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Department of Water Resources

DISTRICT COURT-SRE
TWIN FALLS CO., IDAH
FILED
2004 MAR 23 PM 12 12

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	)	SECOND SPECIAL MASTER'S
	)	REPORT
Case No. 39576	)	
	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW
	)	
	)	FOR WATER RIGHT 65-03212

I. FINDINGS OF FACT

A notice of claim was filed for the above right pursuant to I.C. § 42-1409. The Director of the State of Idaho Department of Water Resources examined the water system for this reporting area. The *Director's Report* contained a recommendation for the elements of this water right.

An *Objection* was filed to the right by the United States through the Department of Interior, Bureau of Reclamation, objecting to the "place of use." On June 9, 2000 a second *Objection* was filed by the United States through the Department of Interior, objecting to Separate Streams General Provisions.

On November 17, 2000, a *Notice of Completed Administrative Proceeding (NCAP)* was filed. Attached to the *NCAP* was an *Amended Director's Report* with a substitution of a party.

On January 19, 2001, the parties filed a *Stipulation to Resolve Objection*. Attached to the *Stipulation* was an *Amended Director's Report* adding language to the "place of use." However, the *Stipulation* stated the "separate streams general provision in Basin 65 is still outstanding."

On March 13, 2001 a *Special Master's Report* was filed. No Challenges were filed to the *Special Master's Report*, and on May 1, 2001, an *Order of Partial Decree* was filed by the SRBA District Court for the above right.

On Dec. 5, 2003, the SRBA Court issued an *Order Rescinding Partial Decree; I.R.C.P 60*

(a) and Order of Reference to Special Master Cushman, stating that neither the previous *Special Master's Report and Recommendation* nor the *Partial Decree* should have been issued until the Separate Streams General Provision issue was settled. The *Order* rescinded the partial decree and remanded the case back to Special Master Cushman.

On September 20, 2002, a *Standard Form 5/Stipulated Elements of a Water Right* signed by the Claimant and the Objector was filed. The *Standard Form 5* addressed the Separate Streams General Provision Issue.

II. CONCLUSIONS OF LAW

Therefore, based on the file and record herein and pursuant to the *Standard Form 5*, IT IS RECOMMENDED that the above water right 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

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 65-03212

NAME AND ADDRESS: MARY NAHAS FAMILY TRUST
RONALD NAHAS FAMILY TRUST
3840 HAPPY VALLEY RD
LAFAYETTE, CA 94549

SOURCE: LAKE FORK TRIBUTARY: NORTH FORK PAYETTE RIVER

QUANTITY: 2.00 CFS

USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A
DIVERSION RATE OF .02 CFS AT THE FIELD HEADGATE. COMBINED NOS.:
65-02487 & 65-02489.

PRIORITY DATE: 11/29/1918

POINT OF DIVERSION: T17N R03E S03 SENE Within Valley County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	05-01 TO 09-15	2.00 CFS

PLACE OF USE:	Irrigation	Within Valley County
	T17N R03E S31	NENE 39.0 NWNE 12.0 SWNE 8.0 SENE 35.0
	94.0 Acres Total	

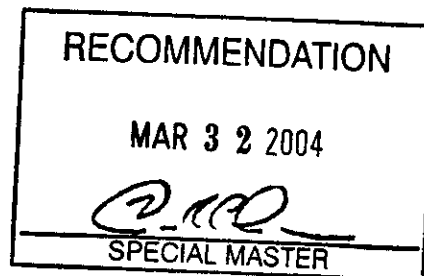
THE IRRIGATION IN THE SWNE, SECTION 31 IS LIMITED TO
IRRIGATION IN THE E1/2 SWNE, SECTION 31.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

Basin 65 General Provisions No. 3, the Separate Streams
General Provision, does not apply to appropriations of water
after October 18, 1977.

This water right shall be administered as being from a
separate source pursuant to Basin 65 General Provision No. 3.
If the holder of this right seeks to change the right pursuant
to Idaho Code Section 42-222 or successor statute, nothing in
this general provision shall preclude any other person or entity
from demonstrating that such change in use would cause injury to
its water right or from receiving any relief provided by law in
the event of injury.

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

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
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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): 65-03212

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 23, 2004, with sufficient first-class postage prepaid to the following:

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

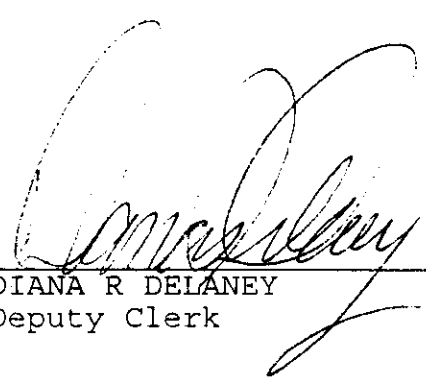
STATE OF IDAHO
Represented by:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
PO BOX 44449
BOISE, ID 83711-4449

USDI BUREAU OF RECLAMATION
Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

CERTIFICATE OF MAILING

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03/23/04

MARY NAHAS FAMILY TRUST
RONALD NAHAS FAMILY TRUST
3840 HAPPY VALLEY RD
LAFAYETTE, CA 94549



DIANA R DELANEY
Deputy Clerk

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
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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

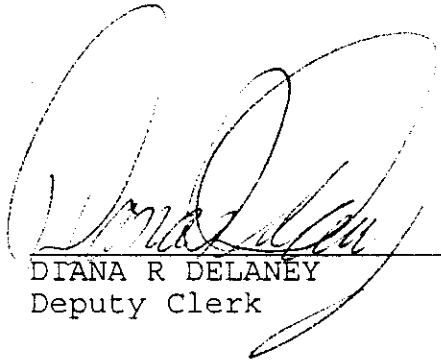
Water Right(s): 65-03212

On March 23, 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 23, 2004.



DIANA R DELANEY
Deputy Clerk