

DISTRICT COURT-SRBA  
TWIN FALLS CO., IDAHO  
FILED 21

2004 APR 14 AM 11 27

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 ) Subcases 47-15285, *et al.*  
 ) (USDI / BLM)  
Case No. 39576 ) (see two lists of 109 claims attached)  
 )  
 ) SPECIAL MASTER REPORT

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**Findings of Fact**

The Director of the Idaho Department of Water Resources filed his *Director's Report for Domestic and Stockwater, Reporting Area 12 (IDWR Basin 47)* on August 14, 1998. The Director recommended the above 109 claims to the United States of America, Department of Interior, Bureau of Land Management, Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho, 83709-1657, for .02 cfs from various springs, creeks and streams for year-'round stockwater use in Twin Falls County, all with a priority date of January 1, 1875. based on beneficial use. The Director also noted with each recommendation under priority date:

4/17/1926 Claimed under federal reserved water right.

This water right is also 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.

The State of Idaho filed *Objections* on February 10, 1999, objecting to priority date and alleging the water rights should not exist. On May 12, 2003, the United States and the State filed a *Joint Motion to Vacate Hearing on Dispositive Motions and to Proceed with Hearing Under I.C. § 42-1411(A)*. On February 24, 2004, the State filed a *Report on Status of State of Idaho's Objections for Selected Subcases in Basins 35 and 47*. In the *Report*, the State said its objections in the 109 subcases were withdrawn.

On April 8, 2004, the United States filed an *Affidavit of John R. Ash* in subcases 47-15285, *et al.* covering 121 subcases, including the above 109 claims.<sup>1</sup> Mr. Ash, a natural resource specialist (water rights) with the USDI / BLM in its Jarbidge Field Office located in Twin Falls, Idaho, stated that for the **PWR 28** claims, the land surrounding the 19 claims was unreserved federal public domain as of May 31, 1915, the water sources were confirmed by field investigation and there is sufficient surface water at the sites for consumptive use by livestock. For the **PWR 107** claims, Mr. Ash stated that the land surrounding those 90 claims was unreserved federal public domain as of April 17, 1926, the water sources were confirmed by field investigation and there was sufficient surface water at the sites for consumptive use by livestock.

### Conclusions of Law

The United States is entitled to partial decrees adjudicating water rights as described in the attached *Special Master Recommendations for Partial Decrees for Water Rights*.

DATED April 14, 2004.



TERRENCE A. DOLAN  
Special Master  
Snake River Basin Adjudication

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<sup>1</sup> Mr. Ash's *Affidavit* included claims with pending objections which are **not** part of this *Special Master Report and Recommendation*. The *Affidavit* also included claim 47-15417 for which a *Special Master Report and Recommendation* was entered on March 29, 2004. Also, see the *Errata to the Affidavit of John R. Ash*, filed April 13, 2004.

PWR 28 (May 31, 1915)

47-15468  
47-15471  
47-15472  
47-15473  
47-15480  
47-15482  
47-15487  
47-15492  
47-15529  
47-15532  
47-15535  
47-15546  
47-15563  
47-15607  
47-15610  
47-15875  
47-16558  
47-16563  
47-16564

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19 claims total

PWR 107 (April 17, 1926)

|          |          |          |
|----------|----------|----------|
| 47-15285 | 47-15551 | 47-16494 |
| 47-15287 | 47-15554 | 47-16496 |
| 47-15297 | 47-15557 | 47-16509 |
| 47-15299 | 47-15560 | 47-16510 |
| 47-15310 | 47-15566 | 47-16517 |
| 47-15319 | 47-15573 | 47-16518 |
| 47-15334 | 47-15576 | 47-16519 |
| 47-15337 | 47-15581 | 47-16520 |
| 47-15340 | 47-15584 | 47-16521 |
| 47-15343 | 47-15638 | 47-16522 |
| 47-15346 | 47-15641 | 47-16524 |
| 47-15349 | 47-15644 | 47-16531 |
| 47-15352 | 47-15665 | 47-16534 |
| 47-15399 | 47-15677 | 47-16535 |
| 47-15402 | 47-15680 | 47-16536 |
| 47-15405 | 47-15722 | 47-16543 |
| 47-15411 | 47-15726 | 47-16545 |
| 47-15414 | 47-15734 | 47-16546 |
| 47-15427 | 47-15738 | 47-16555 |
| 47-15430 | 47-15742 | 47-16556 |
| 47-15446 | 47-15785 | 47-16560 |
| 47-15450 | 47-15791 | 47-16561 |
| 47-15451 | 47-15799 | 47-16562 |
| 47-15461 | 47-15810 | 47-16565 |
| 47-15465 | 47-15812 | 47-16577 |
| 47-15495 | 47-15833 | 47-16578 |
| 47-15498 | 47-15895 | 47-16584 |
| 47-15501 | 47-16477 | 47-16590 |
| 47-15540 | 47-16478 | 47-16591 |
| 47-15543 | 47-16481 | 47-16592 |

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90 claims total

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

NOTICE OF ISSUANCE OF  
SPECIAL MASTER'S  
RECOMMENDATION

Water Right(s): 47-15285  
(SEE ATTACHED EXHIBIT A)

On April 14, 2004, Special Master TERRENCE A. DOLAN 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 14, 2004.

