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Department of Water Resources

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED 701

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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 43-11217**

)

Case No. 39576

)

) **SPECIAL MASTER REPORT**

)

)

Findings of Fact

The Director of the Idaho Department of Water Resources filed his *Director's Reports for Irrigation and Other, Reporting Area 7, IDWR Basin 43, Part I* on September 28, 2001. The Director recommended claim 43-11217 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 a spring tributary to sinks for year-round stockwater use in Cassia County with a priority date of January 1, 1873, based on beneficial use.

On February 22, 2002, the State of Idaho was granted leave to file a late *Objection* to priority date. The United States' claim was also based on Public Water Reserve 107 (PWR 107) with a claimed priority date of April 17, 1926. On August 5, 2002, the BLM, the State and IDWR filed a *Standard Form 5* agreeing to a priority date of April 17, 1926.

On September 26, 2002, a hearing pursuant to Idaho Code § 42-1411A (12) and (14) was held for the United States to "establish a prima facie case for the water right established under federal law." The United States also filed an *Affidavit of Steven R. Davis* on November 7, 2002.

Conclusions of Law

1. Before April 17, 1926, the claimed water source was located on unreserved federal public domain land.

2. Before April 17, 1926, no water rights had been established pursuant to state law for the use of the water from the claimed water source.

3. On April 17, 1926, PWR 107 withdrew the 40 acre tract of land upon which the claimed water source is located from the public domain. That tract of land is described in the "place of use" element in the attached *Special Master Recommendation*.

4. The claimed water source consists of a spring or water hole of the type contemplated by PWR 107.

5. Contemporaneously with the withdrawal of the land, PWR 107 impliedly reserved enough water to fulfill the primary purpose of the land reservation.

6. The minimum amount of water necessary to fulfill the primary purpose of the land reservation is the amount stated in the "quantity" element on the attached *Special Master Recommendation*.

7. The United States has met its burden under to Idaho Code § 42-1411A (12) and (14) and is entitled to a partial decree adjudicating a water right as described in the *Standard Form 5* and the attached *Special Master Recommendation for Partial Decree for Water Right 43-11217*.

DATED November 13, 2002.



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO

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

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In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
) Water Right 43-11217

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

SOURCE: SPRING TRIBUTARY: SINKS

QUANTITY: 0.02 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE SHALL
NOT EXCEED 13,000 GALLONS PER DAY.

PRIORITY DATE: 04/17/1926

* 4/17/1926 CLAIMED UNDER FEDERAL RESERVED WATER RIGHT *
* *
* THIS WATER RIGHT IS 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 *
* WATER RESERVE 107. *

POINT OF DIVERSION: T13S R26E S17 SWSWSW Within Cassia County

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 Cassia County
T13S R26E S17 SWSW

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.

RECOMMENDATION

NOV 13 2002

Thomas A. Eldon
SPECIAL MASTER

Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

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STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case No. 39576

CERTIFICATE OF MAILING

Water Right(s): 43-11217

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 November 13, 2002, with sufficient first-class postage prepaid to the following:

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

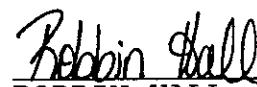
STATE OF IDAHO

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

UNITED STATES OF AMERICA ACTIN

Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724
Phone: 208-387-0835

CERTIFICATE OF MAILING


ROBBIN HALL
Deputy Clerk

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In Re SRBA)
Case No. 39576)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

Water Right(s): 43-11217

On November 13, 2002, 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 November 13, 2002.

Robbin Hall
ROBBIN HALL
Deputy Clerk