

**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	)	Subcases: 32-11171, 33-10513, 33-
	)	10515, 33-10523, 33-10531, 33-10533,
Case No. 39576	)	33-10899, 33-10901, 55-12439, 61-
	)	11161, 61-11220, 61-11226, 61-11230,
	)	72-12169, 72-12775, and 72-16543
)	
	)	MEMORANDUM DECISION AND
	)	ORDER ON CHALLENGE
)	
	)	ORDER CORRECTING CLERICAL
	)	ERRORS IN RECORD; I.R.C.P 60(a)
)	
	)	ORDER OF RECOMMITMENT TO
	)	SPECIAL MASTER CUSHMAN

**I.
APPEARANCES**

LARRY A. BROWN, U.S. Dept. of Justice, Boise, Idaho.

**II.
MATTER DEEMED FULLY SUBMITTED FOR DECISION**

The United States filed its Opening Brief in these subcases on February 3, 2000. The State of Idaho, the only other party to these subcases, elected to not submit any responsive briefing. The United States did not seek oral argument, and the Court did not request oral argument. On March 30, 2000, the United States filed a *Withdrawal of Challenge* for water right numbers 61-11161, 61-11220, 61-11126, and 61-11230.

Therefore, this matter is deemed fully submitted for decision on the next business day, or March 31, 2000.

III.

BRIEF PROCEDURAL BACKGROUND

1. The United States has filed claims for each of the above-captioned water rights. With the exception of those water right claims located in basin 61 (which have been withdrawn from this challenge), the notices of claim (and amendments thereto) for each of the remaining twelve water rights assert both a beneficial use basis for the claim, and a federal reserve basis pursuant to Public Water Reserve 107 (“PWR 107”).¹
2. On June 3, 1998, the State of Idaho filed objections to the subject water rights located in Basins 32 and 33.² On December 3, 1997, the State of Idaho filed objections to the subject water rights located in Basins 55 and 61. On August 20, 1997, the State of Idaho filed objections to the subject water rights located in Basin 72.
3. On July 1, 1999, the United States and the State of Idaho filed a *Stipulation to Resolve Subcases* (“*Stipulation*”), which resolved the State of Idaho’s objections to hundreds of beneficial use water right claims filed by the United States. The sixteen subcases involved in this challenge were listed among these water rights.
4. On July 12, 1999, Special Master Haemmerle issued *Special Master’s Reports and Recommendations* for all of the water right numbers listed in the *Stipulation*, including the sixteen subject water right claims.

¹ PWR 107 refers to an executive order entitled “Public Water Reserve No. 107,” issued by President Calvin Coolidge on April 17, 1926.

² The objections for the water right claims in basins 32 and 33 erroneously assert the rights are claimed “solely pursuant to state law.”

5. On December 21, 1999, the United States filed a *Motion to Alter or Amend Special Master's Reports to Correct Clerical Errors*, contending that the sixteen subcases were inadvertently included on the *Stipulation* and ultimately in the *Special Master's Reports and Recommendations*.
6. On December 23, 1999, Special Master Cushman issued an *Order Denying Motions to Alter or Amend*.
7. On January 6, 2000, the United States filed its *Notice of Challenge*.
8. On March 30, 2000, the United States filed a *Withdrawal of Challenge* for water right claims 61-11161, 61-11220, 61-11126, and 61-11230.

IV. ISSUE PRESENTED

The United States, in its *Notice of Challenge*, states the issue as follows:

Did the Special Master abuse his discretion by denying an unopposed Motion to Alter or Amend to Correct Clerical Errors filed by the United States to correct clerical errors resulting from clerical errors in a joint submission to Special Master Haemmerle listing hundreds of subcase numbers resolved by stipulation between the United States and the State of Idaho?

