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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

- ) ORDER TREATING PROCEEDING AS
- ) MOTION TO FILE LATE OBJECTION
- ) AND GRANTING SAME; SETTING
- ) DEADLINE FOR RESPONSES ON
- ) LIMITED ISSUE OF PRIORITY; AND
- ) SETTING DEADLINE FOR STANDARD
- ) FORM 5 FOR FEDERAL CLAIMS
- ) BASED ON STATE-LAW
- )
- ) For water right claims: 74- 15474, 74-
- ) 15475, 74-15476, 74-15478, 74-15479, 74-
- ) 15481, 74-15482, 74-15483, 74-15484, 74-
- ) 15485, 74-15486 and 74-15487
- )

The above-captioned stockwater rights were claimed by the United States Department of Interior, Bureau of Land Management (United States). The claims are based on the acquisition of the lands by the United States to which the subject water right claims are alleged to be appurtenant and were made solely pursuant to state law. All claimed priority dates preceded the priority date of June 28, 1934, which is the date of enactment of the Taylor Grazing Act. The claims were reported in the *Basin 74, Part I, Reporting Area 23, Director's Report* filed on January 23, 2006. However, due to an oversight by the Idaho Department of Water Resources (IDWR) the claims were reported as "dual-based" or pursuant to both state and federal law. Additionally, the claims were reported with priority dates of June 28, 1934, for the state-law basis as opposed to the

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earlier claimed priority dates. No objections were filed either by the United States or any other party to the adjudication.

In conjunction with the I.C. § 42-1411A hearing held for the federal basis of the claims, the United States informed the Court of the reporting error as well as of its intent to pursue the earlier priority date for the state-law basis of the claims. Previously the Court addressed the issue of filing amended director's reports to provide notice of the earlier priority dates being sought. However, prior to the hearing, the Court was unaware that the rights were actually claimed with the earlier priority date. The claims were just not recommended with claimed priority. As such, because the United States is not seeking to amend its claims and is merely seeking to have its rights decreed exactly as claimed, the filing of amended director's reports to reflect the claimed priority would be procedurally incorrect.<sup>1</sup> To place matter into context, if the director's reports had not also

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<sup>1</sup> The United States argued that an amended director's report is not required citing the *Memorandum Decision and Order Granting, In Part, and Denying, In Part, Motion to Stay Subcases ("Cranney Bros.")*, In Re SRBA Case No. 39576\* (Feb 13, 1998) (\*This case and the subsequent decision on reconsideration were docketed in the main SRBA case as opposed to individual subcase). The Court agrees that amended director's reports are unnecessary but only because the United States is not seeking to amend its claims. Rather, the United States' disagreement is with how the rights were recommended. If the United States were amending its claim to seek any earlier priority than originally claimed an amended director's report may be required to put parties to the adjudication on notice. See *AOI(4)(d)(2)(I)*(The Presiding Judge or Special Master shall determine how to proceed when an amendment is granted and whether a Supplemental Director's Report is required.). The *Cranney Bros.* decision is distinguishable because the subcases at issue were contested. The SRBA Court reasoned that notice of the amended claims enlarging the demand on the source beyond what was originally claimed would ultimately appear on the docket sheet through a special master's recommendation. Parties to the adjudication could therefore enter the subcase through a motion to alter or amend. In the instant matter the claims were uncontested as such the matter was not referred to a special master so the same reasoning does not apply. Furthermore, the *Cranney Bros.* was somewhat modified in the decision on reconsideration where *SF-5's* were ultimately deemed to be supplemental director's reports. *Order Granting In Part, Motion for Reconsideration and Clarification, In Re SRBA Case No. 39576* (Mar. 20, 1998). The rationale of the *Cranney Bros.* decision was also clarified/modified by the holding in *Memorandum Decision and Order on Challenge (Gisler)*, Subcase 36-00077D (June 30, 2000) *affmd NSGWD v. Gisler*, 136 Idaho 747, 40 P.3d 105 (2002). *Gisler* stands for the proposition that a party to the adjudication can reasonably expect the scope of a water right to be decreed within the parameters of the elements of the right as claimed and the elements as recommended in the director's report. Therefore notice is sufficient and a third party monitoring a subcase who agrees with a director's recommendation reducing the scope of the right from how the right was claimed should file a response to any objections to secure participation in the subcase. The rationale being that the claim could be resolved up to the full amount claimed. However, a party monitoring a subcase cannot reasonably expect a case to resolve for more than originally claimed. Accordingly, any amendment enlarging the scope of the claim may require re-opening the subcase to objections through the filing of an amended director's report.

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included the federal law basis, absent an objection to the state law basis, the claims would be decreed as reported along with the other uncontested rights for Basin 74.<sup>2</sup> The proper procedural mechanism would have been for the United States to timely file an objection to the director's reports. However, because the time for filing objections has expired, the proper mechanism is through a motion to file a late objection.

Because the claims were erroneously reported with the federal law basis which led to some confusion the Court will order the matter to proceed as follows:

1. Late Objections: The Court will treat the filing of the supporting affidavits as a motion to file a late objection only as to the recommended priority date and grant the same. The Court will not require the filing of a *Standard Form 1 Objection*. In lieu of the requirements of *AOI* (10)(j) notice of the granting of the late objection will appear on the docket sheet for February 2007.
2. Responses: Any party wishing to file a response to the objection shall have until March 28, 2007.
3. If any responses are filed the matter can be resolved through the *SF-5* process between the United States, the respondent, if any, and in either case with IDWR's concurrence. *SF-5*'s should be filed no later than April 20, 2007.

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Finally, although not discussed in *Cranney Bros.*, a motion to alter or amend is not co-extensive with an objection because the issues which can be raised on a motion to alter or amend are more limited. See e.g. *Gisler*. Accordingly a special master's recommendation is not the equivalent of an amended director's report for satisfying due process concerns.

<sup>2</sup> The hearing on the uncontested is presently set for June of this year.

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4. If the matter is unresolved via the *SF-5* process the Court will schedule a hearing on the limited issue of priority date as between the recommended June 28, 1934, priority and the claimed date of acquisition of the acquired property.

The Court is allowing the matter to proceed in this manner because of the confusion over procedure generated by the claim being erroneously reported as a dual-based claim, IDWR's admission that the reported federal basis and later priority for the state-law basis for the claims were in error, and but for the claimant, the subject rights are otherwise uncontested.

Dated: February 28, 2007.



JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication

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CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER TREATING PROCEEDING AS MOTION TO FILE LATE OBJECTION AND GRANTING SAME; SETTING DEADLINES 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. The signature is in dark ink and is positioned to the right of the printed text "Deputy Clerk".