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DEPARTMENT OF
WATER RESOURCES

Names of Parties Filing Document:

UNITED STATES OF AMERICA

Attorneys' Names and Addresses:

IGNACIA S. MORENO
Assistant Attorney General
R. LEE LEININGER
Attorney, Natural Resources Section
Environment and Natural Resources Division
U.S. Dept. of Justice
1961 Stout Street, 8th Floor
Denver, Colorado 80294
Ph.: (303) 844-1364 FAX: (303) 844-1350

Counsel for the United States

**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 Number: 73-10520
	)	
	)	MOTION TO CORRECT CLERICAL
Case No. 39576	)	ERROR
	)	
_____	)	

MOTION

Pursuant to Idaho R. Civ. P. 60(a), the United States of America, by and through the undersigned attorney, respectfully moves this Court to correct a clerical error reflected in the partial decree filed in the above-captioned subcase. The water right was decreed with an inaccurate description of the priority date. The Partial Decree describes the priority date as June 28, 1934, but should be described as April 7, 1917.

MEMORANDUM OF POINTS AND AUTHORITIES

The above-captioned subcase is a “triple-based” claim for watering of livestock from Rock Spring filed by the United States Department of the Interior, Bureau of Land Management. The Affidavit of Fredric W. Price filed with the court on April 4, 2008 describes this claim as having three bases: 1) state basis with a June 28, 1934 priority date; 2) federal basis under PWR-107 with an April 17, 1926 priority date; and 3) federal basis under PWR-47 with an April 7, 1917 priority date. Attached as Exhibit 1.

On July 31, 2008, an Evidentiary Hearing was held pursuant to I.C. 42-1411(A) by Special Master Dolan. The United States offered the Affidavit of Fredric W. Price as meeting the requirements of an Evidentiary Hearing for rights containing a federal reserve basis. The United States expressed a preference for a partial decree to be entered under the senior federal reserve basis (i.e. PWR-47, April 7, 1917). *See Id.* at 7.

On August 17, 2009, Special Master Dolan issued his Special Master’s Report in this subcase concluding: “The United States is entitled to a partial decree adjudicating a federal reserved water right with a priority date of April 7, 1917, as described in Mr. Price’s Affidavit and the attached *Special Master Recommendation for Partial Decree for Federal Reserved Water Right 73-10520*.” *See* attached Exhibit 2. Unfortunately, the water right description attached to the Special Master’s Report and Recommendation described the priority date as June 28, 1934, which was the priority date for the state law basis claimed. *See Id.* at 3. The priority date should have been described as April 7, 1917, consistent with the Special Master’s conclusions. The error went undiscovered and was carried over into the Partial Decree issued by the court on October 20, 2009.

Therefore, for good cause shown, the United States requests that this Court correct the

above-referenced clerical error and describe the priority date as April 7, 1917.

DATED this 11th day of June, 2010.

Respectfully submitted,

UNITED STATES OF AMERICA

A handwritten signature in black ink, appearing to read 'R. Lee Leininger', is written over a horizontal line.

R. Lee Leininger
Attorney for the United States

CERTIFICATE OF SERVICE

I certify that on this 11th day of June, 2010, I served a true and correct copy of the foregoing **MOTION TO CORRECT CLERICAL ERROR** as indicated below:

via FedEx mail:

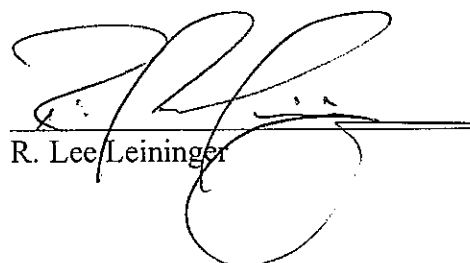
CLERK OF THE SRBA COURT (Original)
SRBA Courthouse
253 Third Ave. North
Phone: (208) 736-3011
Fax: (208) 736-2121

via first class U.S. Mail, prepaid:

Chief, Natural Resources Division
State of Idaho
Office of the Attorney General
P.O. Box 44447
Boise, ID 83711-4447

United States Department of Justice
Environment and Natural Resources Div.
550 W. Fort St., MSC 033
Boise, ID 83724

