

2004 MAR 9 PM 3 15

**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 subcase: See Attached 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 each claim was reported by the Idaho Department of Water Resources. Objections were filed by the State of Idaho regarding whether the claimed rights met the criteria for a federal reserved right pursuant to PWR 107.

On February 24, 2004, 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 of the claimed rights to meet its burden.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the file and record in these subcases, 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 The tract of land withdrawn for each claim is described as the "place of use" element on each of the attached *Special Master's Recommendation*.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 each of the attached *Special Master's Recommendation*.

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 a federal reserved water right 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 the above-captioned rights, that said right not be confirmed in any partial or final decree.

Dated March 9, 2004.


THOMAS CUSHMAN
Special Master
Snake River Basin Adjudication

EXHIBIT A

Subcase Nos:

61-10951
61-11000
61-11006
61-11008
61-11282
61-11286
61-11288
61-11290
61-11300
61-11302
61-11304
61-11306
61-11321
61-11333
61-11341
61-11343
61-11345
61-11347
61-11353
61-11359
61-11361
61-11388
61-11416
61-11422
61-11428
61-11443
61-11461
61-11464
61-11474
61-11482
61-11490
61-11508
61-11511
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61-11553
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61-11562
61-11566
61-11569

2004 MAR 9 PM 3 16

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): 61-10951
(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 09, 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

PAGE 1
03/09/04

Exhibit A

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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED _____

2004 MAR 9 PM 3 16

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): 61-10951
(SEE ATTACHED EXHIBIT A)

On March 09, 2004, 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 March 09, 2004.


DIANA R DELANEY
Deputy Clerk

EXHIBIT A

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61-11569

In Re SRBA
Case No. 39576

NAME AND ADDRESS:

SOURCE :

SPRING TRIBUTARY: HOT SPRINGS 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:

T03S R08E S04

NWRTONE

Within Elmore County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE
Stockwater

PERIOD OF USE
01-01 TO 12-31

QUANTITY
0.02 CFS

PLACE OF USE:

Stockwater
T03S R08E S04

NWNE

Within Elmore County

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.

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.

MAR - 9 2004

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SPECIAL MASTER

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