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DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

FILED SM

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

) SPECIAL MASTER'S REPORT AND
) RECOMMENDATION
)
) FINDINGS OF FACT AND
) CONCLUSIONS OF LAW FOR
)
) WATER RIGHT NO: 34-00322A

FINDINGS OF FACT

No notice of claim was filed by any claimant for the above-referenced water right. The director of the State of Idaho Department of Water Resources (IDWR) examined the water system for Reporting Area 1 and investigated the notices of claim for Reporting Area 1 (Basin 34), which includes portions of Custer, Butte, Bonneville and Jefferson Counties, State of Idaho. The Director's Report for Reporting Area 1 does not contain a recommendation for water right no. 34-00322A.

Although no notice of claim or Director's Report recommendation was filed for this water right, a subcase was opened when San Felipe Ranches filed an Objection to water right no. 34-00322A on March 17, 1993. The objection erroneously identified the United States Bureau of Land Management as the claimant of this water right. IDWR submitted a response on July 16, 1993. Subsequently, on January 25, 1995, the United States filed its *United States' Motion to Dismiss Subcase and Vacate Settlement*.

The United States argued the subcase should be dismissed because the United States had never filed a claim for this water right. The response filed by IDWR also asserted that no claim had ever been filed for water right no. 34-00322A. The court ordered the parties to respond to

the *United States' Motion to Dismiss*. A *Response to Motion to Dismiss (Response)* was filed on February 14, 1995 by San Felipe Ranches stating "[t]he objection filed by San Felipe Ranches for subcase no. 34-00322A on March 17, 1993 was erroneously numbered." The *Response* stated that San Felipe Ranches did not object to dismissal of this subcase.

CONCLUSIONS OF LAW

A *Preliminary Special Master's Report and Recommendation; Findings of Fact and Conclusions of Law*, was issued for this subcase, July 19, 1995. No parties filed *Motions to Reconsider* or *Motions to Correct Clerical Errors*, and the time for such (*Motions*) has now elapsed. Under *SRBA Administrative Order 1*, a Special Master is required to make a recommendation to the Presiding Judge as to whether and how a water right should be recommended for each subcase.

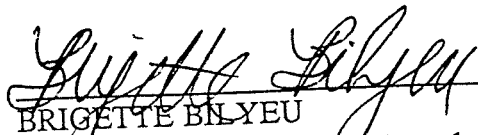
Under I.R.C.P. 41, an action may be dismissed with prejudice by stipulation or court order. The record on file for this subcase, particularly the *United States Motion to Dismiss*, *Order Granting Motion to Vacate Settlement Conference*, and the *Response to Motion to Dismiss*, clearly establishes the intent of all parties that this subcase be dismissed with prejudice. It is also clear from the record that the parties request the Special Master recommend to the Presiding Judge that water right no. 34-00322A not be decreed. Pursuant to *SRBA Administrative Order 1 § 11g*, General Provisions do not apply to this water right as it is recommended as not decreed.

Therefore, based on the file and record herein, and good cause appearing, IT IS RECOMMENDED that subcase no. 34-00322A be **DISMISSED WITH PREJUDICE**.

IT IS FURTHER RECOMMENDED that the court should **not** include water right no. 34-00322A in any partial or final decrees.

IT IS SO RECOMMENDED.

DATED OCTOBER 3, 1995.


BRIGETTE BLYEU
Special Master, Reporting Area 1
Snake River Basin Adjudication

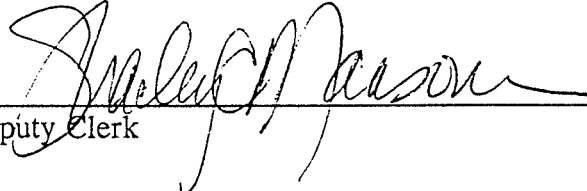
CERTIFICATE OF MAILING

I certify that a true and correct copy of the **PRELIMINARY SPECIAL MASTER'S REPORT AND RECOMMENDATION** was mailed on October 3, 1995, with sufficient first-class postage to the following: *4 sm*

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