  
\_\_\_\_\_  
ROBBIN HALL  
Deputy Clerk

Exhibit A

Subcase Nos:

|          |          |
|----------|----------|
| 47-15285 | 47-15785 |
| 47-15287 | 47-15791 |
| 47-15297 | 47-15799 |
| 47-15299 | 47-15810 |
| 47-15310 | 47-15812 |
| 47-15319 | 47-15833 |
| 47-15334 | 47-15895 |
| 47-15337 | 47-16477 |
| 47-15340 | 47-16478 |
| 47-15343 | 47-16481 |
| 47-15346 | 47-16494 |
| 47-15349 | 47-16496 |
| 47-15352 | 47-16509 |
| 47-15399 | 47-16510 |
| 47-15402 | 47-16517 |
| 47-15405 | 47-16518 |
| 47-15411 | 47-16519 |
| 47-15414 | 47-16520 |
| 47-15427 | 47-16521 |
| 47-15430 | 47-16522 |
| 47-15446 | 47-16524 |
| 47-15450 | 47-16531 |
| 47-15451 | 47-16534 |
| 47-15461 | 47-16535 |
| 47-15465 | 47-16536 |
| 47-15495 | 47-16543 |
| 47-15498 | 47-16545 |
| 47-15501 | 47-16546 |
| 47-15540 | 47-16555 |
| 47-15543 | 47-16556 |
| 47-15551 | 47-16560 |
| 47-15554 | 47-16561 |
| 47-15557 | 47-16562 |
| 47-15560 | 47-16565 |
| 47-15566 | 47-16577 |
| 47-15573 | 47-16578 |
| 47-15576 | 47-16584 |
| 47-15581 | 47-16590 |
| 47-15584 | 47-16591 |
| 47-15638 | 47-16592 |
| 47-15641 |          |
| 47-15644 |          |
| 47-15665 |          |
| 47-15677 |          |
| 47-15680 |          |
| 47-15722 |          |
| 47-15726 |          |
| 47-15734 |          |
| 47-15738 |          |
| 47-15742 |          |

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In Re SRBA )

Case No. 39576 )  
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CERTIFICATE OF MAILING

Water Right(s): 47-15468  
(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 April 14, 2004, with sufficient first-class postage prepaid to the following:

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

CERTIFICATE OF MAILING

PAGE 1  
04/14/04

USDI BLM

Represented by:

US DEPARTMENT OF JUSTICE  
ENVIRONMENT & NATL' RESOURCES  
550 WEST FORT STREET, MSC 033  
BOISE, ID 83724

  
\_\_\_\_\_  
ROBBIN HALL  
Deputy Clerk

Exhibit A

Subcase Nos:

47-15468  
47-15471  
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SPECIAL MASTER'S  
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Water Right(s): 47-15468  
(SEE ATTACHED EXHIBIT A)

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pursuant to SRBA Administrative Order 1 (AO1), Section 13a.

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to the adjudication including parties to the subcase, may file a Motion  
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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 14, 2004.

  
\_\_\_\_\_  
ROBBIN HALL  
Deputy Clerk

Exhibit A

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

PARTIAL DECREE PURSUANT TO  
I.R.C.P. 54(b) FOR

Water Right 47-15607

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

SOURCE: BEAR CREEK TRIBUTARY: SALMON FALLS CREEK, NORTH FORK

QUANTITY: 0.02 CFS

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

PRIORITY DATE: 05/31/1915

THIS WATER RIGHT IS DECREED BASED ON FEDERAL LAW WITH A  
MAY 31, 1915, DATE OF PRIORITY PURSUANT TO AN EXECUTIVE ORDER  
SIGNED THE SAME DATE AND KNOWN AS PUBLIC WATER RESERVE 28.

POINT OF DIVERSION: T16S R13E S21 SWNE (Instream Beginning Point) Within Twin Falls County  
NWSENE (Instream Ending Point)

| PURPOSE AND<br>PERIOD OF USE: | PURPOSE OF USE | PERIOD OF USE  | QUANTITY |
|-------------------------------|----------------|----------------|----------|
|                               | Stockwater     | 01-01 TO 12-31 | 0.02 CFS |

PLACE OF USE: Stockwater Within Twin Falls County  
T16S R13E S21 NENE SENE

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

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

