

DISTRICT COURT - SRBA  
TWIN FALLS CO., IDAHO  
FILED \_\_\_\_\_  
2004 MAR 3 PM 3 48

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 AND  
) RECOMMENDATION ON FEDERAL  
) RESERVED WATER RIGHT  
) PURSUANT TO PWR 107  
)  
) FINDINGS OF FACT AND  
) CONCLUSIONS OF LAW  
)  
) For subcases: See Exhibit A  
)

**I. PROCEDURAL BACKGROUND**

The above-captioned water rights were claimed in the SRBA as federal reserved water rights pursuant to Public Water Reserve 107, by the United States Department of the Interior, Bureau of Land Management. Notice of the elements of the claims was reported by the Idaho Department of Water Resources. Objections were filed the State of Idaho regarding whether the claimed rights met the criteria for a federal reserved right pursuant to PWR 107.

On December 11, 2003, a trial was held on these and other claims pursuant to Idaho Code 42-1411A(12), which requires the United States to demonstrate a *prima facie* showing of the existence of the claimed federal reserve water right. In conjunction with that trial, the United States filed affidavits, which were admitted into evidence, for each claimed right to meet its burden.

**II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the file and record in this subcase, and the affidavits presented at the hearing on the matter, this Special Master makes the following findings of fact and conclusions of law:

1. Prior to April 17, 1926, the subject water source for each claim was located on unreserved federal public domain land.

2. Prior to April 17, 1926, no water rights had been established pursuant to state law for the use of the water from the subject water source for each claim.

3. On April 17, 1926, President Coolidge executed Public Water Reserve 107, which withdrew the 40 acre tract of land upon which the subject water source for each claim is located from the public domain. The tract of land withdrawn for each claim is described as the "place of use" element on each of the attached *Special Master's Recommendation*.

4. The subject water source for each claim consists of a spring or water hole of the type contemplated by Public Water Reserve 107.

5. Contemporaneously with the withdrawal of the land, President Coolidge impliedly reserved enough water to fulfill the primary purpose of the land reservation for each claim.

6. The minimum amount of water necessary to fulfill the primary purpose of the land reservation is the amount set forth in the "quantity" element on the attached *Special Master's Recommendation* for each claim.

7. The United States has satisfied its burden under Idaho Code section 42-1411A(12) as to the nature and existence of the claimed federal reserve water right for each claim.

8. The elements of the federal reserved water right for each claim are set forth on each of the attached *Special Master's Recommendation*.

### III. RECOMMENDATION

Therefore, based on the file and record herein, IT IS RECOMMENDED that the above-captioned water rights be decreed as federal reserved water rights with the elements as set forth in each of the attached *Special Master's Recommendation for Partial Decree Pursuant to I.R.C.P. 54(b)*. It is further recommended that to the extent any concomitant state-law water right was claimed in the alternative for any of the above-captioned rights, that said right not be confirmed in any partial or final decree.

Dated March 3, 2004.



THOMAS CUSHMAN  
Special Master  
Snake River Basin Adjudication

EXHIBIT A

Subcase Nos:

|          |          |          |
|----------|----------|----------|
| 32-10434 | 32-10772 | 32-10960 |
| 32-10436 | 32-10774 | 32-10970 |
| 32-10438 | 32-10776 | 32-10972 |
| 32-10440 | 32-10778 | 32-10978 |
| 32-10446 | 32-10782 | 32-10980 |
| 32-10510 | 32-10784 | 32-10990 |
| 32-10514 | 32-10786 | 32-10992 |
| 32-10516 | 32-10788 | 32-10994 |
| 32-10518 | 32-10790 | 32-10996 |
| 32-10522 | 32-10794 | 32-10998 |
| 32-10524 | 32-10800 | 32-11002 |
| 32-10542 | 32-10802 | 32-11018 |
| 32-10544 | 32-10804 | 32-11030 |
| 32-10546 | 32-10806 | 32-11040 |
| 32-10548 | 32-10814 | 32-11042 |
| 32-10550 | 32-10818 | 32-11044 |
| 32-10552 | 32-10820 | 32-11046 |
| 32-10554 | 32-10822 | 32-11048 |
| 32-10556 | 32-10828 | 32-11050 |
| 32-10558 | 32-10830 | 32-11068 |
| 32-10560 | 32-10836 | 32-11070 |
| 32-10564 | 32-10844 | 32-11072 |
| 32-10570 | 32-10846 | 32-11074 |
| 32-10578 | 32-10848 | 32-11173 |
| 32-10586 | 32-10852 | 32-11177 |
| 32-10588 | 32-10854 | 32-11178 |
| 32-10590 | 32-10856 | 32-11203 |
| 32-10592 | 32-10862 |          |
| 32-10594 | 32-10868 |          |
| 32-10596 | 32-10870 |          |
| 32-10598 | 32-10876 |          |
| 32-10608 | 32-10878 |          |
| 32-10614 | 32-10880 |          |
| 32-10616 | 32-10884 |          |
| 32-10639 | 32-10886 |          |
| 32-10641 | 32-10888 |          |
| 32-10643 | 32-10894 |          |
| 32-10681 | 32-10896 |          |
| 32-10683 | 32-10898 |          |
| 32-10748 | 32-10900 |          |
| 32-10752 | 32-10902 |          |
| 32-10754 | 32-10906 |          |
| 32-10756 | 32-10910 |          |
| 32-10758 | 32-10936 |          |
| 32-10760 | 32-10940 |          |
| 32-10762 | 32-10942 |          |
| 32-10764 | 32-10944 |          |
| 32-10766 | 32-10946 |          |
| 32-10768 | 32-10954 |          |
| 32-10770 | 32-10958 |          |

