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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

) Subcases: 36-07134 and 36-07135

Case No. 39576

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I. PROCEDURE

The Director of the Idaho Department of Water Resources filed his *Director's Report, Part I, for Reporting Area 3 (Basin 36)* on November 2, 1992. The Director recommended claims 36-07134 and 36-07135 to the Minidoka County School District #331, 633 Fremont Avenue, Rupert, Idaho, 83350-1610, each for .38 cfs from groundwater to irrigate 19 acres in Minidoka County from April 1 to October 31 with a priority date of June 24, 1970, based on licenses. *Partial Decrees* for each claim were entered on January 15, 1998.

On August 2, 1999, the Director filed his *Supplemental Director's Reports, Reporting Area 3, IDWR Basin 36, Regarding Revision of the Following: Period of Use (For Irrigation Water Uses), Conjunctive Management General Provisions*. For each of the School District's water rights, the Director recommended a general irrigation season of May 1 to November 1 together with a subordination remark.

The School District filed an *Objection to Irrigation Season and/or Conjunctive Management General Provisions* in each subcase on September 9, 1999, alleging:

The season of use should be the general season of use from 3/15 – 11/15, and should not be subordinated.

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This right uses recaptured project water from Minidoka Irrigation District and thus should not be subjected to the conjunctive management provisions.

On February 14, 2005, the School District filed a *Standard Form 5*, with IDWR's concurrence, for each water right agreeing to the recommended period of use plus the following remark pertaining to conjunctive management:

The water used by this right is: (1) used in lieu of surface water from Minidoka Irrigation District that the water right holder is entitled to receive, the place of use being within Minidoka Irrigation District and the lands being included in and assessed by Minidoka Irrigation District, (2) from a perched aquifer created by application of surface water by the Minidoka Irrigation District, and (3) recaptured under this right before it reaches the Eastern Snake Plain Aquifer. Therefore, this right is not subject to a delivery call against or any mitigation requirements that may be imposed on Eastern Snake Plain Aquifer ground water rights.

On February 15, 2004, Special Master Terrence A. Dolan issued a *Special Master's Report, Findings of Fact and Conclusions of Law* for the above-captioned subcases based on the *SF-5*. After reviewing the *Special Master's Recommendation*, consistent with Court's duty of applying the law to the facts and ensuring that rights are decreed consistent with the law, the Court finds that there are some factual and legal issues with the above remark that need to be clarified before *Partial Decrees* may be entered. Specifically:

1. Is the hydrogeology one of a "perched aquifer" or more akin to the "groundwater mounding" resulting from surface drainage by the Minidoka Irrigation District water? The remark is not clear concerning whether the groundwater would return to the ESPA but for the recapture of the groundwater. The issue concerning the recapture of mounded groundwaters is currently at issue in numerous subcases in Basin 35 involving Aberdeen-Springfield Canal Company, *et. al*, Consolidated Subcase 35-2315.
2. Does the inclusion of the shoulder remark which allows for the expanded irrigation season so long as it is subordinated to certain other rights, including rights from the ESPA, contradict the determination that the source is derived from a perched aquifer

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and is recaptured and reused water? If so, does the contradiction make the subordination language ambiguous or illusory? If the source for the water rights is derived solely from a perched aquifer and is recaptured water, then what is the reason for subordination to other rights with sources from the ESPA?

3. Is the Court exceeding its jurisdiction by decreeing that the water right is not subject to a delivery call or any mitigation requirements imposed on ESPA groundwater rights? Is the determination that the right is not subject to a call more appropriately an administrative determination that should be made when and if the issue arises? Is the determination consistent with the Basin-Wide 5 general provision that provides for the identification of sources that will be administered separately from other sources but does not provide which rights are or are not subject to a delivery call?

The *Special Master's Recommendation* did not expand on or make conclusions beyond recommending what was ultimately agreed upon by the School District and IDWR. Therefore, the record does not provide any information that would be helpful to the Court in regards to answering these questions. The Special Master was provided by IDWR with a copy of an expert report relied on by the School Dist., which was brought to the Court's attention, however, the report was not part of the record and therefore it would not be proper for the Court to consider unless made part of the record.

II. NOTICE OF HEARING

Therefore, IT IS ORDERED that a hearing will be held on this matter on **June 21, 2005 at 1:30 p.m. at the Adams County Courthouse, 201 Industrial Ave. Council, Idaho**, for purposes of having the Claimant and IDWR briefly explain the settlement in the context of these issues. Telephone participation will be available by calling 1-918-583-3445 and entering 406128 when prompted.

Dated

May 6, 2005

John L. Melanson

JOHN MELANSON
Presiding Judge
Snake River Basin Adjudication

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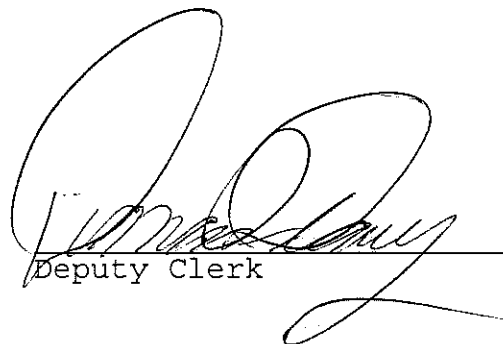
CERTIFICATE OF MAILING

I certify that a true and correct copy of the NOTICE OF HEARING FOR CLARIFICATION ON SF-5 PRIOR TO ENTRY OF PARTIAL DECREE was mailed on May 06, 2005, with sufficient first-class postage to the following:

MINIDOKA COUNTY SCHOOL
SCHOOL DISTRICT NO 331

Represented by:
ROGER D LING
PO BOX 396
RUPERT, ID 83350
Phone: 208-436-4717

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

A large, stylized handwritten signature in black ink, likely belonging to the Deputy Clerk, is written over a horizontal line.