



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

February 12, 2003

*VIA UNITED STATES MAIL
AND FACSIMILE (208) 736-2121*

Special Master Tom Cushman
253 3rd Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

Re: Report Regarding State Law Based Claim Nos. 57-07066, 57-07230, 57-02484, and 57-01059 and Federal Reserved Water Right Claim Nos. 57-11260, 57-11287, 57-11246, and 57-11201.

Dear Special Master Cushman:

I met with Messrs. Scott Beazer and Fred Price with the Bureau of Land Management on January 31, 2003, at their offices in Boise. The meeting was productive in resolving some factual issues regarding the above-described claims. Since this matter is set for a status conference on Friday, February 14, 2003, I thought it would be useful to you and to the United States for a written report regarding the above claims. That report is attached.

Sincerely,

A handwritten signature in cursive script, appearing to read "David J. Barber".

David J. Barber
Deputy Attorney General
Natural Resources Division

DJB/ov

Cc: Mr. Fred Price
Mr. Lee Leininger

REPORT

1. State Law Based Claim No. 57-07066 and related Federal Reserved Water Right Claim No. 57-11260.

The State Law Based Claim No. 57-07066 was withdrawn on or about February 5, 1996.

The Federal Reserved Water Right Claim No. 57-11260 as presently described contains errors. The source should be changed from Hyde Saddle Spring to Henderson Spring (South).

2. State Law Based Claim No. 57-07230 and related Federal Reserved Water Right Claim No. 57-11287.

The State Law Based Claim No. 57-07230 is shown as being partially decreed on February 9, 1998. Since I do not have a copy of this partial decree, I do not know whether the source is incorrectly described.

The Federal Reserved Water Right Claim No. 57-11287 was recommended for decree on December 9, 1996. The SRBA court has not entered a partial decree. The present described source is "Driscoll Spring, Tributary: Bates Creek." This is an incorrect description, since a Driscoll Spring exists at a different location and since the spring is tributary to sinks. The name of this source should simply be "Spring."

There is no basis for the Court to enter a partial decree in this matter, since a state based decree has already been entered. In Basin-Wide Issue No. 12, the District Court adopted the recommendation of Special Master Haemmerle in its entirety. MEMORANDUM DECISION AND ORDER RE: BASIN-WIDE ISSUE 12, at 5. Special Master Haemmerle concluded as follows with regard to dual-based claims under PWR 107 as follows:

In summary, for both express and implied reservations, the court concludes that **a state-based claim for any purpose of use** would preclude a federal reservation for the same water where the state-based claim has an earlier priority date. On the other hand, if a federal reservation predates a state-based claim, then the earlier federal reservation precludes the state-based claim.

SPECIAL MASTER'S SECOND AMENDED RECOMMENDATION RE: BASIN-WIDE ISSUE 12, at 13 (emphasis added). Here, the federal reservation predates the state-based water right, but the state-based water right has already been decreed. The United States really has two options. It can opt to live with the state-based decree and to have its PWR 107 based claim disallowed. In the alternative, it can agree to the disallowal of its prior decree entered for its state-based claim and get the PWR 107 claim decreed. The suggestion by the United States that only the stockwater purpose of use be deleted from the decree entered for State Law Based Claim No. 57-07230 would not be allowed under the law of the case. Regardless of what the court does on these legal issues, the court should correct the factual errors described above.

3. State Law Based Claim No. 57-02484 and related Federal Reserved Water Right Claim No. 57-11246.

The State Law Based Claim No. 57-02484 is shown as being partially decreed on November 26, 1997. Since I do not have a copy of this partial decree, I do not know whether the source is incorrectly described. But the Director's Report describes the source as "Red Bluff Spring, Tributary: Wilson Creek," and this description is incorrect. The correct description is "Spring, Tributary: Sinks."

Federal Reserved Water Right Claim No. 57-11246 on December 26, 1996. The SRBA court has not entered a partial decree. There is no basis for the Court to enter a partial decree in this matter, since a state based decree has already been entered. In Basin-Wide Issue No. 12, the District Court adopted the recommendation of Special Master Haemmerle in its entirety. MEMORANDUM DECISION AND ORDER RE: BASIN-WIDE ISSUE 12, at 5. Special Master Haemmerle concluded as follows with regard to dual-based claims under PWR 107 as follows:

In summary, for both express and implied reservations, the court concludes that **a state-based claim for any purpose of use** would preclude a federal reservation for the same water where the state-based claim has an earlier priority date. On the other hand, if a federal reservation predates a state-based claim, then the earlier federal reservation precludes the state-based claim.

SPECIAL MASTER'S SECOND AMENDED RECOMMENDATION RE: BASIN-WIDE ISSUE 12, at 13 (emphasis added). Here, the federal reservation predates the state-based water right, but the state-based water right has already been decreed. The United States really has two options. It can opt to live with the state-based decree and to have its PWR 107 based claim disallowed. Or, in the alternative, it can agree to the disallowal of its prior decree entered for its state-based claim and get the PWR 107 claim decreed. The suggestion by the United States that only the stockwater purpose of use be deleted from the decree entered for State Law Based Claim No. 57-07230 would not be allowed under the law of the case.

4. State Law Based Claim No. 57-01059 and Federal Reserved Water Right Claim No. 57-11201.

These two claims were believed to overlap, but they are two separate springs. The location of the spring for Federal Reserved Water Right Claim No. 57-11201 is as follows: NW¼SE¼, section 08. Twp. 02 South, Rge. 04 West.