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

2004 MAR 4 PM 4 09

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	**SPECIAL MASTER'S REPORT AND RECOMMENDATION ON FEDERAL RESERVED WATER RIGHT PURSUANT TO PWR 107**
Case No. 39576	**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 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 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 The tract of land withdrawn for each claim is described as the "place of use" element on each of the attached *Special Master's Recommendation.*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 4, 2004.

THOMAS CUSHMAN
Special Master
Snake River Basin Adjudication

EXHIBIT A

Subcase Nos:

72-11769	72-12007	72-12265	72-12599	72-12895	72-13119
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72-12005	72-12249	72-12591	72-12891	72-13117	72-13257

(Subcase list: PWR/72 MRR)
3/04/04

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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)	CERTIFICATE OF MAILING
)	
Case No. 39576)	
)	Water Right(s): 72-11769 (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 04, 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

DIANA R DELANEY
Deputy Clerk

EXHIBIT A

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72-15165	72-15603
72-15183	72-15605
72-15187	72-15617
72-15195	72-15633
72-15201	72-15655
72-15203	72-15665
72-15209	72-15667
72-15217	72-15671
72-15223	72-15675
72-15225	72-15679
72-15227	72-15687
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72-15243	72-15691
72-15261	72-15709
72-15279	72-15711
72-15289	72-15713
72-15297	72-15717
72-15301	72-15731
72-15309	72-15735
72-15311	72-15741
72-15319	72-15747
72-15345	72-15751
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72-15473	
72-15483	

(Subcase list: PWR/72 MRR)
3/04/04

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED
2004 MAR 4 PM 4 23

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): 72-11769 (SEE ATTACHED EXHIBIT A)

On March 04, 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 04, 2004.

/DIANA R DELANEY
Deputy Clerk

EXHIBIT A

Subcase Nos:

72-11769	72-12007	72-12265	72-12599	72-12895	72-13119
72-11779	72-12009	72-12277	72-12615	72-12897	72-13121
72-11787	72-12015	72-12283	72-12619	72-12899	72-13123
72-11789	72-12019	72-12285	72-12621	72-12901	72-13125
72-11791	72-12023	72-12295	72-12627	72-12903	72-13131
72-11799	72-12027	72-12297	72-12629	72-12909	72-13133
72-11803	72-12029	72-12305	72-12631	72-12911	72-13135
72-11805	72-12033	72-12307	72-12633	72-12913	72-13137
72-11813	72-12035	72-12309	72-12641	72-12915	72-13141
72-11817	72-12043	72-12323	72-12643	72-12917	72-13143
72-11819	72-12047	72-12329	72-12645	72-12919	72-13145
72-11825	72-12053	72-12331	72-12647	72-12921	72-13147
72-11833	72-12057	72-12337	72-12649	72-12923	72-13151
72-11835	72-12059	72-12341	72-12675	72-12925	72-13155
72-11837	72-12061	72-12343	72-12687	72-12927	72-13159
72-11839	72-12067	72-12345	72-12695	72-12929	72-13161
72-11841	72-12075	72-12365	72-12697	72-12933	72-13163
72-11843	72-12077	72-12371	72-12699	72-12935	72-13165
72-11847	72-12079	72-12373	72-12701	72-12937	72-13167
72-11849	72-12081	72-12375	72-12703	72-12953	72-13169
72-11855	72-12085	72-12381	72-12705	72-12955	72-13171
72-11857	72-12091	72-12399	72-12707	72-12961	72-13173
72-11859	72-12093	72-12429	72-12715	72-12983	72-13175
72-11861	72-12095	72-12443	72-12725	72-12989	72-13177
72-11863	72-12101	72-12453	72-12737	72-12991	72-13179
72-11865	72-12105	72-12465	72-12751	72-12995	72-13181
72-11867	72-12111	72-12467	72-12753	72-13005	72-13187
72-11877	72-12113	72-12473	72-12755	72-13007	72-13189
72-11881	72-12123	72-12479	72-12765	72-13009	72-13193
72-11883	72-12125	72-12481	72-12769	72-13011	72-13195
72-11897	72-12131	72-12485	72-12771	72-13013	72-13197
72-11911	72-12137	72-12519	72-12785	72-13029	72-13201
72-11917	72-12139	72-12523	72-12787	72-13033	72-13205
72-11919	72-12147	72-12533	72-12791	72-13037	72-13207
72-11927	72-12151	72-12535	72-12817	72-13039	72-13211
72-11937	72-12165	72-12539	72-12819	72-13043	72-13213
72-11941	72-12171	72-12545	72-12823	72-13069	72-13227
72-11943	72-12173	72-12555	72-12831	72-13071	72-13229
72-11955	72-12191	72-12557	72-12837	72-13073	72-13231
72-11957	72-12211	72-12559	72-12841	72-13085	72-13233
72-11961	72-12217	72-12561	72-12843	72-13087	72-13235
72-11969	72-12221	72-12563	72-12845	72-13091	72-13237
72-11971	72-12225	72-12565	72-12849	72-13095	72-13239
72-11973	72-12227	72-12573	72-12851	72-13097	72-13241
72-11975	72-12233	72-12575	72-12865	72-13107	72-13243
72-11979	72-12239	72-12579	72-12867	72-13109	72-13245
72-11981	72-12243	72-12581	72-12873	72-13111	72-13247
72-11983	72-12245	72-12587	72-12877	72-13113	72-13251
72-12001	72-12247	72-12589	72-12881	72-13115	72-13253
72-12005	72-12249	72-12591	72-12891	72-13117	72-13257

