

2003 MAY 21 PM 2:36

DISTRICT COURT-SRBA
TWIN FALLS CO. IDAHO
FILED 21

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	)	SPECIAL MASTER'S REPORT
	)	
	)	FINDINGS OF FACT AND
Case No. 39576	)	CONCLUSIONS OF LAW
	)	
	)	FOR WATER RIGHTS 65-00285, 65-
	)	00292, 65-00293, 65-00294, 65-00295, 65-
	)	00372, 65-03078X, 65-22266 and 65-22067

I. FINDINGS OF FACT

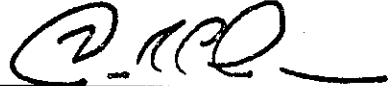
A notice of claim was filed for the above listed water rights pursuant to I.C. § 42-1409. The Director of the State of Idaho Department of Water Resources examined the water system for this reporting area. The *Director's Report* contained a recommendation or abstract for the elements of these water rights.

65-00285 is an unobjected to water right but overlaps with water right 65-00293. On January 16, 2002, an objection was filed to all the water rights listed above by the Idaho Department of Lands. On January 17, 2002, an objection was filed to water rights 65-00292, 65-00372, 65-03078X, 65-22266 and 65-22067 by the United States of America, Bureau of Reclamation. On February 14, 2002, the United States of America, USDA Forest Service filed a response to all the above listed water rights. On June 18, 2002, the Department of Lands and the claimant, Nesbitt Ranch & Cattle Co LLC filed Standard Form's 5 in each of the subcases. On September 20, 2002, a Standard Form 5 was filed regarding the General Provision Separate Streams issue. On June 21, 2002, the USDA Forest Service filed a Notice by the United States of Withdrawal of Responses to Objections. The Notice of Withdrawal of Responses is **granted**. All parties and IDWR are signatures to the *Standard Form's 5*.

II. CONCLUSIONS OF LAW

Therefore based on the file and record herein and pursuant to the *Standard Form's 5*, IT IS RECOMMENDED that the above listed water rights be decreed with elements as set forth in the attached *Recommendations for Partial Decrees pursuant to I.R.C.P 54(b)*.

DATED May 21, 2003.


THOMAS R. CUSHMAN
Special Master
Snake River Basin Adjudication

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)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 65-00293

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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
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NAME AND ADDRESS: NESBITT RANCH & CATTLE CO LLC
10500 NESBITT LN
OLA, ID 83657

SOURCE: SPRING TRIBUTARY: KIMBALL GULCH CREEK

QUANTITY: 0.14 CFS
8.10 AFY

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.
USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A TOTAL
COMBINED DIVERSION RATE OF .14 CFS AND TO A TOTAL COMBINED
ANNUAL DIVERSION VOLUME OF 8.1 AF. COMBINED RIGHT NOS.:
65-291, 65-292, 65-294, 65-295, 65-372, 65-373, 65-286,
65-285, 65-284, 65-282, 65-283, 65-280, 65-365, 65-3078X &
65-501.

PRIORITY DATE: 09/15/1965

POINT OF DIVERSION: T12N R01E S36 NWNWNE Within Gem County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Stockwater	01-01 TO 12-31	0.14 CFS
			8.10 AFY

PLACE OF USE: Stockwater Within Gem County
T12N R01E S25 SWSE
S36 NWNE

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.

BASIN 65 GENERAL PROVISIONS NO. 3, THE SEPARATE STREAMS
GENERAL PROVISION, DOES NOT APPLY TO APPROPRIATIONS OF WATER
AFTER OCTOBER 18, 1977.

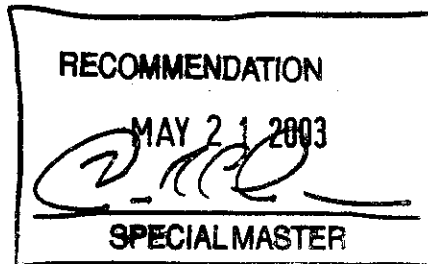
THIS WATER RIGHT SHALL BE ADMINISTERED AS BEING FROM A
SEPARATE SOURCE PURSUANT TO BASIN 65 GENERAL PROVISION NO. 3.
IF THE HOLDER OF THIS RIGHT SEEKS TO CHANGE THE RIGHT PURSUANT
TO IDAHO CODE 42-222 OR SUCCESSOR STATUTE, NOTHING IN THIS
GENERAL PROVISION SHALL PRECLUDE ANY OTHER PERSON OR ENTITY
FROM DEMONSTRATING THAT SUCH CHANGE IN USE WOULD CAUSE INJURY
TO ITS WATER RIGHT OR FROM RECEIVING ANY RELIEF PROVIDED BY
LAW IN THE EVENT OF INJURY.

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



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In Re SRBA)

CERTIFICATE OF MAILING

Case No. 39576)
_____)

Water Right(s): 65-00285

65-00292	65-00293	65-00294
65-00295	65-00372	65-03078X
65-22266	65-22267	

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT, SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on May 21, 2003, with sufficient first-class postage prepaid to the following:

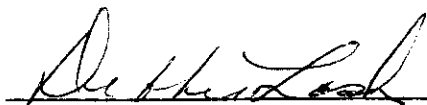
DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

Nesbitt Ranch & Cattle Co LLC
10500 Nesbitt Ln
Ola, Idaho 83657

United States of America
550 West Fort Street, MSE 033
Boise, Idaho 83724

IDAHO DEPARTMENT OF LANDS

Represented by:
CLIVE STRONG
NATURAL RESOURCES
DEP AG OFFICE OF ATTY GEN
STATEHOUSE MAIL
BOISE, ID 83720-0010
Phone: 208-334-2400



Deputy Clerk

CERTIFICATE OF MAILING

PAGE 1
05/21/03

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In Re SRBA)
Case No. 39576)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

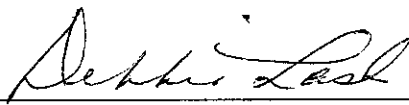
Water Right(s): 65-00285
65-00292 65-00293 65-00294
65-00295 65-00372 65-03078X
65-22266 65-22267

On May 21, 2003, Special Master THOMAS R CUSHMAN
issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s)
pursuant to SRBA Administrative Order 1 (AO1), Section 13a.

Pursuant to SRBA Administrative Order 1, Section 13a, any party
to the adjudication including parties to the subcase, may file a Motion
to Alter or Amend on or before the 28th day of the next month.

Failure of any party in the adjudication to pursue or participate
in a Motion to Alter or Amend the SPECIAL MASTER'S RECOMMENDATION
shall constitute a waiver of the right to challenge it before the
Presiding Judge.

DATED May 21, 2003.


DEBBIE LASH
Deputy Clerk