

**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. 25-13625, 25-13627,
)	25-13629, 25-13631, 25-13633, 25-13635,
Case No. 39576)	25-13653, 25-13676, 25-13678, 25-13942
)	
)	ORDER OF RECOMMITMENT FOR
)	EVIDENTIARY HEARING
_____)	I.C. § 42-1411A

**I.
DESCRIPTIVE SUMMARY**

This is an order recommitting the above-captioned subcases to Special Master Cushman for the purpose of conducting evidentiary hearings in accordance with Idaho Code § 42-1411A.

**II.
PROCEDURAL BACKGROUND**

1. The United States acting through the Bureau of Land Management filed stockwater claims in the above-captioned subcases. The claims were originally filed as federal reserved water right claims pursuant to PWR 107, and in the alternative, pursuant to state law.
2. On September 11, 1998, the State of Idaho filed an objection in each of the above-captioned subcases. The State of Idaho was the only objector in each subcase.

3. On August 10, 1998, the State of Idaho and the United States filed a *Stipulation to Resolve Objections to Certain Claims Based on Public Water Reserve No. 107*. Pursuant to the stipulation, the United States agreed to forego the state-based theory of the claims.

4. On August 24, 1999, Special Master Haemmerle issued *Findings of Fact and Conclusions of Law* which recommended that the water rights in each of the subcases be decreed based on federal law (PWR 107). The basis for the Special Master's recommendation was that the stipulation between the United States and the State of Idaho resolved the State of Idaho's objections as to each subcase. The Special Master's findings of fact also state that: "The Director of the State of Idaho Department of Water Resources examined the water system for this reporting area. The Director's Report contained a recommendation for the elements of these water rights." The record, however, does not indicate that an evidentiary hearing was held or that the United States made a *prima facie* case for each of its federal-based claims.

III. DISCUSSION

Idaho Code Title 42 establishes the SRBA procedures for both state-based and federal-based water right claims. Claims brought pursuant to state law are investigated by the Idaho Department of Water Resources (IDWR). The elements of the water right are subsequently recommended in a Director's Report. Claims brought pursuant to federal law are not investigated by IDWR, nor is a recommendation made. Instead of issuing a recommendation for federal-based claims, IDWR issues an *Abstract*, which merely recites the elements of the claimed water right.

The statutory provisions for federal law based claims are contained in Idaho Code section 42-1411A. The statutory provisions take into account the absence of an independent investigation into federal law based claims and require that the claimant make a *prima facie* case for the claimed water right. In the event an objection to the claim is filed, the Court is required to conduct a trial on the objection. I.C. § 42-1411A(11). However, in addition to conducting a trial on the objection(s), the claimant is

still required to establish a *prima facie* case for the claimed water right.¹ Idaho Code § 42-1411A(12) provides:

Each claimant of a water right established under federal law has the ultimate burden of persuasion for each element of a water right. Since no independent review of the notice of claim has occurred as provided for water rights acquired under state law in a director's report, a claimant of a water right established under federal law has the burden of going forward with the evidence to establish a *prima facie* case for the water right established under federal law. All such proceedings shall be governed by the Idaho rules of civil procedure and Idaho rules of evidence.

I.C. § 42-1411A(12). The *prima facie* showing requirement even applies if the claims are uncontested. Idaho Code section 42-1411A(14) provides:

If no objections are filed to a notice of claim for a water right established under federal law, the claimant shall appear at a hearing scheduled by the district court and shall demonstrate a *prima facie* case of the existence of the water right established under federal law prior to entry of a decree for such claimed water right established under federal law. If the claimant fails to present a *prima facie* case of the existence of the water right established under federal law, then the district court shall enter an order determining that the claimed water right does not exist.

I.C. § 42-1411A(14).

In the above-captioned subcases, although the Director may have issued a recommendation as to the state law basis for each claim, the United States, pursuant to the stipulation, is not proceeding on a state law theory. The Director's Report does not pertain to the federal law basis for the claims nor does it carry with it *prima facie* weight as to the federal law basis for the claims. Although the United States and the State of Idaho resolved the objections filed by the State of Idaho via the stipulation, the United States still must establish a *prima facie* case for each right claimed under federal law. I.C. § 42-1411A(12), (14). A review of the record in these subcases indicates that the United States made no such showing nor was the Special Master's recommendation issued pursuant to such a showing. Therefore, these subcases need to be recommitted to a special master in order to give the United States the opportunity to present a *prima facie* case for each claimed water right.

¹ The objection(s) to the water right claim may only go to less than all the elements. As such, a trial

IV.
ORDER OF RECOMMITMENT

Therefore; based on the foregoing, IT IS HEREBY ORDERED that the above-captioned subcases are recommitted to Special Master Cushman for further proceedings consistent with this Order.

IT IS SO ORDERED.

DATED: JUNE 15, 2000

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

limited to the objections would not satisfy the requirements set forth in Idaho Code section 42-1411A.