

DISTRICT COURT
SNAKE RIVER BASIN ADJUDICATION
STATE OF IDAHO

RECEIVED
OCT 19 2005
Department of Water Resources

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October 18, 2005

Brian L. McMahan
PO Box 1066
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Re: Subcases: 65-6957, 65-10371, 65-2916, 65-2513, 65-2934C, 65-2943K, 65-10372, 65-2937B, 65-22967 and 65-22969

Dear Brian,

This letter is in response to your letter dated October 5, 2005, regarding separate administration of the above-listed subcases. With the exception of the two late claims (65-22967 and 65-22969), *Partial Decrees* have been issued for each of these water rights. These water right numbers are not included on the Court's *Proposed Partial Decree Pursuant to I.R.C.P. 54(b) for General Provision in Basin 65* for the reason that the water right numbers were not included in the *Director's Report for General Provisions in Basin 65*. The Court did not make its own factual inquiry into water rights that perhaps should have been included on the list for separate administration.

In issuing a partial decree for general provisions in basin 65, it is the Court's intent to simply issue a decree which summarizes and reflects the prior proceedings relative thereto. The Court does not intend to now create an opportunity for the filing of late objections to the *Director's Report* or otherwise open-up these proceedings anew.

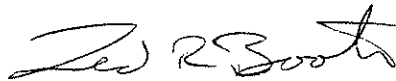
The United State Department of Interior, Bureau of Reclamation (BOR), filed an objection to each water right recommended for separate administration in the *Director's Report*. The ultimate resolution of those objections was the inclusion of the following language on the face of each individual *Partial Decree*:

Basin 65 General Provision No. 3, the Separate Streams General Provision, does not apply to appropriations of water after October 18, 1977.

This water right shall be administered as being from a separate source pursuant to Basin 65 General Provision No. 3. If the holder of this right seeks to change the right pursuant to Idaho Code 42-222 or successor statute, nothing in this general provision shall preclude any other person or entity from demonstrating that such a change in use would cause injury to its water right or from receiving any relief provided by law in the event of injury.

At this stage of the proceedings, fairness would dictate that the BOR be allowed to object to the inclusion of any water right which did not initially appear in the *Director's Report*. I do not know the current position of the parties and IDWR, but I would suggest that this matter may be amendable to resolution by the filing of a joint motion and stipulation by your clients and the BOR agreeing to add the water right numbers to the list, and moving to issue amended partial decrees in each subcase to include the above-quoted language. Concurrence by IDWR would also be essential.

In any event, absent further motion, the Court does not intend to modify the list by adding water right numbers that did not appear in the *Director's Report*.



Theodore Booth
Special Master
SRBA District Court

Cc: Susan Hamlin, IDWR
Office of the Attorney General, State of Idaho
United States Department of Justice