

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
JUN 17 2003	
By _____	 Deputy Clerk

**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
	)	
Case No. 39576	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW
_____	)	FOR WATER RIGHT 61-04038

I. FINDINGS OF FACT

A notice of claim was filed for this water right 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 that this water right not be decreed.

An objection was filed by Carlene Smith on April 1, 1999. On September 23, 2002, the parties filed a *Stipulation to Resolve Objections* in this and other subcases owned by Carlene Smith. The Idaho Department of Water Resources was not a signature to the *Stipulation*. On December 16, 2002, IDWR filed an *Amended Director's Report*. Objection deadlines were set and followed the docket sheet procedure. No objections were filed and the time for filing has expired.

II. CONCLUSIONS OF LAW

Therefore, based on the file and record herein and pursuant to the *Amended Director's Report*, IT IS RECOMMENDED that the elements for water right 61-04038 be decreed as set forth in the *Attached Recommendation for Partial Decree pursuant to I.R.C.P. 54(b)*.

DATED: June 17, 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

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

In Re SRBA)
Case No. 39576)
_____)

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

Water Right 61-04038

JUN 17 2003

By _____
Clerk
Deputy Clerk

NAME AND ADDRESS: CARLENE SMITH
RT 1 BOX 420
GLENN'S FERRY, ID 83623

SOURCE: SAND SPRING GULCH CREEK TRIBUTARY: LITTLE CANYON CREEK

QUANTITY: 0.18 CFS

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

PRIORITY DATE: 08/02/1898

POINT OF DIVERSION: T05S R10E S10 NESW Within Elmore County
SWSE

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-15 TO 11-15	0.18 CFS
	Stockwater	01-01 TO 12-31	0.04 CFS

PLACE OF USE: Irrigation Within Elmore County
T05S R10E S18 NESW 2.0 SESW 7.0
SWSE 1.0
S19 NENW 1.0
11.0 Acres Total

Stockwater Within Elmore County
T05S R10E S18 NESW SESW

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

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR STOCK
WATER USE 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.

Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

RECOMMENDATION

JUN 17 2003

SPECIAL MASTER

SRBA PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 61-04038 File Number: 00039

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)
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CERTIFICATE OF MAILING

Water Right(s): 61-04038

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 June 17, 2003, with sufficient first-class postage prepaid to the following:

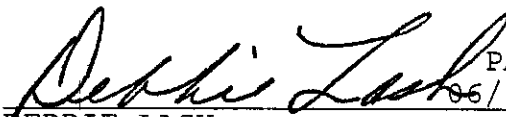
DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

CARLENE SMITH
Represented by:
CHARLES L. HONSINGER
PO BOX 2773
BOISE, ID 83701-2773
Phone: 208-342-4591

BATRUEL DAIRY
Represented by:
MATT J. HOWARD
ATTORNEY AT LAW
PO BOX 190012
BOISE, ID 83719
Phone: 208-333-0622

CERTIFICATE OF MAILING

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06/17/03


DEBBIE LASH
Deputy Clerk

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In Re SRBA)
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NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

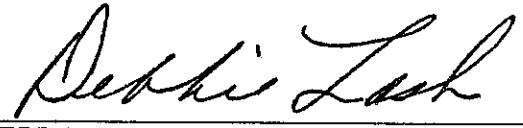
Water Right(s): 61-04038

On June 17, 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 June 17, 2003.


DEBBIE LASH
Deputy Clerk