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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	)	Subcase Numbers 45-12127 (45-12127A,
	)	45-12127B and 45-12127C), 45-12218, 45-
	)	12243 and 45-12280
Case No. 39576	)	
	)	RESPONSE TO ORDER SETTING
	)	DEADLINE FOR SUGGESTIONS

In its July 25, 2007, *Order Setting Deadline for Suggestions*, the Special Master requested responses to three concerns regarding the Special Masters' Report and Recommendation:

1) Do the priority dates in the Report and Recommendation comport with the parties'

August 29, 2002, *Stipulation*?

2) Is the "operation, use and administration" remark accurate?

3) Should subcase 45-12838 be included with these subcases?

The United States provides its response to the Court's *Order* as follows.

1. The priority dates comport with the 2002 *Stipulation*.

The 2002 *Stipulation* provides in general that the United States' priority date for certain claims subject to the *Stipulation* shall be the Forest Reservation date, which in the case of these claims is June 12, 1905. *See Stipulation* ¶ 5(A)(i). The *Stipulation*, however, provides for different priorities in certain circumstances, one of which is that if the United States' received a partial decree prior to execution of the *Stipulation*, the priority date shall remain that which was decreed. *See Stipulation* ¶ 5 (described priority dates only apply to Exhibits A, D, E, and F; partially decreed claims at issue are listed on Exhibit C), ¶ 5 (A)(ii) and ¶ 5(A)(iii) (United States' priority is that which is listed in the decree).

In the case of these subcases, the analysis of the proper priority date is complicated by the overlap among different claims. In 45-12127A, for instance, that subcase overlaps with private claim 45-13655. Private claim 45-13655 overlaps, however, not only with 45-12127A, but also with 45-12164, which is an already-decreed Forest Service claim.¹ At the time of execution of the *Stipulation*, 45-12164 had already been partially decreed with a priority date of May 1, 1879.

Thus, to comply with the *Stipulation*, the parties either had to 1) split out private claim 45-13655 into separate claims with different water sources and different priority dates, or 2) leave the private claim intact with an 1879 priority for all sources listed in the claim as well as all overlapping Forest Service claims. Because the Forest Service claims had been reported out with

¹ The additional overlap results from the private parties' practice of claiming multiple water sources on a single claim. Thus, although a Forest Service claim usually only overlaps with one private-party claim, the corresponding private-party claim usually overlaps with multiple Forest Service claims.

Subcase 45-12838 is postured similarly to these subcases in that it was the subject of a Report and Recommendation shortly before the filing of a Joe Tugaw motion to file a late objection. The United States, however, has not identified any overlap with a private claim.

It appears that the motion to file late objection has not yet been withdrawn by Mr. Tugaw. Once that occurs,³ the United States suggests that it would be appropriate for the Special Master to alter his Report and Recommendation by 1) changing the priority date to June 12, 1905, and 2) adding a "operation, use and administration" remark identical to that included in 45-12218.

4. The Report and Recommendation erroneously lists "mitigation" as the purpose of use of the water rights.

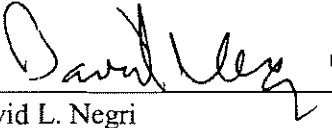
The Report and Recommendation for these subcases erroneously lists "mitigation" as the purpose of use. The purpose of use should be "stockwater," as claimed and reported. The United States' suggests that such a change is appropriate.

* * * * *

Undersigned counsel hopes this responds to the Court's concerns. If further questions remain, counsel is available for a status conference at the Court's convenience.

DATED this 10th day of August, 2007.

UNITED STATES OF AMERICA



David L. Negri
United States Department of Justice

³ Counsel for the United States is requesting, by correspondence contemporaneous with this filing, that counsel for Joe Tugaw prepare and file such a motion.

CERTIFICATE OF SERVICE

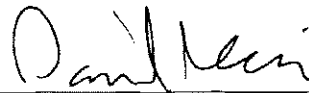
I certify that on August 10, 2007, I served a true and correct copy of the foregoing
RESPONSE TO ORDER SETTING DEADLINE FOR SUGGESTIONS upon the following
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