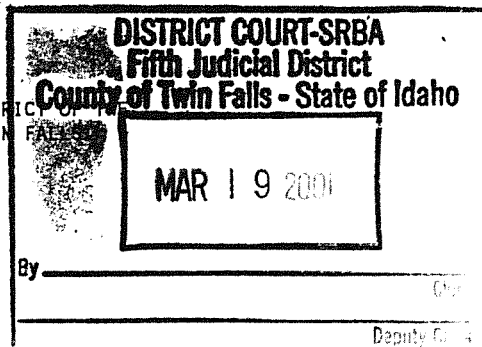


IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS



In Re SRBA )  
 )  
Case No. 39576 )  
\_\_\_\_\_ )

**AMENDED**  
PARTIAL DECREE PURSUANT TO  
I.R.C.P. 54(b) FOR  
Water Right 63-30980

NAME AND ADDRESS: USDA FOREST SERVICE  
550 W FORT ST, MSC 033  
BOISE, ID 83724

SOURCE: SPRING TRIBUTARY: BOISE RIVER, NORTH FORK

QUANTITY: 0.02 CFS

PRIORITY DATE: 05/29/1905

\*\*\*\*\*  
\* THIS WATER RIGHT IS CLAIMED PURSUANT TO FEDERAL LAW. \*  
\* \*  
\* THIS IS NOT A STATE-LAW BASED CLAIM. \*  
\*\*\*\*\*

POINT OF DIVERSION: T07N R10E S10 NWSW Within Boise County

| PURPOSE AND PERIOD OF USE: | PURPOSE OF USE | PERIOD OF USE  | QUANTITY |
|----------------------------|----------------|----------------|----------|
|                            | Domestic       | 06-01 TO 10-01 | 0.02 CFS |

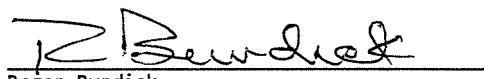
PLACE OF USE: Domestic Within Boise County  
T07N R10E S09 NESE

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS  
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT  
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY  
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE  
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

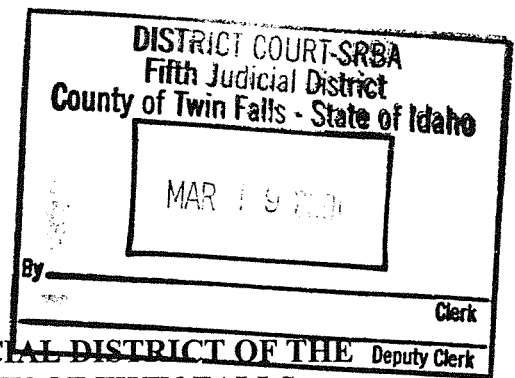
With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

  
\_\_\_\_\_  
Roger Burdick  
Presiding Judge of the  
Snake River Basin Adjudication

RECEIVED

MAR 21 2001

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

|                |   |                                 |
|----------------|---|---------------------------------|
| In Re SRBA     | ) | Subcase No. 63-30980 & 63-30981 |
|                | ) |                                 |
| Case No. 39576 | ) | ORDER GRANTING MOTION TO        |
|                | ) | CORRECT CLERICAL ERRORS         |
|                | ) |                                 |
|                | ) | ORDER AMENDING PARTIAL          |
|                | ) | DECREE                          |

On December 13, 2000, the United States of America, on behalf of the Forest Service, filed a *Motion to Correct Clerical Errors* in the *Partial Decrees* issued on July 31, 2000, for subcases 63-30980 and 63-30981.

Due to a programming inconsistency between the Court's database and the records downloaded from the Idaho Department of Water Resource's database, the *Partial Decrees* contained a legal description for "Location Instream Flow" instead of "Point of Diversion."

The Court recognizes this error and therefore **grants** the *Motion to Correct Clerical Errors* filed in subcases 63-30980 and 63-30981.

The *Partial Decrees* are hereby amended to replace "Location Instream Flow" with "Point of Diversion" as set forth in the attached *Amended Partial Decrees Pursuant to I.R.C.P. 54(b)*. All other elements of the water rights remain consistent with the July 31, 2000, *Partial Decrees*.

IT IS SO ORDERED.

DATED: 3-19-01.

A handwritten signature of Roger Burdick in cursive script.

Roger Burdick  
Presiding Judge of the  
Snake River Basin Adjudication

2000 JUL 31 PM 3:38  
DISTRICT COURT  
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     | ) | ORDER OF PARTIAL DECREE ON      |
|                | ) | UNCONTESTED FEDERAL WATER RIGHT |
| Case No. 39576 | ) |                                 |
| _____          | ) | For Water Right 63-30980        |

On May 11, 2000, a *Special Master's Report and Recommendation on Uncontested Federal Water Right* was filed for the above water right. No Challenges were filed to the *Special Master's Report and Recommendation* and the time for filing Challenges has now expired.

Pursuant to I.R.C.P. 53(e)(2) and *SRBA Administrative Order 1*, Section 13f, this Court has reviewed the Findings of Fact and Conclusions of Law contained in the *Special Master's Report* and wholly adopts them as its own subject to one notation.