V. DECISION

On July 1, 1999, the United States and the State of Idaho entered into a *Stipulation to Resolve Subcases*, which resolved the State of Idaho's objections to hundreds of beneficial use water right claims made by the United States (i.e. single basis claims under state law, as opposed to "dual based" claims made under both state law and federal law). Attached as Exhibit 1 to this *Stipulation* was a list of water right numbers

several pages long, each page containing 4 columns of water right numbers. This challenge involves the remaining twelve water rights claims that are purported to have been inadvertently included on this list. The United States asserts that these twelve water right numbers ended up on the list due to “oversight and mistake of fact.” This assertion is unopposed in this challenge.

The United States further asserts that the list of water right numbers was intended to contain only state law based (i.e. beneficial use) water right claims, and that the subject twelve water right claims have both a state law basis and a federal reserve water right basis (i.e. PWR 107). This Court finds these assertions to be true. The *Stipulation* states that “[e]ach claim [on the attached list] is made solely pursuant to state law.” Also, the Court has reviewed the notices of claim for each of the twelve subject water rights, and they do in fact assert both a state law and a federal reserve basis for the claim. The fact that these twelve “dual based” claims were included in a list that purported to contain only state law based claims is indicative of the fact that the subject water right numbers were put on that list through clerical error arising from oversight.

The United States first unsuccessfully attempted to have these twelve water right claims removed from the *Stipulation* via a Motion to Alter or Amend in front of the Special Master. The Special Master denied the United States’ motion in a threefold ruling. First, the Special Master held that the United States was improperly attempting to use the motion to alter or amend as a mechanism to amend its claims to include a federal reserve basis for the claims. As stated above, the subject twelve claims, as amended, have always asserted both a state law and a federal reserve basis for the claim.

Secondly, the Special Master held that a water right can not be decreed with both a state and a federal basis. *See Memorandum Decision and Order Re: Basin-Wide Issue 12* (April 25, 1997). The United States asserts that it is not attempting to have these subject water rights decreed with both a state and federal basis, but rather that both bases are being prosecuted in the alternative, and any partial decree arising from these claims will ultimately be based on either one or the other. This Court has reviewed the Basin-Wide Issue 12 decision and its underlying Special Master’s Recommendation, and while it does preclude a partial decree from being issued on more than one basis, it does

not prevent a party from pleading both a state and federal basis for a claim. This reading of Basin-Wide Issue 12 is consistent with I.R.C.P. 8(a)(1) and 8(e)(2).

Third, the Special Master held that because the Motion to Alter or Amend was filed beyond the time limits set forth in *SRBA Administrative Order 1* § 13(a), it would be denied on that procedural basis as well. However, this Court considers the United States' motion to be a motion to correct clerical errors pursuant to I.R.C.P. 60(a), despite the fact that it was styled otherwise by the United States. *See 9 Moore's Federal Practice 3d*, § 52.61[4](rule 52(b) motion may be treated as a motion under Rule 60); *Obrey v. Mitchell*, 98 Idaho 533, 538, 567 P.2d 1284 (1977)(court may treat motion to reconsider as a motion to alter or amend judgment). A court may take action pursuant to I.R.C.P. 60(a) at any time, either in response to a motion of a party or on the court's own initiative.

THEREFORE, THE FOLLOWING IS HEREBY ORDERED:

1. Having been withdrawn by the United States, the challenge to water right claims 61-11161, 61-11220, 61-11126, and 61-11230 is DISMISSED.
2. The remaining twelve dual based water right claims are hereby stricken from the list of subcases attached as Exhibit 1 to the *Stipulation to Resolve Subcases* (July 1, 1999), and the resultant *Special Master's Reports and Recommendations* as to these twelve claims are without effect. All other enumerated claims contained in the *Special Master's Reports and Recommendations* remain as recommended.
3. The remaining twelve subcases are hereby recommitted to Special Master Cushman for further proceedings, culminating in special master's reports and recommendations, recommending either a state law or a federal reserve basis (or possibly neither) for the subject water right claims. The Special Master is directed to grant leave to the State of Idaho to amend its objections to these twelve water right claims.

IT IS SO ORDERED:

DATED: FRIDAY, MARCH 31, 2000

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