

2004 MAR 9 AM 9 33

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 The tract of land withdrawn for each claim is described as the "place of use" element on each of the attached *Special Master's Recommendation*.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

51-10514	51-11178	51-11589
51-10515	51-11230	51-11594
51-10520	51-11359	51-11599
51-10598	51-11365	51-11604
51-10600	51-11370	51-11609
51-10628	51-11375	51-11614
51-10865	51-11380	51-11619
51-10868	51-11385	51-11624
51-10870	51-11390	51-11629
51-10875	51-11395	51-11634
51-10884	51-11400	51-11636
51-10890	51-11405	51-11639
51-10892	51-11409	51-11644
51-10895	51-11414	51-11649
51-10899	51-11419	51-11654
51-10901	51-11424	51-11659
51-10910	51-11429	51-11664
51-10914	51-11434	51-11669
51-10917	51-11439	51-11674
51-10920	51-11444	51-11679
51-10932	51-11449	51-11688
51-10941	51-11454	51-11693
51-10943	51-11459	51-11698
51-10947	51-11464	51-11703
51-10949	51-11469	51-11706
51-10956	51-11474	51-11711
51-10958	51-11479	51-11716
51-10968	51-11489	51-11721
51-10970	51-11494	51-11726
51-10974	51-11496	51-11731
51-10982	51-11499	51-11736
51-10986	51-11501	51-11741
51-10992	51-11504	51-11746
51-10994	51-11506	51-11751
51-11018	51-11509	51-11756
51-11022	51-11514	51-11761
51-11043	51-11519	51-11766
51-11045	51-11524	51-11771
51-11047	51-11529	51-11776
51-11051	51-11534	51-11781
51-11053	51-11539	51-11786
51-11055	51-11544	51-11791
51-11057	51-11549	51-11796
51-11071	51-11554	51-11801
51-11076	51-11559	51-11806
51-11078	51-11564	51-11811
51-11082	51-11569	51-11816
51-11100	51-11574	
51-11105	51-11579	
51-11106	51-11584	

(Subcase list: B51MRR)
3/08/04

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

2004 MAR 9 AM 9 34

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): 51-10514
(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

Subcase Nos:

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51-11071	51-11554	51-11801
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(Subcase list: B51MRR)
3/08/04

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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): 51-10514
(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

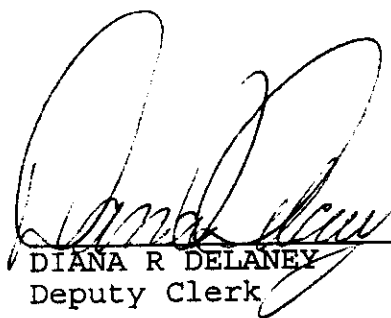
STATE OF IDAHO

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

Exhibit A

Subcase Nos:

51-10514	51-11178	51-11589
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51-11106	51-11584	

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)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 51-10914

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

SOURCE: SPRING TRIBUTARY: NIT 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: T13S R04E S03 SESESE Within Owyhee 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 Owyhee County
T13S R04E S03 SESE

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 - 9 2004


SPECIAL MASTER

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