

2004 APR 27 PM 2:03

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

) SPECIAL MASTER'S REPORT AND
) RECOMMENDATION ON FEDERAL
) RESERVED WATER RIGHT
) PURSUANT TO PWR 107
)
) FINDINGS OF FACT AND
) CONCLUSIONS OF LAW
)
) For subcase: 23-10876, 23-10892
)

I. PROCEDURAL BACKGROUND

The above-captioned water rights were claimed as dual-based stockwater rights meaning the rights were claimed as federal reserved water rights pursuant to Public Water Reserve (PWR) 107 and alternatively as state-law based rights. Notice of the elements of the claim was reported by the Idaho Department of Water Resources. Objections were filed by the State of Idaho regarding whether the claimed right 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 the claimed rights to meet their burden.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the file and record in this subcase, 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 the claims were 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 the claims.

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 the claim is located from the public domain. The tract of land withdrawn for each claim is described as the "place of use" element on the attached *Special Master's Recommendation*.

4. The subject water source for the claims 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 the claims.

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 the attached *Special Master's Recommendation* for the claims.

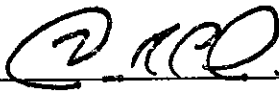
7. The United States has satisfied its burden under Idaho Code section 42-1411A(12) as to the nature and existence of the claimed federal reserve water right for the claims.

8. The elements of the federal reserved water right for the claims are set forth on 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 federal reserved water rights with the elements as set forth in 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 rights not be confirmed in any partial or final decree.

Dated April 27, 2004.


THOMAS 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

DISTRICT COURT - SRBA
TWIN FALLS CO, IDAHO
FILED 

2004 APR 27 PM 2 03

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 23-10876

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

SOURCE: SPRING TRIBUTARY: PINE 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: T02N R43E S21 SENENW Within Bonneville 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 Bonneville County
T02N R43E S21 NENW

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

RECOMMENDATION

APR 27 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

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED 17

2004 APR 27 PM 2 03

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 23-10892

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

SOURCE: WARM SPRINGS TRIBUTARY: SNAKE RIVER, SOUTH FORK

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: T03N R42E S12 NWSWSW Within Bonneville County
SESWSW
NESWSW

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 Bonneville County
T03N R42E S12 SWSW

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

RECOMMENDATION

APR 27 2004

SPECIAL MASTER

2004 APR 27 PM 2 03

In Re SRBA)
)
Case No. 39576)
)

Water Right(s): 23-10876
23-10892

DEBBIE LASH
Deputy Clerk

PAGE 1
04/27/04

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED 

2004 APR 27 PM 2 03

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

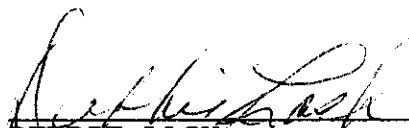
Water Right(s): 23-10876
23-10892

On April 27, 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 27, 2004.


DEBBIE LASH
Deputy Clerk