IDWR
Document Depository
P.O. Box 83720
Boise, ID 83720-0098



R. Lee Leining

Exhibit 1

1. My name is Fredric W. Price. I am an employee of the United States, Department of Interior, Bureau of Land Management. The following statements are based upon my personal knowledge. My present position is that of Water Rights Specialist for the United States, Department of Interior, Bureau of Land Management (hereinafter "BLM"), Idaho State office. My current responsibilities include coordinating the BLM's efforts for the Snake River Basin Adjudication (hereinafter "SRBA") in Idaho. In that capacity, I provide guidance and technical support to the State Director, Field Office Managers, and technical specialists in BLM field offices, particularly those specialists working in water rights and related issues. I develop agency policy on water issues and in other programs affected by water rights, such as the range management and realty programs. I also review, interpret and analyze water right claims for preparing opinions, recommendations, objections and other SRBA documents to the Department of Justice.

2. I have been employed by the BLM since 1982 in the following positions:

a. Eleven and a half years in various positions within the Rangeland Firefighting Program at the BLM, Shoshone Field Office. I spent 12 months working on that office's water rights team to develop and create 5,500 BLM claims;

b. Water Rights Specialist at the BLM, State Office in Boise, Idaho since August of 1993.

3. My experience with water rights is as follows:

a. My eleven and a half years in BLM's fire program required that I have the ability to understand and interpret maps, legal land descriptions, and Range Improvement Project Files. I was routinely required to: travel to remote fire locations with just a map; map the position and extent of fires for which I was responsible; locate, construct and

maintain range improvements (including but not limited to: spring developments, pipelines and fences), prepare as-built drawings, and to supplement the range improvement project files. I taught several courses to new employees in interpreting maps and BLM Master Title Plats, as well as, in the use of a compass. In my work with the BLM, I have been responsible for tasks requiring an ability to interpret: maps, legal land descriptions, and water claims, including the preparation, mapping and review of 5,500 SRBA water right claims for BLM. I have reviewed hundreds of Range Improvement Project Files for the purpose of locating the project, to determine when it was constructed, whether it was completed, whether it is still functional, to identify candidates for filing SRBA water claims, and to capture certain types of projects into the Geographic Information System (i.e. computer mapping system).

b. As a Water Rights Specialist at the BLM State Office, it is my responsibility to provide guidance and direction to Idaho BLM offices in all matters relating to water rights. I am also responsible for making recommendations to the Department of Justice and provide technical support on matter involving the SRBA. My experience with water rights in my present position is as follows. I develop policy for BLM across several programs to deal with water issues, such as the range management and realty programs. I have reviewed tens of thousands of legal land descriptions represented in Points of Diversion (hereinafter "POD") and Places of Use (hereinafter "POU") that were published in SRBA Director's Reports to determine land ownership by comparing those land descriptions to BLM's Master Title Plats and Historical Indexes. I have used these resources to determine the ownership history for thousands of legal land descriptions. I provide training to BLM employees in how to read and interpret Master Title Plats and

Historical Indexes. I have reviewed hundreds of deeds to determine who owned what land descriptions. I've determined the changes needed for thousands of water right descriptions for use within settlement documents (such as the SRBA Standard Form 5 (hereinafter "SF-5")) to resolve objections involving the BLM. I have extensive knowledge of, and experience with, the official business records of BLM and the Idaho Department of Water Resources (hereinafter "IDWR"), including but not limited to: BLM water right claim files, BLM water right field investigations, Master Title Plats, Historical Indexes, Control Document Indexes (hereinafter "CDI"), Tract Books, Serialized Case Recordation Files, Cadastral Survey Plats, Mining Claim Files, Grazing Allotment Files, Grazing Operator Files, IDWR Adjudication Files, and IDWR Water Right Files. I provide advice, guidance and direction to BLM field office personnel as to investigating and preparing claims, how to interpret water rights and how they relate to other water rights. For hundreds of subcases, I have made determinations whether multiple claims exist for the same source and what the nature of their relationship is to each other. I have reviewed hundreds of Range Improvement Project Files for the purpose of locating the project, to determine when it was constructed, whether it was completed, if it is still functional, who contributed to the construction and in what amounts, and to determine whether water is present and in what amounts. I developed the investigative criteria to be used for BLM field offices to investigate water sources for claims preparation and for objection purposes. I have reviewed thousands of BLM claim files and field investigations conducted by BLM. I have also performed investigations of water rights in the field. I routinely provide technical assistance, reports, recommendations and opinions to the Department of Justice concerning all of the above matters.

