

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 The tract of land withdrawn for each claim is described as the "place of use" element on each of the attached *Special Master's Recommendation*.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

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In Re SRBA
Case No. 39576

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

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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CERTIFICATE OF MAILING

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
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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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DISTRICT COURT-SRBA
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In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 32-10940

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

SOURCE: SPRING TRIBUTARY: MUD 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: T12N R28E S03 SENENW Within Lemhi County

PURPOSE AND 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
T12N R28E S03 NENW

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.

RECOMMENDATION

MAR - 3 2004


SPECIAL MASTER

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