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Department of Water Resources

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

2004 MAY 5 AM 11 35

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

)
) FINDINGS OF FACT AND
) CONCLUSIONS OF LAW

)
) FOR WATER RIGHTS: 65-10538, 65-
) 22720, 65-22721, 65-22767 and 65-22678

I. FINDINGS OF FACT

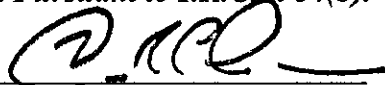
A notice of claim was filed for the water right 65-10538 pursuant to I.C. § 42-1409. The Director of the State of Idaho Department of Water Resources examined the water system for this reporting area. The *Director's Report* contained a recommendation or abstract for the elements of water right 65-10538.

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." The objection was filed to water right 65-10538. A *Notice of Completed Administrative Proceeding* was filed on November 14, 2002, splitting water right 65-10538 into 65-22720 and 65-22721. On February 27, 2003, a *Notice of Completed Administrative Proceeding* was filed splitting water right 65-22720 into 65-22767 and 65-22768. Subsequently *Standard Form's 5* were filed in subcases 65-22720, 65-22721 and 65-22768. James Nisula filed a Standard Form 5 in water right 65-22720. The SF5 filed in 65-22720 will be considered settlement for 65-22767 since ownership is still in the name of James Nisula.

II. CONCLUSIONS OF LAW

Therefore based on the file and record herein, and pursuant to the *Standard Form's 5*, IT IS RECOMMENDED that water rights 65-10538 and 65-22720 be **decreed disallowed** and water rights 65-22721, 65-22767 and 65-22768 be decreed with the elements as set forth in the attached *Recommendations for Partial Decrees Pursuant to I.R.C.P. 54(b)*.

DATED May 4, 2004.


THOMAS R. CUSHMAN

Special Master
Snake River Basin Adjudication

DISTRICT COURT - SRBA
TWIN FALLS CO. IDAHO
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2004 MAY 5 AM 11 35

PAGE 1
Jan-09-2004

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
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2004 MAY 5 AM 11 35

In Re SRBA)
Case No. 39576)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 65-22767

NAME AND ADDRESS: JAMES P NISULA
PO BOX 639
LAKE FORK, ID 83635

SOURCE: LAKE FORK CREEK TRIBUTARY: NORTH FORK PAYETTE RIVER

QUANTITY: 0.81 CFS

PRIORITY DATE: 12/12/1903

POINT OF DIVERSION: T17N R03E S03 NESENE Within Valley County

PURPOSE AND
PERIOD OF USE: PURPOSE OF USE PERIOD OF USE QUANTITY
Irrigation 05-01 TO 09-15 0.81 CFS

PLACE OF USE: Irrigation Within Valley County
T17N R03E S15 NENE 25.0 NWNE 20.0
45.0 Acres Total

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.

RECOMMENDATION

MAY - 5 2004


SPECIAL MASTER

John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

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

2004 MAY 5 AM 11 35

PAGE 1
Jan-12-2004

2004 MAY 5 AM 11 35

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

Water Right(s): 65-10538
65-22720 65-22721 65-22767
65-22768

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.

Debbie Lash
DEBBIE LASH
Deputy Clerk

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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): 65-10538
65-22720 65-22721 65-22767
65-22768

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 May 05, 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

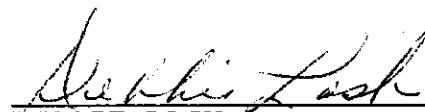
CERTIFICATE OF MAILING

PAGE 1
05/05/04

WYLIE H GRIFFITH
GRIFFITH, JANICE C
PO BOX 6825
BOISE, ID 83707

JAMES P NISULA
PO BOX 639
LAKE FORK, ID 83635

JULIE LINDSAY
KASEY J LINDSAY
51 TRABERT LN
PO BOX 803
LAKE FORK, ID 83635



DEBBIE LASH
Deputy Clerk