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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA
TWIN FALLS COUNTY
FILED
2007 FEB 28
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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 COURT'S INTENT TO
) ISSUE PARTIAL DECREE FOR
) FEDERAL UNCONTESTED RIGHT
) BASED ON STATE LAW AND NOTICE
) OF HEARING THEREON
)
) For water right claim: 74-15468
)

The above-captioned stockwater right was claimed by the United States Department of Interior, Bureau of Land Management (United States) pursuant to both state and federal law. The claim was reported in the *Basin 74, Part I, Reporting Area 23, Director's Report* filed on January 23, 2006. No objections were filed and the time for filing objections expired June 30, 2006.

In conjunction with the I.C. § 42-1411A hearing held for the federal basis of the claim on February 20, 2007, the United States informed the Court that the claim did not meet the factual criteria for a federal reserved water right based on Public Water Reserve 107 and that it intended to withdraw the federal basis for the claim. The United States also requested that the Court reset the matter for status conference so it could determine how to proceed on the state-law basis for the claim. The issue was raised because of the recent Idaho Supreme Court ruling in *Joyce Livestock Co. v. United States of America*, (Feb. 9, 2007), whereby the Idaho Supreme Court upheld the SRBA District Court ruling that the United States could not appropriate a beneficial use water right solely through its management of grazing allotments. See *Memorandum Decision and Order on Challenge*, Subcases 55-10135 (Joyce), 55-11061, 55-11385, 55-12452 (BLM) (Aug. 3, 2005).

NOTICE OF COURT'S INTENT TO ISSUE PARTIAL DECREE FOR FEDERAL
UNCONTESTED RIGHT BASED ON STATE LAW AND NOTICE OF HEARING THEREON

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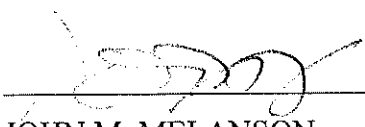
The Court does not find the *Joyce* ruling applicable to the circumstances of this particular subcase. The claim is uncontested and the time for filing objections expired June 30, 2006. More than sixty days has also elapsed since the objection period expired. I.C. § 42-1412(7). The only reason partial decrees for all of the uncontested rights in Basin 74 have yet to be issued is because of the delay in identifying overlapping contested rights. A case management report for Basin 74 was recently filed and the hearing on the uncontested rights is now set for June 19, 2007. Accordingly, the Court is free to issue partial decrees for all uncontested rights in Basin 74.

Next, because the claim is uncontested the Court need not inquire into the factual basis for the director's recommendation. Under the ruling in *Joyce*, there are still factual scenarios by which it would be legally possible for the United States to acquire a beneficial use water right such as through an agency relationship or agreement with the appropriator of the water right. Again, because the claim is uncontested the Court need not inquire into the factual basis for the recommendation in the director's report.

Accordingly, the Court intends to treat the claim the same as any other uncontested claim based on state law and issue a partial decree for the claim in conjunction with the hearing on the uncontested rights for Basin 74.

Therefore, THE FOLLOWING IS HEREBY ORDERED, a hearing will be held on this matter on **June 19, 2007, at 1:30 p.m.** at the Snake River Basin Adjudication Courthouse, 253 3rd Avenue North, Twin Falls, Idaho. Any party wishing to object or comment on the Court's proposed action shall do so at that time. Attendance at this hearing by the claimant is not required, as the Court will take the proposed action in the absence of any objection to the contrary. Telephone participation will be available by calling 1-918-583-3445 and entering 406128 when prompted.

Dated: February 28, 2007.



JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

**NOTICE OF COURT'S INTENT TO ISSUE PARTIAL DECREE FOR FEDERAL
UNCONTESTED RIGHT BASED ON STATE LAW AND NOTICE OF HEARING THEREON**

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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)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 74-15468

NAME AND ADDRESS: UNITED STATES OF AMERICA
USDI BUREAU OF LAND MANAGEMENT
IDAHO STATE OFFICE
1387 S VINNELL WAY
BOISE, ID 83709-1657

SOURCE: HAYDEN CREEK TRIBUTARY: LEMHI RIVER

QUANTITY: 0.02 CFS

The quantity of water under this right shall not exceed 13,000
gallons per day.

PRIORITY DATE: 06/28/1934

POINT OF DIVERSION: T17N R23E S22 NENESE (Instream Ending Point) Within Lemhi County
SESWSE (Instream Beginning Point)
S23 SWSWNW (Instream Beginning Point)
NWSWNW (Instream Ending Point)

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Stockwater	01-01 TO 12-31	0.02 CFS

PLACE OF USE:	Stockwater	Within Lemhi County
	T17N R23E S22	NESE SWSE
	S23	SESE SWNW

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

The quantity of water decreed for this water right is not a
determination of historical beneficial use.

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.

DRAFT

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

CERTIFICATE OF MAILING

I certify that a true and correct copy of the NOTICE OF COURT'S INTENT TO ISSUE PARTIAL DECREE FOR FEDERAL UNCONTESTED RIGHT AND NOTICE OF HEARING THEREON was mailed on February 28, 2007, with sufficient first-class postage to the following:

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

UNITED STATES OF AMERICA
USDI BUREAU OF LAND MANAGEMENT
IDAHO STATE OFFICE
1387 S VINNELL WAY
BOISE, ID 83709-1657
Phone: 208-373-4000

A handwritten signature in cursive script, reading "Julie Murphy", is written over a horizontal line.