4. At the request of counsel for the United States, I have reviewed the official business records of BLM and IDWR regarding the captioned subcase for an SRBA claim made by the United States of America on behalf of the BLM, and have reached the determinations described herein.

5. The Master Title Plat (hereinafter "MTP") is an official business record of BLM. The MTP is the United States' official Record of Title. It is a graphic display of township survey data, and is drafted from information abstracted, compiled, and composed from the latest approved U.S. Government Survey Plats, survey field notes, and protraction diagrams. It describes the locations of United States property, aliquot parcels, and government surveyed "lots."

The Historical Index (hereinafter "HI") is an official business record of the United States that maintains a time line of events occurring on United States' property.

6. Based upon a review of BLM's SRBA water right claim file and IDWR's abstract/recommendation, the captioned subcase is a BLM "dual" claim based upon state and federal law. The federal claim basis asserts two separate federal reservations made pursuant to: an Executive Order dated April 17, 1926 and known as Public Water Reserve 107 (hereinafter "PWR 107"); and an Executive Order dated April 7, 1917 and known as Public Water Reserve 47 (hereinafter "PWR 47"). The state basis is based on beneficial use with a priority date of June 28, 1934. The 1934 date under state law was reached through settlement with the State of Idaho.

a. Attachment 1 to this affidavit is a true and correct copy of PWR 47 made personally by me from official business records of the United States which are located in my office.

7. I have reviewed the official business records of BLM and compared the captioned subcase to BLM's MTPs and HIs. I was able to determine that the above captioned subcase is

located on unreserved federal public domain as of April 7, 1917; and this land currently remains under Department of Interior administration.

8. The water source described by the captioned subcase was confirmed by field investigation.

9. Based upon the field verification and my review of the field investigation and claim file documents for the captioned subcase, there is sufficient surface water at this site for consumptive use by livestock.

10. Based upon the field verification and my review of the field investigation and claim file documents, the source of water for the captioned subcase is a spring or waterhole located at the Point of Diversion (hereinafter "POD") and Place of Use (hereinafter "POU") described in the SF-5 filed with the court on March 31, 2008.

11. I have reviewed the official business records of BLM for the captioned subcase for a federal reserved water right pursuant to PWR 47 and PWR 107. The elements of the claimed water right have been verified through examination of the claim file and physical field investigation and are correctly described in the SF-5 filed with the court on March 31, 2008. A quantity of 0.02 cfs, not to exceed 13,000 gpd, for stockwatering purposes is sufficient to satisfy the federal reservations based upon Public Water Reserve 47 or 107.

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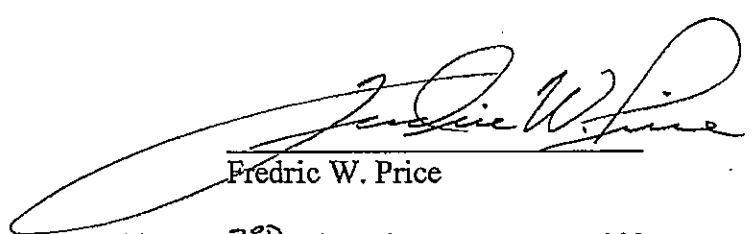
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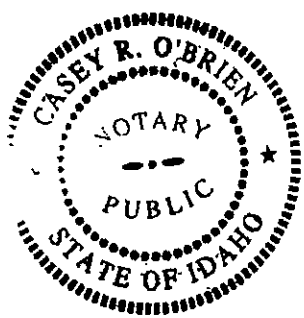
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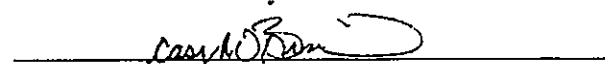
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BLM prefers to receive a partial decree under the senior federal reserve basis made pursuant to PWR 47.


Fredric W. Price

Subscribed and sworn to before me this 3RD day of APRIL, 2008.
Witnessed by my hand and official seal.




