

STATE OF WYOMING )  
 )  
COUNTY OF WASHAKIE )

IN THE DISTRICT COURT  
  
FIFTH JUDICIAL DISTRICT

Civil No. 86-0012-3906

IN RE: THE GENERAL ADJUDICATION )  
OF ALL RIGHTS TO USE WATER IN THE )  
BIG HORN RIVER SYSTEM AND ALL )  
OTHER SOURCES, STATE OF WYOMING )

Issued \_\_\_\_\_

Filed 1-9-08

*Sanjiv Kumar White* Clerk

\_\_\_\_\_  
Deputy

PERMIT INVOLVED: 6902R, Anchor Reservoir

DESCRIPTIVE SUMMARY: The Special Master provides notice that the final Report and Recommendation has been filed with the District Court which contains findings of fact and conclusions of law regarding the Joint Motion to Adjudicate Permit No. 6902R in Part and Remand the Remainder to the State Engineer.

NUMBER OF PAGES: 2 pages.



**NOTICE OF FILING  
SPECIAL MASTER'S REPORT AND RECOMMENDATION  
REGARDING ANCHOR RESERVOIR**

THIS NOTICE is made to inform all attorneys and parties that the Special Master's Report and Recommendation on Anchor Reservoir, Permit No. 6902R, has been filed with the District Court of the Fifth Judicial District, Washakie County, State of Wyoming. This Notice has been filed and served by U.S. Mail to all attorneys and parties of record for this matter, and pursuant to Rule 53, Wyoming Rules of Civil Procedure. A copy of the Special Master's Report and Recommendation has also been served on all parties of record. The served parties are noted at the end of this notice.

**Pursuant to Rule 53 (e)(2), Wyoming Rules of Civil Procedure, within ten (10) days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties and the Court. Application to the court for action upon the report and upon objections thereto shall be by motion upon notice as prescribed in Rule 6(d). The court, after hearing, may adopt the report or may modify it or may reject**

**it in whole or in part or may receive further evidence or may recommit it with instruction. The date of service of this Notice begins the ten (10) day period within which to file and serve written objections.**

Any party may call Ms. Mead at the Special Master's office with any questions.

Dated this 7<sup>th</sup> day of January, 2008.

  
\_\_\_\_\_  
**Ramsey L. Kropf**  
**Special Master**

I hereby certify that on this 9<sup>th</sup> day of Jan, 2008, true copies of the foregoing **Notice of Report and Recommendation** were sent by U.S. Mail to the to all Parties and Attorneys of Record, Big Horn River General Adjudication.

  
\_\_\_\_\_  
Gayla D. Mead, Administrative Assistant

- Jane Caton, Esq., Attorney Generals Office
- Nancy McCann, Loren Smith, State Engineer's Office
- John Chaffin, Esq., US Dept. of the Interior,
- John Lawson, Gordon Aycok, Bureau of Reclamation
- James Dubois, Esq., US Dept. of Justice
- Michael Messenger, Esq., Attorney of Record, Owl Creek Irrigation District
- Joe Campbell, President, Owl Creek Irrigation District
- Richard Berley, Esq., Northern Arapaho Tribe
- Colin Hampson, Esq., Eastern Shoshone Tribe
- Teresa McKee, Esq., Eastern Shoshone Tribe

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Issued \_\_\_\_\_  
Filed 1-9-08  
*Suzanne W. [Signature]*  
Deputy

PERMIT INVOLVED: 6902R, Anchor Reservoir

DESCRIPTIVE SUMMARY: The Special Master provides a Report and Recommendation to the District Court containing findings of fact and conclusions of law regarding the Joint Motion to Adjudicate Permit No. 6902R in Part and Remand the Remainder to the State Engineer.

NUMBER OF PAGES: 8 pages, plus Exhibits 1-10.

DATE OF FILING: Original delivered to the Clerk of Court on \_\_\_\_\_, 2008.

## REPORT AND RECOMMENDATION

### I. BACKGROUND

**THIS MATTER** came before the Special Master by the Joint Motion to Adjudicate Permit No. 6902R in Part and Remand the Remainder to the State Engineer, filed April 30, 2007. Also pending before the Special Master is an unopposed Motion to Dismiss from Adjudication and Remand to the State Engineer's Office for Further Review of the Status of the Permit ("Motion to Dismiss"), filed by Owl Creek Irrigation District ("Owl Creek"), and joined by the United States Department of the Interior, Bureau of Reclamation ("Reclamation"). Based upon discussions with the parties during the April 10, 2007 status conference, the Special Master will treat the Motion to Dismiss as withdrawn and such motion is replaced by the Joint Motion to Adjudicate.