The water right at issue is an implied reserved water right on a Forest Service administrative site within the boundaries of the Boise National Forest. The *Special Master's Report and Recommendation* correctly states the elements for federal reserved water rights as follows:

A state has plenary control of water located within its territory. *Kansas v. Colorado*, 206 U.S. 46 (1907). A claim to a federal reserved water right is an exception to a state's plenary control of water. *United States v. Rio Grande Dam and Irrigation Co.*, 174 U.S. 690 (1899). Reserved water rights may be express or implied. *United States v. New Mexico*, 438 U.S. 696 (1978). An express reservation of water is created by the explicit language in the act creating the reservation. *Id.* An implied reserved water right must be based on a reservation of land, *Arizona v. California*, 373 U.S. 546 (1963), and may be granted if the following three criteria are satisfied:

(1) An implied reservation of water exists only if necessary to fulfill the primary, not the secondary, purpose for which the reservation of land was created, *United States v. New Mexico*, 438 U.S. at 702;

(2) Without water, the purposes of the reservation must be entirely defeated, *Id.*; and

(3) The water claimed must be the minimum amount necessary to achieve the purposes of the reservation, *Id.* At 700.

***Special Master's Report and Recommendation*, page 2.**

While not expressly stated in the ***Special Master's Report and Recommendation***, implicit in recommending the claim are the necessary findings of fact and the conclusions of law that the three criteria stated above are satisfied.

The claim is for a *de minimis* amount for domestic use, and as noted earlier, is within the forest boundaries for an administrative site (a guard station). Another court has already dealt with a similar claim. In 1993, the Colorado District Court for Water Division No. 1 denied the federal government's claims for reserved rights for channel maintenance instream flows in certain national forests, but upheld its claims for firefighting and administrative sites. As to the administrative sites, the Court reasoned as follows:

No matter what the ultimate outcome of these cases, the national forests in Water Division No. 1 must be administered. Such administration requires administrative sites. It is reasonable to assume that Congress intended to reserve sufficient water to serve those sites.

*In the Matter of Reserved Water Rights in the Platte River*, Nos. W-8439-76 (Colo. Water Div. 1), Feb. 12, 1993, page 31.

This Court finds the above reasoning to be persuasive as to *de minimis* domestic claims, reasonable in number, for administrative sites within the boundaries of the national forest such as

those for which this claim was made.<sup>1</sup>

Finally, the Court notes that the claim was not contested, which indicates that all parties to the SRBA agree that this *de minimis* domestic water claim at the administrative site within the boundaries of the national forest is reasonable and satisfies the three criteria of an implied reserved water right.

Therefore, IT IS ORDERED that water right 63-30981 is hereby **decreed** as set forth in the attached *Partial Decree Pursuant to I.R.C.P. 54(b)*.

DATED JUL 31 2000.



\_\_\_\_\_  
BARRY WOOD  
Administrative District Judge and  
Presiding Judge of the  
Snake River Basin Adjudication

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<sup>1</sup> The Court recognizes that Judges should abstain from public comment about pending cases. *See e.g. Smith v. Smith*, 124 Idaho 431, 435, 860 P.2d 634, 638 (1993). Therefore, to be clear, this Court agrees with this reasoning as to administrative sites only and expresses no present opinion on any other type of claim. Specifically, there are pending before this Court reserved claims for instream flows for channel maintenance and the Court expresses no opinion thereon or with the Colorado Water Division No. 1 Court's decision on the topic.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLSIn Re SRBA )  
Case No. 39576 )PARTIAL DECREE PURSUANT TO  
I.R.C.P. 54(b) FOR  
Water Right 63-30980

200 JUL 31 PM 3:38

DISTRICT COURT  
TWIN FALLS CO., IDAHO  
FILEDNAME AND ADDRESS: USDA FOREST SERVICE  
550 W FORT ST, MSC 033  
BOISE, ID 83724

SOURCE: SPRING

TRIBUTARY: BOISE RIVER, NORTH FORK

QUANTITY: 0.02 CFS

PRIORITY DATE: 05/29/1905

\*\*\*\*\*  
\* THIS WATER RIGHT IS CLAIMED PURSUANT TO FEDERAL LAW. \*  
\* \* \* \* \*  
\* THIS IS NOT A STATE-LAW BASED CLAIM. \*  
\*\*\*\*\*

LOCATION INSTREAM FLOW: T07N R10E S10 NWSW Within Boise County

PURPOSE AND PERIOD OF USE: PURPOSE OF USE PERIOD OF USE QUANTITY  
Domestic 06-01 TO 10-01 0.02 CFS

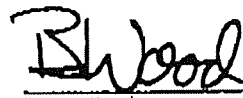
PLACE OF USE: Domestic T07N R10E S09 NESE Within Boise County

## OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS  
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT  
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY  
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE  
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

## RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

  
Barry Wood  
Administrative District Judge  
Presiding Judge of the  
Snake River Basin Adjudication

2000 AUG 01 PM 02:00  
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     | ) | CERTIFICATE OF MAILING   |
|                | ) |                          |
| Case No. 39576 | ) |                          |
| _____          | ) | Water Right(s): 63-30980 |

CERTIFICATE OF MAILING

I certify that a true and correct copy of the PARTIAL DECREE  
PURSUANT TO I.R.C.P. 54(b) for WATER RIGHT 63-30980 was mailed  
on August 01, 2000, with sufficient first-class postage prepaid  
to the following:

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

USDA FOREST SERVICE  
Represented by:  
US DEPARTMENT OF JUSTICE  
ENVIRONMENT & NATL' RESOURCES  
550 WEST FORT STREET, MSC 033  
BOISE, ID 83724  
Phone: 208-387-0835

DIANA DELANEY  
Chief Deputy Clerk