Casey R. O'Brien
Notary Public in and for the State of Idaho
Residing at: Nampa, Idaho
My Commission Expires: 10-31-2009

CERTIFICATE OF SERVICE

I certify that on April 3, 2008, I served a true and correct copy of the foregoing **AFFIDAVIT OF FREDRIC W. PRICE; SUBCASE NUMBER: 73-10520, together with ATTACHMENT 1** by placing the document in the United States Mail in Boise, Idaho, postage paid, and addressed as follows:

Original to:

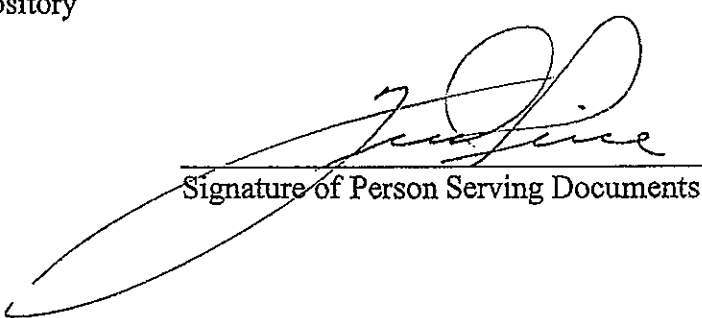
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

Copies to:

U.S. Department of Justice
General Litigation Section
Environment and Natural Resources Division
550 West Fort Street, MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098



Signature of Person Serving Documents

ATTACHMENT 1

ORDER OF WITHDRAWAL

Public Water Reserve No. 47, Plano No. 3

Under and pursuant to the provisions of the act of Congress approved June 25, 1910 (36 Stat., 947), entitled "an act to authorize the President of the United States to make withdrawals of public lands in certain cases," as amended by act of Congress approved August 24, 1911 (37 Stat., 497), it is hereby ordered that the lands hereinafter described be, and the same are hereby, withdrawn from settlement, location, sale, or entry, and reserved for public use in accordance with the provisions of Sec. 13 of the act of December 20, 1915 (Public No. 293).

Boise Meridian

- ✓ 1. 12 N., E. 22 E., Sec. 34, S₂ of NW₂, NE of SW₂
- ✓ 2. 12 N., E. 23 E., Sec. 31, S₂ of SW₂
- ✓ 3. 13 N., E. 23 E., Sec. 30, S₂ of NW₂, NE of SW₂
- ✓ 4. 16 S., E. 12 E., Sec. 31, E₂ of SW₂, S₂ of NW₂, Sec. 29, E₂ of NW₂, Sec. 35, N₂ of NW₂, Sec. 34, E₂ of NW₂

Woodrow Wilson
President

7 April 1911

Exhibit 2

DISTRICT COURT - SRBA	
Fifth Judicial District	
County of Twin Falls - State of Idaho	
AUG 17 2009	
By _____	Clerk
_____	Deputy Clerk

**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 73-10520
	)	(USDI / BLM)
Case No. 39576	)	SPECIAL MASTER REPORT
_____	)	

Findings of Fact

The Director of the Idaho Department of Water Resources filed his *Director's Report, Irrigation & Other Uses, Reporting Area 23, Basin 73* on January 25, 2007. The Director recommended claim 73-10520 to the United States of America, Department of Interior, Bureau of Land Management, Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho, 83709-1657, for .02 cfs from Rock Spring for year-'round stockwater use in Custer County with a priority date of June 28, 1934, based on beneficial use. The Director added the following language under priority date:

4 / 17 / 1926 Claimed under Federal Reserved Water Right.
This water right is also claimed based on federal law with an April 17, 1926, date of priority pursuant to an Executive Order signed the same date and known as Public Water Reserve 107.

IDWR filed its *Amended Director's Report* on February 5, 2009,¹ adding the following language under priority date:

4/07/1917 Claimed under Federal Reserved Water Right.
This water right is also claimed based on federal law with an April 7, 1917, date of priority pursuant to an executive order signed the same date and known as Public Water Reserve 47.

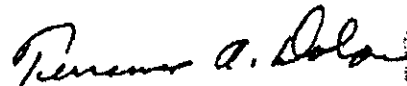
¹ No one objected to the *Amended Director's Report*.

An I.C. §42-1411A hearing was held by telephone on July 31, 2008, and the United States submitted the *Affidavit of Fredric W. Price*, filed April 4, 2008, in support of its claim. In the *Affidavit*, Mr. Price stated: he is a Water Rights Specialist for the USDI/BLM and his statements are based on his personal knowledge; the subcase is a dual-based claim based upon state and two separate federal reservations pursuant to Executive Orders dated April 7, 1917, known as PWR 47, and April 17, 1926, known as PWR 107; the claim is located on unreserved federal public domain as of April 7, 1917; the lands currently remain under USDI administration; the claimed water source was confirmed by field investigation; there is sufficient water at the claimed site for consumptive use by livestock; and the source is a spring or waterhole located at the claimed point of diversion and place of use; the quantity for stockwatering purposes is sufficient to satisfy the federal reservations based upon Public Water Reserve 47 or 107; and "BLM prefers a partial decree under the senior federal reserve basis made pursuant to PWR 47."