In the April status conference, the Special Master advised the parties that she observed three main factors in this matter which differentiate this permit from others in the adjudication, as follows:

1. There is agreement that the permit holder constructed the full capacity of the reservoir allowed under Permit No. 6902R, and the permit holder has continually undertaken diligent work in developing the water not yet appropriated for storage under this permit.
2. Permit No. 6902R has been fully reported to the Court – it is not a partial report on partial uses. The court has previously stated that it is not generally inclined to act on incomplete or partial files forwarded for the Special Master’s review – this is not the current circumstance. Further, the Court has previously ordered adjudications when such action furthers settlement negotiations. The Court’s concern with previous requests of partial adjudications was to avoid any favoritism claims to particular owner(s) when there were several owners under one permit. This concern is not present in this matter.
3. The permit is for storage appropriation, and the parties agree that the reservoir has capacity to store the full permitted amount. Thus, there are no impacts of either reduced or expanded use (or other use besides storage) by adjudicating a portion of the permit.

### DISCUSSION

THEREFORE, based upon the discussion above, the following Findings of Fact and Conclusions of Law are recommended to the District Court in this Report.

### FINDINGS OF FACT

4. The original permit for Anchor Dam was filed by Owl Creek on December 18, 1933, for 22,011 acre-feet of storage for irrigation use. The Permit was later assigned to the United States, Bureau of Reclamation on October 19, 1946. The United States Department of the Interior, Bureau of Reclamation, is the current holder of Permit No. 6902R. Owl Creek’s members, through a contract with Reclamation, use the irrigation water stored under Permit No. 6902R. The original project was permitted for irrigation, but the federal funding was allotted for both irrigation and flood control. A copy of the Permit 6902 is attached as **Exhibit 1**.
5. Pursuant to Permit No. 6902R, Bureau of Reclamation, constructed Anchor Dam with due diligence at a cost of approximately \$ 5.3 million. Anchor Dam was constructed with a capacity to store 17,412 acre-feet to benefit the lands within the Owl Creek Irrigation District for purposes of irrigation and to provide flood control benefiting all lands susceptible to flooding.
6. Due to circumstances beyond the control of the Bureau of Reclamation or Owl Creek, the reservoir behind Anchor Dam is not currently able to store 17,412 acre-feet and release that amount for irrigation. Upon initial filling of the reservoir, a series of sinkholes and leaks developed in the reservoir basin area. These geological problems were not detectable prior to the reservoir construction and filling. From 1961, when the

reservoir first stored water, through at least 1980, sink holes and other depression in the floor of reservoir continued to develop. The sinkholes caused a portion of the water legally diverted under the Permit to be unavailable for release to the intended irrigation beneficiaries. The presence of the sinkholes made the water physically unavailable for storage and use above the level of 9,252 acre-feet.

7. The United States, in the Motion, represents that it has diligently undertaken steps to reduce the excessive reservoir seepage loss, and improve the impoundment capability of Anchor Dam and reservoir. These efforts have included filling sinkholes, diking off the large sinkholes from the main reservoir area and blanketing smaller leaks at a total cost of about \$1.5 million. As a result, the Bureau of Reclamation has been able to store at least 9,252 acre-feet of water in one water year. In 1967, the reservoir reached a maximum water surface elevation of 6418.55 feet on July 5 and again on July 6. Based on the acre-feet capacity table in use in 1967, 9,252 acre-feet of water was stored in Anchor Reservoir at elevation 6418.55 feet. Please see **Exhibit 2**, 1967 acre-feet capacity table.

8. Each time these sink holes and other depressions appeared, significant effort was made by the Bureau of Reclamation to fill these areas using material from within the reservoir high water line. In addition, it appears that some sinkholes have been sealed with silt and no longer present a leakage problem. As a result of the reoccurring sinkholes and work in within the reservoir high water line to repair these areas, the capacity of the reservoir may have increased such that the maximum water stored in the reservoir in 1967 at reservoir elevation 6418.55 feet may now be greater than the 9,252 acre-feet shown by the reservoir's acre-capacity table. The Bureau of Reclamation and Owl Creek advised the Court that a reoccurrence of a large runoff event similar to that in 1967 would most likely result in a higher storage level in the reservoir than occurred in 1967. Determination of the actual water stored in the reservoir in 1967, or storable in a high-flow year, will require additional evaluation or survey of the reservoir site area. However, water has not been physically available to allow such a storage event for a number of years. Therefore, additional time is needed to determine the effectiveness of the past Anchor Reservoir repair work, and determine the actual amount that can be stored and placed to beneficial use under the current reservoir conditions.

9. On November 22, 1967, the Bureau of Reclamation submitted to the Wyoming State Engineer a revised application map and a Notice of Completion of Construction for Anchor Dam and Reservoir showing an as constructed reservoir capacity of 17,412 acre-feet. The Notice of Completion of Construction is attached as **Exhibit 3**. The Parties agree that the Anchor Dam, as constructed, is capable of impounding the 17,412 acre-feet of water allowed by the Permit. The State Engineer in a letter dated September 11, 1968, acknowledged receipt of the Notice of Completion of Construction and stated: "all notices have been filed that are required by law." Please see copy of the letter, **Exhibit 4**. The State Engineer further stated that the only step remaining to secure an adjudicated water right was receipt of the final proof of construction from the Water Division Superintendent for Water Division No. 3. Because of the sinkholes which caused a

