

DISTRICT COURT - SRBA
TWIN FALLS CO. IDAHO
FILED
2004 MAR 22 PM 3 44

**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**
)
) **FINDINGS OF FACT AND**
) **CONCLUSIONS OF LAW**
)
) **FOR SUBCASE: 57-11260**

I. FINDINGS OF FACT

A. The above-captioned water right was claimed as a "dual-based" water right, meaning the right was claimed both as a federal reserved water right pursuant to Public Water Reserve (PWR) 107, and as a state-law based beneficial use water right. The state-law water right was claimed and reported under the separate water right number 57-07066.¹

B. On December 3, 1997, pursuant to a withdrawal of claim, the state-law based portion claimed under 57-07066 was decreed disallowed.

C. The State of Idaho previously objected to all federal reserved water rights based on PWR 107. The matter was appealed to the Idaho Supreme Court. On April 6, 1998, the Idaho Supreme Court entered its opinion in *U.S. v. State* (PWR) 107, 131 Idaho 468, 959 P.2d 449 (1998). *Remittitur* was filed July 29, 1999.

¹ Early on in the adjudication in the three test basins, dual-based claims were claimed and/or reported by IDWR under separate water right numbers. Judge Hurlbutt later ruled that the United States could not have a water right decreed under both a federal and state-law basis. *See Memorandum Decision and Order Re: Basin-Wide Issue 12*, SRBA Case No. 91-00012 (April 25, 1997). Subsequently, in order to eliminate confusion and prevent the inadvertent issuance of two partial decrees for the same water right, this process was eliminated. "Dual-based" water rights are now reported under a single water right number.

- D. On June 9, 2000, the Affidavit of Leo E. Coleman was filed in support of the elements of water right 57-11260, consistent with I.C. § 42-1411A.
- E. On February 18, 2003, the United States and the State of Idaho filed a *Standard Form 5/Amended Director's Report* amending the "source" element for water right 57-11260 from "High Saddle Spring" to "Henderson Spring".
- F. On April 8, 2003, IDWR filed a *Competing Claims Analysis, Subcase Nos. 57-1059, et al.*, setting forth the status and background for 57-11260 and other similarly situated dual-based rights. A hearing on the matter was held on July 31, 2003.

II. CONCLUSIONS OF LAW

Based on the file and record herein and pursuant to the *Standard Form 5*, the *Affidavit* on file, and the disallowance of the state-based portion of the claim, IT IS RECOMMENDED that water right 57-11260 be **decreed** with the elements as set forth in the attached *Recommendation for Partial Decree Pursuant to I.R.C.P. 54(b)*.

DATED March 22, 2004.



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
TWIN FALLS CO., IDAHO
FILED

2004 MAR 22 PM 3 44

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 57-11260

NAME AND ADDRESS: UNITED STATES OF AMERICA
USDI BUREAU OF LAND MANAGEMENT
IDAHO STATE OFFICE
1387 S VINNELL WAY
BOISE, ID 83709-1657

SOURCE: HENDERSON SPRING (SOUTH) TRIBUTARY: SINKS

QUANTITY: 0.02 CFS

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. *

LOCATION INSTREAM FLOW: T06S R02W S14 NENW Within Owyhee County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Stockwater	01-01 TO 12-31	0.02 CFS

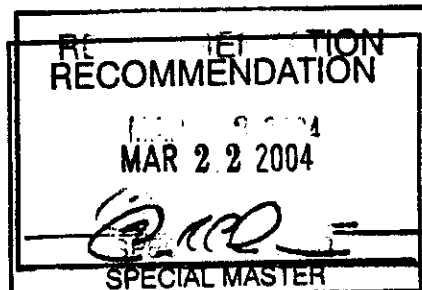
PLACE OF USE: Stockwater Within Owyhee County
T06S R02W S14 NENW

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.



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

2004 MAR 22 PM 3 44

In Re SRBA)
)
Case No. 39576)
)

Water Right(s) : 57-11260

DEBBIE LASH
Deputy Clerk

2004 MAR 22 PM 3 44

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

Water Right(s) : 57-11260

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.


DEBBIE LASH
Deputy Clerk