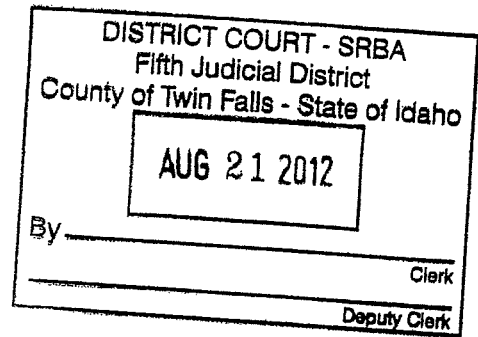


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AUG 24 2012

DEPARTMENT OF
WATER RESOURCES



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

	)	Subcases:
	)	01-2064, et al. (American Falls Reservoir)
	)	and
In Re SRBA	)	01-2068, et al. (Palisades Reservoir)
	)	(see list of subcases attached)
	)	
Case No. 39576	)	ORDER GRANTING UNITED STATES'
	)	MOTION, CERTIFICATION, AND PARTIAL
	)	SPECIAL MASTER REPORT AND
	)	RECOMMENDATION

Findings of Fact

On July 27, 2012, the Special Master entered an *Order on Motions for Partial Summary Judgment* in the above 24 subcases. The Special Master denied *Motions for Partial Summary Judgment* filed by the State and the Surface Water Coalition and concluded as a matter of law the State's refill remark is not necessary to define and/or efficiently administer the American Falls and Palisades Reservoir irrigation storage rights.¹

On August 20, 2012, the United States filed its *Motion for Issuance of Special Master's Recommendation on Refill Issue*. The United States noted the *Order* effectively ruled no refill remark is appropriate and therefore, the refill issue has been effectively resolved. Hence, even

¹ The State proposed the following refill remark because it argued the remark was necessary to define and/or efficiently administer the rights:

This right is filled for a given irrigation season when the total quantity of water that has been accumulated to storage under this right equals the decreed quantity. Additional water may be stored under this right but such additional storage is incidental and subordinate to all existing and future water rights.

though the United States' proposed remark was not proscribed, the United States withdrew its request for that remark.

The United States went on to observe that under SRBA Administrative Order 1, Rules of Procedure, § 9, d:

No water right claim which has not had full resolution of every element of the right shall be included in a *Special Master's Recommendation*, unless the Special Master, simultaneously with the filing of the report, certifies to the Presiding Judge that there has been an express determination that there is no just reason for delay for submission to the Presiding Judge. Notice of the filing of such certification shall be reported in the Docket Sheet [emphasis added].

The United States suggested the value of a Special Master's recommendation once a significant issue is resolved and a report on the refill issue will provide the parties finality on the matter and narrow the issues remaining in these subcases that may go to trial. In addition, it will help the parties' ongoing settlement discussions. The United States concluded by stating: "Given the potential for protracted negotiations and/or litigation on the other issues in these subcases, there is no just reason to delay submission of the refill issue to the Presiding Judge."

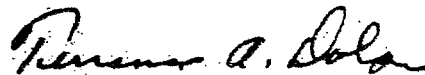
Order

THEREFORE, IT IS ORDERED that the United States' *Motion for Issuance of Special Master's Recommendation on Refill Issue* is **granted**.

Conclusions of Law

1. No refill remark is necessary to define and/or efficiently administer the American Falls and Palisades Reservoir irrigation storage rights;
2. When the American Falls and Palisades Reservoir irrigation storage rights are partially decreed, such partial decrees should **not** include refill remarks; and
2. There is no just reason for delay for submission of that determination to the Presiding Judge.

DATED August 22, 2012.



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

AMERICAN FALLS AND PALISADES RESERVOISRS

Subcase Nos:

01-02064
01-02064A
01-02064B
01-02064C
01-02064D
01-02064E
01-02064F
01-02064L
01-02068
01-02068D
01-02068E
01-02068F
01-02068M
01-02068Y
01-10042
01-10042A
01-10042B
01-10043
01-10043A
01-10043E
01-10053A
01-10190
01-10191
01-10389

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING UNITED STATES' MOTION, CERTIFICATION, AND PARTIAL SPECIAL MASTER REPORT RECOMMENDATION was mailed on August 22, 2012, with sufficient first-class postage to the following:

IDAHO POWER COMPANY

Represented by:
ADAM T DEVOE
BROWNSTEIN HYATT & FARBER PC
410 17TH ST 22ND FL
DENVER, CO 80202-4437
Phone: 303-223-1100

