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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

Case No. 39576

) SPECIAL MASTER'S REPORT AND
) RECOMMENDATION ON FEDERAL
) RESERVED WATER RIGHT
) PURSUANT TO PWR 107
)
) FINDINGS OF FACT AND
) CONCLUSIONS OF LAW
)
) For subcase: 32-11122
)
)

I. PROCEDURAL BACKGROUND

The above-captioned water right was claimed by the United States, Department of Interior, Bureau of Land Management as a state-based stockwater right. Notice of the elements of the claim was reported by the Idaho Department of Water Resources. Objections were filed by the State of Idaho, stating that the right should not exist. Objections were filed by the claimant as to the reported legal descriptions and purpose of use descriptions.

On June 10, 2004, a *Standard Form 5/Amended Claim* signed by the claimant and the objector with IDWR concurrence was filed. The *SF5* resolved the objections, and stated that the right was now claimed on a dual basis, meaning that the right was claimed as a state-law beneficial use basis and a federal reserve water right basis pursuant to Public Water Reserve 107. An *Order Rescinding Order of Reference to Thomas R. Cushman* was entered on June 23, 2004, stating Judge John M. Melanson would proceed in the above subcases in the manner specified by *Administrative Order 1* for Special Masters. No objections were filed to the *Amended Director's Report*.

On October 19, 2004, a hearing was held on these claims pursuant to Idaho Code 42-1411A(12), which requires the United States to demonstrate a *prima facie* showing of the existence of the claimed federal reserve water right. In conjunction with that hearing, the United

States filed the *Affidavit of Alan R. Bittner* and the *Errata to the Affidavit of Alan R. Bittner*, which were admitted into evidence, for each claimed right to meet its burden. The *Errata to the Affidavit of Alan R. Bittner* stated that the elements of the right should be described as defined by the *SF5* filed with the court on June 10, 2004.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the file and record in this subcase, and the affidavits presented at the hearing on the matter, the Court makes the following findings of fact and conclusions of law:

1. Prior to April 17, 1926, no water rights had been established pursuant to state law for the use of the water from the subject water source for each claim.

3. On April 17, 1926, President Coolidge executed Public Water Reserve 107, which withdrew the 40 acre tract of land upon which the subject water source for the claims is located from the public domain. The tract of land withdrawn for each claim is described as the “place of use” element on the attached *Special Master’s Recommendations*.

4. The subject water sources for the claims consist of a spring or water hole of the type contemplated by Public Water Reserve 107.

5. Contemporaneously with the withdrawal of the land, President Coolidge impliedly reserved enough water to fulfill the primary purpose of the land reservation for each claim.

6. The minimum amount of water necessary to fulfill the primary purpose of the land reservation is the amount set forth in the “quantity” element on the attached *Special Master’s Recommendation* for each claim.

7. The United States has satisfied its burden under Idaho Code section 42-1411A(12) as to the nature and existence of the claimed federal reserve water right for each claim.

8. The elements of the federal reserved water right for each claim are set forth on the attached *Special Master’s Recommendation*.

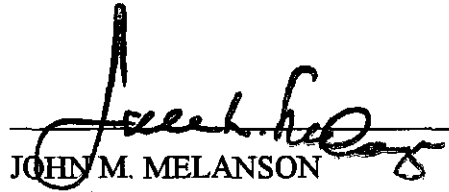
III. RECOMMENDATION

Therefore, based on the file and record herein, IT IS RECOMMENDED that the above-captioned water right be decreed as a federal reserved water right with the elements as set forth in the attached *Special Master’s Recommendation for Partial Decree Pursuant to I.R.C.P.*

54(b). It is further recommended that to the extent any concomitant state-law water rights were

claimed in the alternative for the above-captioned right, that said right not be confirmed in any partial or final decree.

Dated October 21 2004. .


JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

In Re SRBA

Case No. 39576

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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)
Case No. 39576)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

Water Right(s): 32-11122

On October 21, 2004, Special Master JOHN M MELANSON
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 October 21, 2004.


JULIE MURPHY
Deputy Clerk

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DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED *[Signature]*

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)
_____)

CERTIFICATE OF MAILING

Water Right(s): 32-11122

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 October 21, 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

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

CERTIFICATE OF MAILING

Julie Murphy PAGE 1
JULIE MURPHY 10/21/04
Deputy Clerk