(Subcase list: PWR/72 MRR)
3/04/04

EXHIBIT A

Subcase Nos:

72-13259	72-13395	72-13829	72-14183	72-14459	72-14839
72-13263	72-13415	72-13859	72-14197	72-14467	72-14855
72-13265	72-13417	72-13863	72-14199	72-14469	72-14857
72-13267	72-13421	72-13885	72-14203	72-14473	72-14859
72-13271	72-13423	72-13887	72-14205	72-14475	72-14861
72-13275	72-13425	72-13893	72-14217	72-14485	72-14863
72-13277	72-13427	72-13897	72-14229	72-14489	72-14865
72-13279	72-13433	72-13899	72-14231	72-14495	72-14875
72-13281	72-13451	72-13903	72-14233	72-14497	72-14877
72-13283	72-13457	72-13905	72-14235	72-14499	72-14889
72-13285	72-13459	72-13907	72-14239	72-14503	72-14899
72-13287	72-13461	72-13911	72-14241	72-14507	72-14901
72-13289	72-13463	72-13929	72-14243	72-14513	72-14903
72-13291	72-13471	72-13931	72-14245	72-14515	72-14911
72-13299	72-13475	72-13933	72-14247	72-14519	72-14923
72-13301	72-13501	72-13945	72-14257	72-14527	72-14925
72-13303	72-13503	72-13947	72-14265	72-14555	72-14927
72-13305	72-13509	72-13981	72-14267	72-14571	72-14937
72-13307	72-13513	72-13997	72-14273	72-14613	72-14957
72-13311	72-13557	72-14013	72-14279	72-14623	72-14961
72-13313	72-13559	72-14015	72-14281	72-14637	72-14965
72-13315	72-13569	72-14019	72-14293	72-14643	72-14967
72-13317	72-13597	72-14021	72-14295	72-14659	72-14969
72-13319	72-13599	72-14027	72-14299	72-14663	72-14971
72-13321	72-13603	72-14033	72-14301	72-14665	72-14975
72-13323	72-13607	72-14037	72-14307	72-14669	72-14979
72-13327	72-13611	72-14039	72-14309	72-14671	72-14987
72-13329	72-13653	72-14041	72-14311	72-14673	72-15003
72-13331	72-13655	72-14047	72-14315	72-14675	72-15007
72-13333	72-13667	72-14059	72-14319	72-14681	72-15011
72-13335	72-13683	72-14061	72-14323	72-14713	72-15015
72-13337	72-13687	72-14067	72-14329	72-14755	72-15017
72-13339	72-13721	72-14069	72-14337	72-14767	72-15025
72-13343	72-13755	72-14071	72-14341	72-14771	72-15029
72-13345	72-13767	72-14073	72-14345	72-14773	72-15031
72-13347	72-13769	72-14075	72-14349	72-14775	72-15037
72-13349	72-13773	72-14079	72-14363	72-14777	72-15039
72-13351	72-13777	72-14081	72-14367	72-14779	72-15041
72-13357	72-13783	72-14095	72-14379	72-14785	72-15043
72-13359	72-13785	72-14097	72-14397	72-14789	72-15063
72-13361	72-13787	72-14101	72-14399	72-14803	72-15065
72-13363	72-13789	72-14103	72-14401	72-14807	72-15067
72-13365	72-13793	72-14107	72-14413	72-14811	72-15069
72-13367	72-13795	72-14109	72-14423	72-14817	72-15073
72-13381	72-13803	72-14115	72-14431	72-14823	72-15075
72-13383	72-13807	72-14119	72-14437	72-14825	72-15077
72-13385	72-13813	72-14145	72-14439	72-14827	72-15085
72-13387	72-13815	72-14147	72-14449	72-14829	72-15103
72-13391	72-13821	72-14175	72-14455	72-14831	72-15109
72-13393	72-13825	72-14181	72-14457	72-14837	72-15113

(Subcase list: PWR/72 MRR)
3/04/04

EXHIBIT A

Subcase Nos:

72-15117	72-15485
72-15119	72-15503
72-15123	72-15535
72-15125	72-15561
72-15127	72-15563
72-15133	72-15569
72-15135	72-15573
72-15137	72-15575
72-15139	72-15597
72-15153	72-15599
72-15161	72-15601
72-15165	72-15603
72-15183	72-15605
72-15187	72-15617
72-15195	72-15633
72-15201	72-15655
72-15203	72-15665
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72-15217	72-15671
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72-15433	
72-15435	
72-15437	
72-15441	
72-15447	
72-15449	
72-15465	
72-15471	
72-15473	
72-15483	

(Subcase list: PWR/72 MRR)
3/04/04

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 72-12911

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

SOURCE: SPRING TRIBUTARY: BROKEN WAGON 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: T11N R20E S35 NWSWSW Within Custer 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 Custer County
T11N R20E S35 SWSW

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 - 4 2004
SPECIAL MASTER

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