

2006 JAN 13 PM 12 08

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	)	AMENDED SPECIAL MASTER'S
	)	REPORT AND RECOMMENDATION;
Case No. 39576	)	FINDINGS OF 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.

The original *Special Master's Report and Recommendation* was filed January 6, 2006. This *Amended Special Masters' Report and Recommendation* makes no changes other than correcting the date stamp on the *Recommended Partial Decree* which was erroneously dated January 6, 2005.

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*.

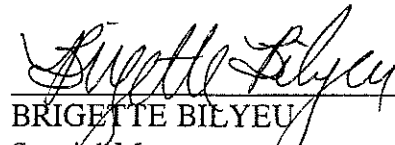
C. Hearing

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 13, 2006.


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

2006 JAN 13 PM 12 08

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

NAME AND ADDRESS: UNITED STATES OF AMERICA
USDI FISH AND WILDLIFE SERVICE
DIVISION OF ENGINEERING
911 N E 11TH AVE
PORTLAND, OR 97212-4181

SOURCE: GROUND WATER

QUANTITY: 0.04 CFS
2.40 AFY

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 AFY
	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.

RECOMMENDATION

JAN 13 2006

Dianna J. L. L.
SPECIAL MASTER

John M. Melanson
Presiding Judge of the
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)
Case No. 39576)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

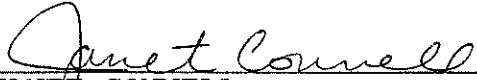
Water Right(s): 25-13715

On January 13, 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 13, 2006.


JANET CONNELL
Deputy Clerk

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

2006 JAN 13 PM 12 08

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 13, 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

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01/13/06

JANET CONNELL
Deputy Clerk