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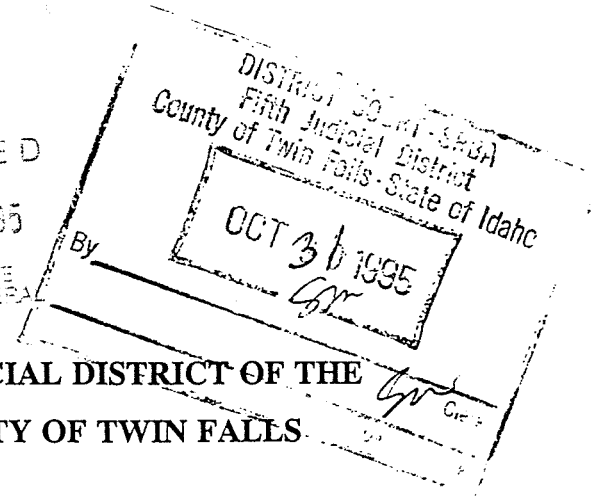
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Department of Water Resources
Adjudication Bureau

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OFFICE OF THE
ATTORNEY GENERAL



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
) PRELIMINARY REPORT AND
) RECOMMENDATION
)
) FINDINGS OF FACT AND
) CONCLUSIONS OF LAW FOR
)
) WATER RIGHT NO: 34-02568A

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. 34-02568A.

Although no notice of claim or Director's Report recommendation was filed for this water right, a subcase was opened when Carolyn Smith filed an Objection to water right no. 34-02568A. The objection erroneously identified the United States Bureau of Land Management as the claimant of this water right. IDWR submitted a response on July 19, 1993. Subsequently, on August 31, 1995, the parties to this subcase filed a *Stipulation*.

The *Stipulation* states that IDWR and the parties agree no claim exists for 34-02568A, and that no claim was ever filed for this water right.

The *Stipulation* states:

[T]he United States of America (the claimant), and Carolyn Smith (the objector), stipulate and agree that:

1. The objection to 34-02568A is dismissed with prejudice.
2. IDWR and the parties agree that claim number 34-02568A does not exist and the objection was erroneously filed. Objector intended to file an objection to 34-02568.

Stipulation paras. 1 & 2.

The signatories to the *Stipulation* were Carolyn Smith, the United States Department of Justice, and the Idaho Department of Water Resources.

CONCLUSIONS OF LAW

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 *Stipulation*, 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 a recommendation that water right no. 34-02568A 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. 34-02568A be **DISMISSED WITH PREJUDICE**.

IT IS FURTHER RECOMMENDED that the court should **not** include water right no. 34-02568A in any partial or final decrees.

IT IS SO RECOMMENDED.

DATED October 30, 1995.



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