Conclusions of Law

The United States is entitled to a partial decree adjudicating a federal reserved water right with a priority date of April 7, 1917, as described in Mr. Price's *Affidavit* and the attached *Special Master Recommendation for Partial Decree for Federal Reserved Water Right 73-10520*.

DATED August 17, 2009.



TERRENCE A. DOLAN
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

In Re SRBA)
Case No. 39576)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 73-10520

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
AUG 17 2009	
By _____	Clerk
_____	Deputy Clerk

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

SOURCE: ROCK SPRING TRIBUTARY: SINKS

QUANTITY: 0.02 CFS

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

PRIORITY DATE: 06/28/1934

This water right is decreed based on federal law with an April 7,
1917, date of priority pursuant to an executive order signed
the same date and known as Public Water Reserve 47.

POINT OF DIVERSION: T12N R22E S24 SESWNE Within Custer County

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 T12N R22E S24 SWNE Within Custer County

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).

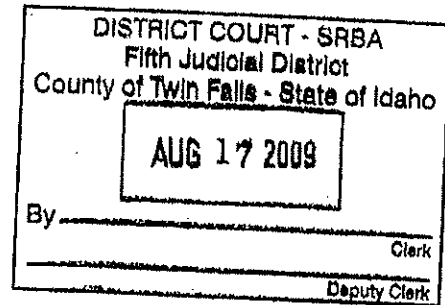
RULE 54(b) CERTIFICATE

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.

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

RECOMMENDATION
AUG 17 2009
<i>Thomas P. Olsen</i>
SPECIAL MASTER

SRBA PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 73-10520 File Number: 00149



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

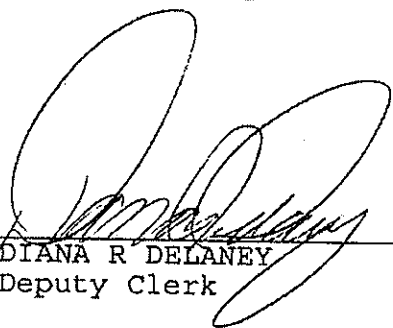
Water Right(s): 73-10520

On August 17, 2009, Special Master TERRENCE A. DOLAN
issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s)
pursuant to SRBA Administrative Order 1 (AO1), Section 13a.

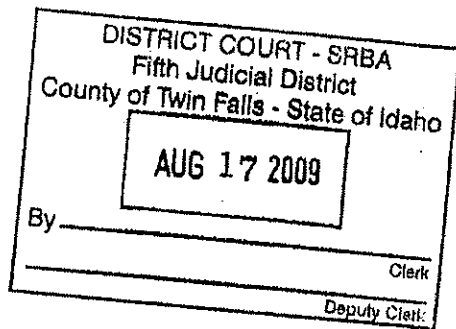
Pursuant to SRBA Administrative Order 1, Section 13a, any party
to the adjudication including parties to the subcase, may file a Motion
to Alter or Amend on or before the 28th day of the next month.

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 August 17, 2009.



DIANA R. DELANEY
Deputy Clerk



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): 73-10520

CERTIFICATE OF MAILING

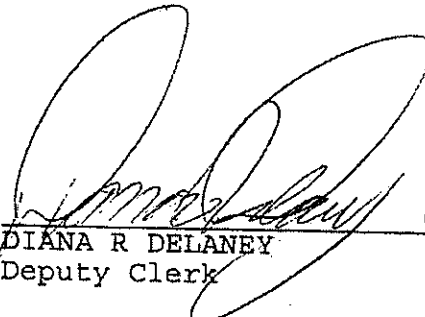
I certify that a true and correct copy of the SPECIAL MASTER'S REPORT, SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on August 18, 2009, with sufficient first-class postage prepaid to the following:

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

UNITED STATES OF AMERICA
Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

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

CERTIFICATE OF MAILING



DIANA R DELANEY
Deputy Clerk

PAGE 1
08/17/09