

RECEIVED

APR 3 - 1996

Department of Water Resources

1996 APR -1 PM 2:32

DISTRICT COURT - SRBA
TWIN FALLS CO. IDAHO

FILED RL

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 Nos.: 34-12770 and 34-12770A
	)	
Case No. 39576	)	ORDER CONSOLIDATING SUBCASES
_____	)	

On March 1, 1996, IDWR submitted *Supplement to IDWR Proposal for Decreeing Dual-Based Claims (Report)*. In the *Report*, IDWR reported that 34-12770 and 34-12770A are the same water right, but were reported under separate water right numbers by IDWR. The two numbers were assigned by IDWR because this water right is a so-called "dual based" claim, where the claimant asserted two theories which could entitle it to a water right; one is based on Idaho state law, another theory is based on federal law. The court **consolidates** these two subcases.

Under the rules of procedure established by *SRBA Administrative Order 1*, Section 9, Consolidation is appropriate if certain factors exist.

SRBA Administrative Order 1 (A.O.1), Section 9 provides that:

A motion to consolidate subcases is appropriate in situations where common issues of law or fact present themselves in more than one subcase and resolution and reconciliation of those issues can be most expeditiously and effectively achieved through presentation to the Presiding Judge or special master in consolidated hearings.

A.O.1, Section 9 (June 21, 1993).

The standard for consolidation set forth in ***A.O.1***, Section 9 is essentially identical to the standard in I.R.C.P. 42(a) which states:

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

I.R.C.P. 42(a)

Under both standards, a judge or special master looks at three essential factors; 1) are there questions of law which are common to all subcases; 2) are there questions of fact which are common to all subcases; and 3) will consolidation of the subcases avoid unnecessary costs and lead to more expeditious and efficient presentation to the judge or special master. *A.O.I.*, Section 9 (June 21, 1993); I.R.C.P. 42(a).

Questions of law and fact are common to both subcases since both 34-12770 and 34-12770A are the same water right; in addition consolidation is mandatory to provide efficient and expeditious adjudication of this water right.

Therefore, **IT IS ORDERED** that subcases 34-12770 and 34-12770A are **consolidated**. All further pleadings shall be filed in and proceedings held under subcase number 34-12770A.

IT IS SO ORDERED.

DATED April 1, 1996.



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

CERTIFICATE OF MAILING

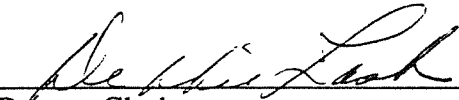
I certify that a true and correct copy of the ORDER CONSOLIDATING SUBCASES was mailed on April 1, 1996, with sufficient first-class postage to the following:

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

The United States Department of Justice
Environment and Natural Resources Division
550 West Fort Street, MSC 033
Boise, ID 83724

Joan Johnson
Star Route
Mackay, Idaho 83251

Director of IDWR
P.O. Box 83720
Boise, ID 83720-0098



Deputy Clerk