PIONEER IRR DIST

Represented by:
ANDREW J WALDERA
101 S CAPITOL BLVD 10TH FL
PO BOX 829
BOISE, ID 83701-0829
Phone: 208-345-2000

AMERICAN FALLS RESERVOIR

Represented by:
C THOMAS ARKOOSH
CAPITOL LAW GROUP PLLC
301 MAIN ST
PO BOX 32
GOODING, ID 83330-0032
Phone: 208-934-8872

BLACK CANYON IRR DIST NEW YORK IRRIGATION DISTRICT

Represented by:
CHARLES F MC DEVITT
420 W BANNOCK ST
PO BOX 2564
BOISE, ID 83701-2564
Phone: 208-343-7500

STATE OF IDAHO

Represented by:
CHIEF NATURAL RESOURCES DIV
OFFICE OF THE ATTORNEY GENERAL
STATE OF IDAHO
PO BOX 44449
BOISE, ID 83711-0449
Phone: 208-334-2400

AMERICAN FALLS RESERVOIR

Represented by:
CRAIG D HOBDEY
HOBDEY LAW OFFICE PLLC
125 5TH AVE
PO BOX 176
GOODING, ID 83330-0176
Phone: 208-934-4429

IDAHO POWER COMPANY

Represented by:
JAMES C TUCKER
IDAHO POWER CO
1221 W IDAHO ST
PO BOX 70
BOISE, ID 83707-0070
Phone: 208-388-2112

AMERICAN FALLS SPACEHOLDERS

JERRY R RIGBY
NEW SWEDEN IRRIGATION DIST
Represented by:
JERRY R RIGBY
25 N 2ND E
PO BOX 250
REXBURG, ID 83440-0250
Phone: 208-356-3633

A & B IRRIGATION DISTRICT BURLEY IRRIGATION DISTRICT

Represented by:
JOHN K SIMPSON
1010 W JEFFERSON ST STE 102
PO BOX 2139
BOISE, ID 83701-2139
Phone: 208-336-0700

CITY OF POCA TELLO

Represented by:
JOSEPHINE P BEEMAN
409 W JEFFERSON ST
BOISE, ID 83702-6049
Phone: 208-331-0950

(Certificate of mailing continued)

A & B IRRIGATION DISTRICT
BURLEY IRRIGATION DISTRICT

Represented by:
PAUL L ARRINGTON
195 RIVER VISTA PL STE 204
TWIN FALLS, ID 83301-3029
Phone: 208-733-0700

ABERDEEN AMERICAN FALLS
ABERDEEN-AMERICAN FALLS
ABERDEEN-SPRINGFIELD CANAL CO
AMERICAN FALLS SPACEHOLDERS
BINGHAM GROUND WATER DISTRICT
BONNEVILLE-JEFFERSON GROUND
JEFFERSON CLARK GROUND WATER
MADISON GROUND WATER DISTRICT
MAGIC VALLEY GROUND WATER
MAGIC VALLEY GROUND WATER DIST
NORTH SNAKE GROUND WATER

Represented by:
RANDALL C BUDGE
201 E CENTER ST STE A2
PO BOX 1391
POCATELLO, ID 83204-1391
Phone: 208-232-6101

A & B IRRIGATION DISTRICT
BURLEY IRRIGATION DISTRICT
FALLS IRRIGATION DISTRICT

Represented by:
ROGER D LING
PO BOX 623
RUPERT, ID 83350-0623
Phone: 208-434-2717

BOISE PROJECT BOARD OF CONTROL

Represented by:
SHELLEY M DAVIS
1010 W JEFFERSON ST STE 102
PO BOX 2139
BOISE, ID 83701-2139
Phone: 208-336-0700

A & B IRRIGATION DISTRICT
BURLEY IRRIGATION DISTRICT
HILLSDALE IRRIGATION DIST
MILNER IRRIGATION DISTRICT
NORTH SIDE CANAL CO LTD
TWIN FALLS CANAL COMPANY

Represented by:
TRAVIS L THOMPSON
195 RIVER VISTA PL STE 204
TWIN FALLS, ID 83301-3029
Phone: 208-733-0700

UNITED STATES OF AMERICA
USDI BUREAU OF RECLAMATION

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

MINIDOKA IRRIGATION DISTRICT

Represented by:
W KENT FLETCHER
1200 OVERLAND AVE
PO BOX 248
BURLEY, ID 83318-0248
Phone: 208-678-3250

BONNEVILLE-JEFFERSON GROUND
WATER DISTRICT

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