

2006 JAN 6 PM 3 01

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     | ) | SPECIAL MASTER'S REPORT AND |
|                | ) | RECOMMENDATION; FINDINGS OF |
| Case No. 39576 | ) | FACT AND CONCLUSIONS OF LAW |
|                | ) |                             |
| _____          | ) | WATER RIGHT NOS.: 25-13715  |

**I. PROCEDURAL BACKGROUND**

A claim was filed by the United States Fish and Wildlife for the above listed water right. The United States claimed this right as a federal reservation. IDWR did not investigate the federal reservation theory because it is based on federal law. I.C. § 42-1411A.

An *Objection* was filed by the State of Idaho, Department of Lands. The *Objection* was resolved with a *Stipulation to Resolve Objections* and a *Standard Form 5*. Therefore, this claim is an uncontested claim based on federal law.

**II. STANDARD OF REVIEW**

**A. Federal Reserve Water Rights**

A state has plenary control of water located within its territory. *Kansas v. Colorado*, 206 U.S. 46 (1907). A claim to a federal reserve water right is an exception to a state's plenary control of water. *United States v. Rio Grande Dam and Irrigation Co.*, 174 U.S. 690 (1899). Reserved water rights may be express or implied. *United States v. New Mexico*, 438 U.S. 696 (1978). An express reservation of water is created by the explicit language in the act creating the reservation. *Id.* An implied reserved water right must be based on a reservation of land. *Arizona v. California*, 373 U.S. 546 (1963), and may be granted if the following three criteria are satisfied:

- (1) An implied reservation of water exists only if necessary to fulfill the primary, not the secondary, purpose for which the reservation of land was created, *United States v. New Mexico*, 438 U.S. at 702

- (2) Without water, the purposes of the reservation must be entirely defeated, *Id.*; and
- (3) The water claimed must be the minimum amount necessary to achieve the purposes of the reservation, *Id.* at 700.

#### **B. Uncontested Claims Based on Federal Law**

Idaho Code Title 42 sets forth the SRBA procedures for both state-based and federal-based water right claims in the Snake River Basin Adjudication. Claims which are brought pursuant to Idaho state law are investigated by the Idaho Department of Water Resources (IDWR) which recommends the elements in a *Director's Report*. Claims which are brought pursuant to federal law are not investigated by IDWR, and IDWR does not make any recommendation for federal-based claims. Instead, the claimed elements are placed on the docket sheet and reported along with the *Director's Report*.

#### **C. Hearing**

An Initial hearing on this water right was held on October 5, 2005. In addition, the parties submitted the *Stipulation to Resolve Objection*. The *Stipulation* identifies water right 25-13715 as a federal reserved water right for an administrative site within the Greys Lake National Wildlife Refuge.

### **III. CONCLUSION**

Therefore, based on the file for this subcase and the record contained therein, IT IS RECOMMENDED that this water right be **decreed** consistent with the *Standard Form 5* signed by the parties and with the elements set forth in the attached *Special Master's Recommendation for Partial Decree*.

DATED: January 6, 2006.

  
\_\_\_\_\_  
BRIGETTE BILYEU  
Special Master  
Snake River Basin Adjudication

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 )  
Case No. 39576 )  
PARTIAL DECREE PURSUANT TO  
I.R.C.P. 54(b) FOR  
Water Right 25-13715

2006 JAN 6 PM 3 01

NAME AND ADDRESS: UNITED STATES OF AMERICA  
USDI FISH AND WILDLIFE SERVICE  
DIVISION OF ENGINEERING  
911 N E 11TH AVE  
PORTLAND, OR 97232-4181

SOURCE: GROUND WATER

QUANTITY: 0.04 CFS  
2.40 APY

PRIORITY DATE: 04/10/1969

LOCATION INSTREAM FLOW: T04S R43E S35 SENE Within Bonneville County

| PURPOSE AND PERIOD OF USE: | PURPOSE OF USE  | PERIOD OF USE  | QUANTITY |
|----------------------------|-----------------|----------------|----------|
|                            | Administrative  | 01-01 TO 12-31 | 0.04 CFS |
|                            |                 |                | 2.40 APY |
|                            | Stockwater      | 01-01 TO 12-31 |          |
|                            | Domestic        | 01-01 TO 12-31 |          |
|                            | Fire Protection | 01-01 TO 12-31 |          |

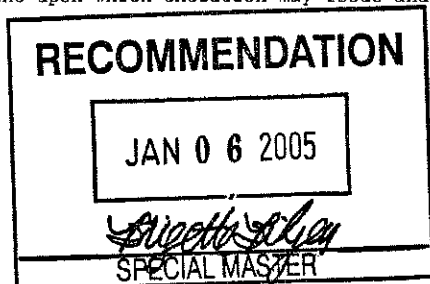
|               |                        |                          |
|---------------|------------------------|--------------------------|
| PLACE OF USE: | Stockwater             | Within Bonneville County |
|               | Same as Administrative |                          |
|               | Domestic               | Within Bonneville County |
|               | Same as Administrative |                          |
|               | Fire Protection        | Within Bonneville County |
|               | Same as Administrative |                          |
|               | Administrative         | Within Bonneville County |
|               | T04S R43E S35 SENE     | NESE                     |

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS  
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT  
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY  
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE  
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.



John M. Melanson  
Presiding Judge of the  
Snake River Basin Adjudication

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

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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 ...

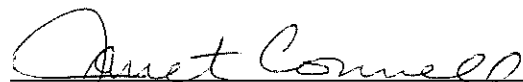
Water Right(s): 25-13715

On January 06, 2006, Special Master BRIGETTE BILYEU  
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 January 06, 2006.

  
\_\_\_\_\_  
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 )  
Case No. 39576 )  
\_\_\_\_\_ )

CERTIFICATE OF MAILING

Water Right(s): 25-13715

CERTIFICATE OF MAILING

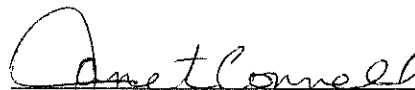
I certify that a true and correct copy of the SPECIAL MASTER'S REPORT, SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on January 06, 2006, with sufficient first-class postage prepaid to the following:

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

UNITED STATES OF AMERICA  
USDI FISH AND WILDLIFE SERVICE  
DIVISION OF ENGINEERING  
911 N E 11TH AVE  
PORTLAND, OR 97232-4181  
Phone: 503-231-6145

CERTIFICATE OF MAILING

 PAGE 1  
01/06/06  
JANET CONNELL  
Deputy Clerk