations contained in PWR 107, because the location of a homestead on the real property meant that the land was not vacant under the public land laws.

The United States also argues that a prior appropriation water right cannot be inferred from the filing of a homestead entry. The United States' discussion of the existence or non-existence of a state water right on the PWR 107 water source is not relevant. The PWR 107 claim is defeated by the existence of an entry under the public land laws on the public domain on the date of entry of PWR 107 on April 17, 1926.

DATED this 13th day of February, 2003.

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CLIVE J. STRONG
DEPUTY ATTORNEY GENERAL
STATE OF IDAHO

A handwritten signature in cursive script, reading "David J. Barber", is written over a horizontal line.

DAVID J. BARBER
Deputy Attorney General
Natural Resources Division

CERTIFICATE OF SERVICE

I certify that on February 13, 2003, I caused the original and the copies of this NOTICE OF INTENT TO PARTICIPATE to be served on the following persons by the method designated:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

U.S. MAIL

2. One copy to the owner of the water right at the following address:

R. Lee Leininger
Trial Attorney
United States Department of Justice
Environment & Natural Resources Division
General Litigation Section
999 18th St. Suite 945
Denver, CO 80202

U.S. MAIL

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

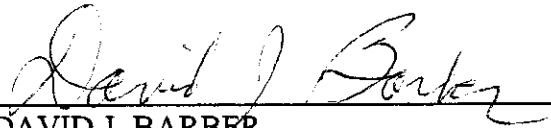
STATEHOUSE MAIL

Chief of Natural Resource Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

(not applicable)

United States Department of Justice
Environment and Natural Resources Division
550 West Fort Street, MSC 033
Boise, Idaho 83724

U.S. MAIL



DAVID J. BARBER
Deputy Attorney General