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DISTRICT COURT-SRBA
TWIN FALLS CO. IDAHO
FILED

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	)	PRELIMINARY SPECIAL
	)	MASTER'S REPORT AND
Case No. 39576	)	RECOMMENDATION
	)	
	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW FOR
	)	
_____	)	WATER RIGHT: 34-12743

FINDINGS OF FACT

A notice of claim was filed for this water right pursuant to I.C. § 42-1409(1990). 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 34 contained recommendations or abstracts for the elements of this water right.

On March 1, 1996, IDWR submitted *Supplement to IDWR Proposal for Decreeing Dual-Based Claims (Report)*. In the *Report*, IDWR reported that 34-12743 and 34-12743A are the same water right, but were reported under separate water right numbers by IDWR. The two numbers were assigned by IDWR because the original water right was a so-called "dual-based" claim, where the claimant asserted two theories which could entitle it to a water right; one based on Idaho state law, another based on federal law.

Before the two portions of this right could be consolidated, a *Special Master's Report and Recommendation; Findings of Fact and Conclusions of Law* (Jan. 30, 1996) was issued

recommending the other portion of this right, 34-12743A, be **dismissed** and **not confirmed** in any decree.

A hearing on this portion of the water right was held April 30, 1996. The only party, The United States, did not object to the court recommending this portion of the right **not be confirmed**.

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 clearly establishes the intent of the parties that this subcase be dismissed with prejudice. It is also clear from the record that the parties request the Special Master recommend that water right 34-12743 not be confirmed in any partial or final decrees.

Therefore, based on the file and record herein, and good cause appearing, IT IS RECOMMENDED that subcase 34-12743 be **DISMISSED WITH PREJUDICE**.

IT IS FURTHER RECOMMENDED that the court should **not confirm** water right 34-12743 in any partial or final decrees.

IT IS SO RECOMMENDED.

DATED May 13, 1996.



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