

APR 13 2004

2004 APR 12 PM 3 45
U. DISTRICT OF THE

Department of Water Resources

In Re SRBA

SPECIAL MASTER'S REPORT

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FOR WATER RIGHT: 65-11247

I. FINDINGS OF FACT

A notice of claim was filed for the above listed water 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 or abstract for the elements of this water right.

On June 9, 2000, the United States of America, Bureau of Reclamation filed a *Motion to File Late Objections* in multiple subcases. The Motion was granted on July 28, 2000. The objections were filed to “General Provisions Basin 65 Irrigation & Other Part II (3) Separate Streams Administration.” A Show Cause Hearing was set for January 27, 2004. The claimant did not appear at hearing. The United States Bureau of Reclamation Motioned, on record, to add General Provision separate streams language to the “other provisions necessary.” The Motion was granted on record.

II. CONCLUSIONS OF LAW

Therefore based on the file and record herein, IT IS RECOMMENDED that water right 65-11247 be decreed with the elements as set forth in the attached *Recommendations for Partial Decrees Pursuant to I.R.C.P. 54(b)*.

DATED April 12, 2004.

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 65-11247

NAME AND ADDRESS: THOMAS F PENCE JR
5433 BIG WILLOW RD
PAYETTE, ID 83661

SOURCE: BIG WILLOW CREEK TRIBUTARY: PAYETTE RIVER

QUANTITY: 4.60 CFS
24.70 APY

THIS RIGHT WHEN COMBINED WITH RIGHT NOS. 65-02019, 65-02620 &
65-11212 SHALL PROVIDE NO MORE THAN .02 CFS PER ACRE WHEN
MEASURED AT THE FIELD HEADGATE.

PRIORITY DATE: 12/10/1892

POINT OF DIVERSION: T08N R04W S25 NWN Within Payette County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Stockwater	01-01 TO 12-31	0.39 CFS
			24.70 APY
	Irrigation	03-15 TO 11-15	4.60 CFS

PLACE OF USE: Irrigation Within Payette County

T08N R04W S26	SWNE 29.0	SENE 2.4
LOT 5 (SNNW) 14.0	LOT 5 (SENN) 23.0	
LOT 3 (NESW) 38.0	LOT 4 (NNSW) 6.7	
LOT 3 (SESW) 8.9	LOT 1 (NESE) 6.0	
LOT 2 (NWSE) 40.0	LOT 2 (SWSE) 27.0	
195.0 Acres Total		

Stockwater Within Payette County

T08N R04W S26	SWNE	SENE
LOT 5 (SNNW)	LOT 5 (SENN)	
LOT 3 (NESW)	LOT 4 (NNSW)	
LOT 3 (SESW)	LOT 1 (NESE)	
LOT 2 (NWSE)	LOT 2 (SWSE)	

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO
THE IRRIGATION OF A COMBINED TOTAL OF 279.0 ACRES IN A SINGLE
IRRIGATION SEASON. COMBINED RIGHT NOS.: 65-02019, 65-02620 &
65-11212.

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

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR
STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL
USE.

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

RECOMMENDATION

APR 12 2004

SPECIAL MASTER

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): 65-11247

On April 12, 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 April 12, 2004.



JULIE MURPHY
Deputy Clerk

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): 65-11247

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 April 12, 2004, with sufficient first-class postage prepaid to the following:

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

UNITED STATES OF AMERICA
Represented by:
DAVID W GEHLERT
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATRUAL RESOURCE
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

THOMAS F PENCE JR
5433 BIG WILLOW RD
PAYETTE, ID 83661
Phone: 208-278-5472

CERTIFICATE OF MAILING


JULIE MURPHY
Deputy Clerk

PAGE 1
04/12/04