(Subcase list: PWR/MRR 32)  
3/03/04

2004 MAR 3 PM 4 10

In Re SRBA  
Case No. 39576

Water Right(s): 32-10434  
(SEE ATTACHED EXHIBIT A)

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.

  
DIANA R DELANEY  
Deputy Clerk

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# Exhibit A

## Subcase Nos:

|          |          |          |
|----------|----------|----------|
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| 32-10756 | 32-10910 |          |
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| 32-10768 | 32-10954 |          |
| 32-10770 | 32-10958 |          |

CERTIFICATE OF MAILING

DISTRICT COURT-SRBA  
TWIN FALLS CO., IDAHO  
FILED \_\_\_\_\_

2004 MAR 3 PM 4 10

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 )

CERTIFICATE OF MAILING

Case No. 39576 )  
\_\_\_\_\_ )

Water Right(s): 32-10434  
(SEE ATTACHED EXHIBIT A)

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 March 03, 2004, with sufficient first-class postage prepaid to the following:

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

STATE OF IDAHO  
Represented by:  
NATURAL RESOURCES DIV CHIEF  
STATE OF IDAHO  
ATTORNEY GENERAL'S OFFICE  
PO BOX 44449  
BOISE, ID 83711-4449

USDI BLM  
Represented by:  
US DEPARTMENT OF JUSTICE  
ENVIRONMENT & NATL' RESOURCES  
550 WEST FORT STREET, MSC 033  
BOISE, ID 83724

CERTIFICATE OF MAILING

  
DIANA R DELANEY  
Deputy Clerk

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03/03/04

Exhibit A

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In Re SRBA )  
 )  
Case No. 39576 )  
\_\_\_\_\_ )

PARTIAL DECREE PURSUANT TO  
I.R.C.P. 54(b) FOR  
  
Water Right 32-10876

2004 MAR 3 PM 3 46

NAME AND ADDRESS: USDI BLM  
IDAHO STATE OFFICE  
1387 S VINNELL WAY  
BOISE, ID 83709-1657

SOURCE: SPRING TRIBUTARY: COTTONWOOD CREEK

QUANTITY: 0.02 CFS

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

PRIORITY DATE: 04/17/1926

4/17/1926 CLAIMED UNDER FEDERAL RESERVED WATER RIGHT.  
THIS WATER RIGHT IS CLAIMED BASED ON FEDERAL LAW WITH AN  
APRIL 17, 1926, DATE OF PRIORITY PURSUANT TO AN EXECUTIVE ORDER  
SIGNED THE SAME DATE AND KNOWN AS PUBLIC WATER RESERVE 107.

POINT OF DIVERSION: T13N R28E S35 NWSWSE Within Lemhi County

| PURPOSE AND<br>PERIOD OF USE: | PURPOSE OF USE | PERIOD OF USE  | QUANTITY |
|-------------------------------|----------------|----------------|----------|
|                               | Stockwater     | 01-01 TO 12-31 | 0.02 CFS |

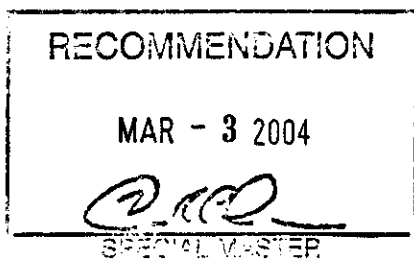
PLACE OF USE: Stockwater Within Lemhi County  
T13N R28E S35 SWSE

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.  
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.



John M. Melanson  
Presiding Judge of the  
Snake River Basin Adjudication