

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

2005 JUN 23 PM 1:13

In Re SRBA)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Case No. 39576)

Water Right 83-11902

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

NAME AND ADDRESS:

UNITED STATES OF AMERICA
USDI BUREAU OF LAND MANAGEMENT
IDAHO STATE OFFICE
1387 S VINNELL WAY
BOISE, ID 83709-1657

SOURCE:

SPRING TRIBUTARY: LUND CREEK

QUANTITY:

0.02 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

PRIORITY DATE:

04/17/1926

* 4/17/1926 CLAIMED UNDER FEDERAL RESERVED WATER RIGHT.*
THIS WATER RIGHT IS ALSO CLAIMED BASED ON FEDERAL LAW WITH AN
APRIL 17, 1926, DATE OF PRIORITY PURSUANT TO AN EXECUTIVE ORDER
SIGNED THE SAME DATE AND KNOWN AS PUBLIC WATER RESERVE 107.

POINT OF DIVERSION:

T43N R04E S25

NWNWNW Within Shoshone County

PURPOSE AND

PERIOD OF USE:

PURPOSE OF USE
Stockwater

PERIOD OF USE
01-01 TO 12-31

QUANTITY
0.02 CFS

PLACE OF USE:

Stockwater
T43N R04E S25

NWNW

Within Shoshone County

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

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

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.

John M. Melanson

John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

SCANNED
JUN 24 2005

RECEIVED

JUN 24 2005

DEPARTMENT OF
WATER RESOURCES

2005 JUN 23 PM 1:13

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

) ORDER OF PARTIAL DECREE
)
)
)

) FOR WATER RIGHTS: 83-11880 *et al.*
) See attached exhibit A
)
)

Case No. 39576

I. PROCEDURAL HISTORY

The United States filed the above water right claims on a "dual" basis, meaning the rights were claimed based on both a state-based beneficial use water right and as a Federal reserved water right based on Public Water Reserve (PWR) 107. The rights were reported to the Court by the Idaho Department of Water Resources in a *Director's Report* on September 21, 2004. No objections were filed to the *Director's Report*, and the time for objections has expired. Pursuant to I.C. 42-1411A(12), the Court held an evidentiary hearing on June 21, 2005. In conjunction with that hearing, the United States submitted affidavits that supported the federal basis for the rights and elected to receive the federal-based rights in lieu of the state-based rights. Mr. David Negri appeared for the United States. No one appeared opposing the rights.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the file and record in this subcase, and the affidavits presented at the hearing on the matter, the Court makes the following findings of fact and conclusions of law:

1. Prior to April 17, 1926, no water rights had been established pursuant to state law for the use of the water from the subject water source for the above claims.

3. On April 17, 1926, President Coolidge executed Public Water Reserve 107, which withdrew the 40-acre tract of land upon which the subject water source for each claim is located

from the public domain. The tract of land withdrawn for each claim is described as the "place of use" element on the attached *Partial Decree*.

4. The subject water source for each of the claims consists of a spring or water hole of the type contemplated by Public Water Reserve 107.

5. Contemporaneously with the withdrawal of the land, President Coolidge impliedly reserved enough water to fulfill the primary purpose of the land reservation for each claim.

6. The minimum amount of water necessary to fulfill the primary purpose of the land reservation is the amount set forth in the "quantity" element on the attached *Partial Decree* for each claim.

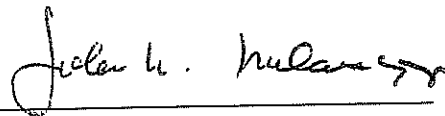
7. The United States has satisfied its burden under Idaho Code section 42-1411A(12) as to the nature and existence of the claimed federal reserve water right for each claim.

8. The elements of the federal reserved water right for each claim are set forth on the attached *Partial Decrees*.

III. ORDER OF PARTIAL DECREE

Therefore, based on the file and record herein, IT IS ORDERED that the above-captioned water rights are hereby **decreed** as set forth in the attached *Partial Decrees Pursuant to I.R.C.P. 54(b)*. It is further **Ordered** that to the extent any concomitant state-law water rights were claimed in the alternative for the above-captioned rights, that said rights not be confirmed in any partial or final decree.

Dated June 23 2005.



JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

EXHIBIT A

Subcase Nos:

83-11880
83-11881
83-11890
83-11891
83-11892
83-11893
83-11894
83-11895
83-11896
83-11897
83-11898
83-11899
83-11900
83-11901
83-11902

(Subcase list: 83UNDUAL)
6/22/05

SCANNED
JUN 24 2005

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER OF
PARTIAL DECREE AND PARTIAL DECREE was mailed on June 23, 2005, 1:13
with sufficient first-class postage to the following:

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

UNITED STATES OF AMERICA

Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

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

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JUN 24 2005