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Department of Water Resources

DISTRICT COURT-SRBA  
TWIN FALLS CO., IDAHO  
FILED \_\_\_\_\_

2005 JUN 6 PM 4 13

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  
) RECOMMENDATION ON  
) MOTION TO FILE LATE CLAIM  
)  
)  
)

) WATER RIGHT NO.: 29-00239  
)  
\_\_\_\_\_)

I. PROCEDURAL HISTORY

A *Motion to File Late Notice of Claim* was filed in subcase number 29-00239 on July 26, 2004 by the Shoshone-Bannock Tribes. The SRBA District Court issued an *Order of Reference to Special Master Brigitte Bilyeu* on September 23, 2004. A status conference was held on May 25, 2005.<sup>1</sup>

The Shoshone-Bannock Tribes filed a *Motion to Correct Clerical Errors Pursuant to Rule 60(a)* and a *Memorandum in Support of Motion to Correct Clerical Errors Pursuant to Rule 60(a)* on January 5, 2005. On January 24, 2005, the United States joined in the Tribes' *Motion*. See, *United States' Joinder in Shoshone-Bannock Tribes' Motion to Correct Clerical Errors Pursuant to Rule 60(a)*. A Status Conference was held January 26, 2005. At that time, the Shoshone-Bannock Tribes explained that the *Motion* sought to correct elements of water rights previously decreed in the SRBA. Specifically, water right 29-00239 was omitted at the conclusion of the *Partial Final Consent Decree Determining the Rights of the Shoshone-Bannock Tribes to the*

<sup>1</sup> It should be noted that the Shoshone-Bannock Tribes withdrew with prejudice their related claim to 29-02322. See, *Withdrawal of Motion to File Late Claim* (December 6, 2004) A *Special Master's Report and Recommendation* was issued on December 17, 2004 recommending 29-02322 not be included in any *Partial Decree*.

*Use of Water in the Upper Snake River Basin* (August 2, 1995) (hereafter "Consent Decree") The elements for 29-00239 were omitted although the water right was referred to in the *Partial Final Consent Decree*, was referred to in the agreement that resolved the Shoshone-Bannock Tribes water rights (*The 1990 Fort Hall Indian Water Rights Agreement*) and was referred to in a prior decree relating to tribal rights, *United States v. Hibner*. The Shoshone-Bannock Tribes and the United States determined that they needed to file the *Motion to Correct Clerical Errors* in the subcase in which the *Consent Decree* was filed, subcase no. 92-22.

On March 25, 2005 the Shoshone-Bannock Tribes filed a *Motion to Correct Clerical Errors* in subcase 92-22. That motion asked the court to correct the *Consent Decree*. A hearing on the *Motion* was held May 25, 2005. The United States joined in the *Motion* during the hearing. The *Motion to Correct Clerical Errors* in 92-22 was **granted**. Following the granting of the *Motion to Correct Clerical Errors* in 92-22, the Shoshone-Bannock Tribes and the United States moved to withdraw their *Motion to Correct Clerical Errors Pursuant to Rule 60(a)* that was filed in 29-00239.

## II. CONCLUSIONS OF LAW

THEREFORE, IT IS RECOMMENDED that the *Motion to File Late Claims* and the *Motion to Correct Clerical Errors Pursuant to Rule 60(a)* filed in 29-00239 be **denied**. It is this Special Master's understanding that the parties concur in the denial of this *Motion* because the *Motion to Correct Clerical Errors* was granted in 92-22.

DATED: June 6, 2005.

  
BRIGETTE BILYEU  
Special Master  
Snake River Basin Adjudication

DISTRICT COURT-SRBA  
TWIN FALLS CO., IDAHO  
FILED \_\_\_\_\_

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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

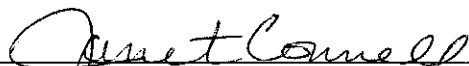
|                |   |                            |
|----------------|---|----------------------------|
| In Re SRBA     | ) | NOTICE OF ISSUANCE OF      |
|                | ) | SPECIAL MASTER'S           |
| Case No. 39576 | ) | RECOMMENDATION             |
|                | ) |                            |
| _____          | ) | Water Right (s) : 29-00239 |

On June 6, 2005, Special Master BRIGETTE BILYEU issued a SPECIAL MASTER'S RECOMMENDATION ON MOTION TO FILE ALTE CLAIM 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 28<sup>th</sup> 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 June 6, 2005.

  
JANET CONNELL  
Deputy Clerk

DISTRICT COURT-SRBA  
TWIN FALLS CO., IDAHO  
FILED \_\_\_\_\_

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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     | ) | CERTIFICATE OF MAILING     |
|                | ) |                            |
| Case No. 39576 | ) |                            |
| _____          | ) | Water Right (s) : 29-00239 |

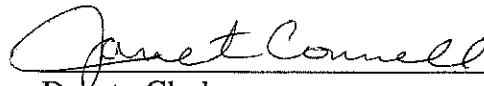
CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S  
RECOMMENDATION ON MOTION TO FILE LATE CLAIM  
was mailed on June 6, 2005, with sufficient first-class postage prepaid to the following:

Director of IDWR  
PO Box 83720  
Boise, Idaho 83720-0098

Jeanette Wolfley  
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Shoshone-Bannock Tribes  
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United States of America  
Represented by:  
US Department of Justice  
Environment & Natl' Resources  
550 West Fort Street, MSC 033  
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Deputy Clerk