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Department of Water Resources

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED
2004 APR 13 PM 3 39

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
	)	
Case No. 39576	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW
	)	
	)	FOR WATER RIGHT: 65-10652
	)	

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 28, 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 rights 65-10652 be decreed with the elements as set forth in the attached *Recommendation for Partial Decree Pursuant to I.R.C.P. 54(b)*.

DATED April 13, 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 65-10652

NAME AND ADDRESS: CHESTER KERSTEIN
JO ANN F KERSTEIN
2100 ARTESIAN RD
EAGLE, ID 83616

SOURCE: SPRING TRIBUTARY: SQUAW CREEK

QUANTITY: 0.22 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE SHALL
NOT EXCEED 13,000 GALLONS PER DAY.

THIS RIGHT WHEN COMBINED WITH RIGHT 65-10653 SHALL PROVIDE NO
MORE THAN .02 CFS PER ACRE AT FIELD HEADGATE FOR IRRIGATION, OR
WHEN COMBINED WITH RIGHT 65-10651 SHALL PROVIDE NO MORE THAN .05
CFS NOR 2.7 AFA FOR STOCKWATER.

PRIORITY DATE: 05/29/1927

POINT OF DIVERSION: T07N R01E S04 NWSE Within Gem County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Stockwater	01-01 TO 12-31	0.05 CFS
			2.70 APY
	Irrigation	04-01 TO 11-01	0.22 CFS

PLACE OF USE: Irrigation Within Gem County
T07N R01E S04 SENE 9.0 NESE 2.0
11.0 Acres Total

Stockwater Within Gem County
Same as Irrigation

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
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).

RECOMMENDATION

APR 13 2004


SPECIAL MASTER

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

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

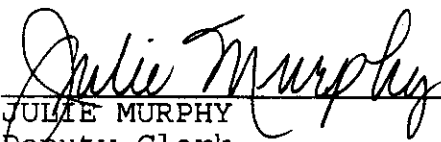
Water Right(s): 65-10652

On April 13, 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 13, 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)

Case No. 39576)
_____)

CERTIFICATE OF MAILING

Water Right(s): 65-10652

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 13, 2004, with sufficient first-class postage prepaid to the following:

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

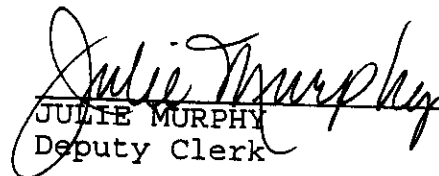
UNITED STATES OF AMERICA

Represented by:

DAVID W GEHLERT
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATRUAL RESOURCE
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

CHESTER KERSTEIN
JO ANN F KERSTEIN
2100 ARTESIAN RD
EAGLE, ID 83616
Phone: 208-939-2226

CERTIFICATE OF MAILING


JULIE MURPHY
Deputy Clerk

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04/13/04