

JUN 17 2003

By

Clerk

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

Case No. 39576

SPECIAL MASTER'S REPORT

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

FOR WATER RIGHT 61-00293D

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 or abstract for the elements of this water right.

An objection was filed on April 1, 1999, by Carlene Smith. The parties filed a *Stipulation to Resolve Objections* in this subcase and other subcases owned by Carlene Smith. The Idaho Department of Water Resources was not a signature to the *Stipulation*. On October 29, 2002, IDWR filed a *Notice of IDWR Non-Concurrence in Basin 61 Subcase Settlements Submitted Without IDWR Signature*. The attachment to the *Notice* made changes to water right 61-00293D (see attachment to this master's report.) Those changes are as follows: "priority date" changes from January 1, 1898 to August 1, 1898; add a point of diversion; and add language to place of use. A hearing was held on the *Notice of Non-Concurrence*. The parties agreed that the water rights should be recommended as per the attachments to the *Notice of Non-Concurrence*.

II. CONCLUSIONS OF LAW

Therefore, based on the file and record herein and pursuant to the *Notice of IDWR Non-Concurrence*, IT IS RECOMMENDED that the elements for water right 61-00293D 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	
JUN 17 2003	
By _____	Clerk
_____	Deputy Clerk

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
_____)
) Water Right 61-00293D

NAME AND ADDRESS: CARLENE SMITH
RT 1 BOX 420
GLENNS FERRY, ID 83623

SOURCE: SAND SPRINGS GULCH 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: 08/01/1898

POINT OF DIVERSION: T05S R10E S18 NWSESE (Injection) Within Elmore County
 NWSESE (Rediversion)
 NWSESE

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 S19 NENW 40.0
 40.0 Acres Total

Stockwater Within Elmore County
 Same as Irrigation

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 10 ACRES WITHIN THE
PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

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

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR
STOCKWATER 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.

RECOMMENDATION
JUN 17 2003

SPECIAL MASTER

Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

IDWR REPORT REGARDING
NON-CONCURRENCE WITH THE PARTIES' STIPULATIONS

IDWR submits this report as an explanation to the Court and the parties of its non-concurrence with the stipulations filed in the following Smith/Batrue subcases:

61-293B – IDWR cannot concur with the parties' stipulation since it does not resolve the BLM's objection to the place of use element. However, it is IDWR's understanding that there is a Stipulation to Resolve the United States' objections to this water right that has yet to be finalized. It is further IDWR's understanding that this stipulation allows certain public lands to remain on this water right. Once the stipulation with the United States has been filed, IDWR will be able to concur with the place of use element as agreed upon by the parties.

Further, IDWR disagrees with the priority date. The priority date originally recommended by IDWR was a typographical error. The appropriate priority date as agreed upon by the parties and IDWR is August 1, 1898; this priority date is identified on the revised recommendation attached hereto and incorporated herein.

61-293C – See explanation concerning priority date for 61-293B above. In addition, the ownership of this water right has changed. Filed contemporaneously herewith is a Notice of Completed Administrative Proceeding that changes the ownership and revises the priority date to August 1, 1898. Although this subcase is an uncontested overlapping water right, correcting the priority date that is based upon a typographical error is appropriate.

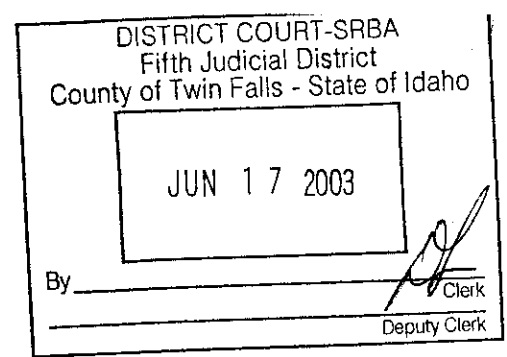
61-293D - See explanation concerning priority date for 61-293B above.

61-2000B - IDWR cannot concur with the quantity as specified under the purpose and period of use on the amended recommendation attached to the parties' stipulation. The quantity element under the purpose and period of use should be 2.056 cfs; the same quantity as listed under the quantity element of this water right. Also, a necessary remark was not included in "Other Provisions Necessary for Definition or Administration of This Water Right" pertaining to the lockable device. Attached hereto is a revised recommendation which is incorporated herein that properly lists these elements.

61-11921 – IDWR cannot concur with the parties' stipulation since it does not resolve the BLM's objection to the place of use element. However, as discussed above in water right number 61-293B, once the United States' stipulation is filed, IDWR will be able to concur with the place of use element as agreed upon by the parties.

IDWR further disagrees with the quantity element and the priority date. The quantity element should be 1.16 cfs based upon the agreed capacity of the ditch not 1.24 cfs. The attached recommendation properly lists the quantity element for this water right. The quantity element under the purpose and period of use should remain as reflected in the parties' stipulation with stockwater and domestic use being non-cumulative.

The appropriate priority date as agreed upon by the parties for this water right is July 31, 1898, and is identified on the revised recommendation attached hereto and incorporated herein.



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)
Case No. 39576)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

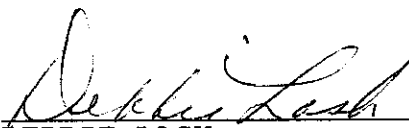
Water Right(s): 61-00293D

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

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
JUN 17 2003	
By _____	 Clerk
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)
)
Case No. 39576)
_____)

CERTIFICATE OF MAILING

Water Right(s): 61-00293D

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
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BOISE, ID 83701-2773
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BATRUEL DAIRY
Represented by:
MATT J. HOWARD
ATTORNEY AT LAW
PO BOX 190012
BOISE, ID 83719
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CERTIFICATE OF MAILING

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ROGER L JONES

Represented by:

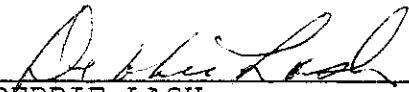
NORMAN M. SEMANKO

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DEBBIE LASH
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