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Department of Water Resources

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TWIN FALLS CO. IDAHO
FILED

**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

) **SECOND SPECIAL MASTER'S REPORT**
) **AND RECOMMENDATION;**
) **RECOMMENDING MODIFICATION OF**
) **STATE-BASED WATER RIGHT 57-07230**
) **IN PART AND RECOMMENDING**
) **FEDERAL WATER RIGHT 57-11287 BE**
) **DISALLOWED**

) **FINDINGS OF FACT AND**
) **CONCLUSIONS OF LAW;**

) **FOR WATER RIGHTS 57-07230 and 57-11287**

I. PROCEDURAL BACKGROUND AND FACTUAL FINDINGS

- A. This *Report and Recommendation* amends an identical *Report* filed on March 31, 2004. Due to a clerical error, the March 31, 2004 *Report* did not include the attached *Recommendation*.
- B. The above-captioned water rights were claimed by the United States acting through the United States Department of Interior, Bureau of Land Management. Both are claimed on the same spring source.
- C. Water right 57-07230 is based on a state issued license. A partial decree for water right 57-07230 was issued on February 9, 1998. The water right was decreed for a "stockwater" and "wildlife" purpose of use with a 1972 priority date.
- D. Water right 57-11287 is a federal reserved water right claim to the same spring source based on Public Water Reserve (PWR) 107. The two claims essentially comprise a "dual-based" water right claim which is a claim to the same source based on both state-law and on a federal reservation.
- E. Early on in the SRBA proceedings in the three "test basins," "dual-based" water right claims were

claimed and/or reported by the Idaho Department of Water Resources (IDWR) under separate water right numbers. In *Memorandum Decision and Order Re: Basin-Wide Issue 12, SRBA Case No. 91-00012* (April 25, 1997), Judge Hurlbutt ruled that although the United States could file claims as both state-law based water right claims and federal reserved water right claims, only one basis for the claim could be decreed. This ruling was not appealed and continues to be the governing law-of-the-case. Several thousand of the United States water rights have already been decreed taking into account this rule of law.

F. Subsequently, IDWR has assigned “dual-based” claims a single water right number to avoid the inadvertent issuance of two partial decrees for the same water right.

G. On August 30, 2002, with respect to water right 57-11287 and other similarly situated water rights, this Special Master issued an *Order Setting Hearing on Water Rights claimed pursuant to both state and federal law*, which addressed the issue of how to proceed with the federal basis for the claim when a partial decree had already been issued for the state law basis.

H. On February 14, 2003, the United States filed a *Motion to Reopen Partial Decree* in 57-07230, seeking to have the Partial Decree amended to clean up an inaccurate description of the source and to have “stockwater” removed as a purpose of use. The stated purpose of removing “stockwater” is to attempt to conform to the pending PWR 107 claim with the decreed state-law based water right.

I. On April 8, 2003, pursuant to a request made by this Special Master, IDWR filed a *Competing Claims Analysis, Subcase No. 's 57-1059 et al.* describing inter alia, the relationship between water rights 57-07230 and 57-11287. IDWR’s review indicated that the source for both water rights is a different spring. However, this Special Master finds the conclusion to be in error. IDWR’s analysis states that the location of the spring for 57-11287 is T05S, R03W, S13, NWSW. The conclusion is based on a *Special Master’s Report and Recommendation* issued for water right 57-11287 on December 9, 1996. However, the location for the spring in the Special Master’s Recommendation is T05S, R03W, S13 SWNW, which is the same legal description for water right 57-07230. This is also consistent with the representation made in the United States’ February 14, 2003, *Motion*. This Special Master attributes IDWR’s error to a clerical error.

II. CONCLUSIONS OF LAW

A. This Special Master views the two claims as alternative claims for the same water right source or rather a “dual-based” claim under separate water right numbers. Issuing two partial decrees for the same spring source is inconsistent with the ruling in Basin-Wide Issue 12. Simply removing “stockwater” as a purpose of use for the beneficial use right will not make issuing two decrees for the same source

consistent with the ruling in Basin-Wide Issue 12, as only one partial decree can be issued.

III. RECOMMENDATION

Based on the foregoing, IT IS THEREFORE RECOMMENDED, pursuant to I.R.C.P. 60(a) that the *Motion to Reopen Partial Decree* be **granted** in part to amend the Partial Decree to correct the description for the source as recommended in the attached *Special Master Recommendation for Amended Partial Decree*.

IT IS FURTHER RECOMMENDED, that the purpose of use not be amended to drop "stockwater" as a purpose of use as this will not achieve its intended purpose.

IT IS FURTHER RECOMMENDED, that the *Special Master's Report and Recommendation* issued on December 9, 1996, for water right 57-11287 be withdrawn and based on the ruling in Basin-Wide Issue 12 that water right 57-11287 be **decreed disallowed** with prejudice, subject to the following. Because the United States can elect to either have the state basis or the federal basis decreed for a water right, on a Motion to Alter or Amend the United States may seek to have the state-law based partial decree set aside and disallowed and seek to have a partial decree issued for water right 57-11287 based on PWR 107 for "stockwater" purpose.

DATE May 10, 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 57-07230

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

SOURCE: SPRING TRIBUTARY: SINKS

QUANTITY: 0.01 CFS
0.10 APY

PRIORITY DATE: 04/06/1972

POINT OF DIVERSION: T05S R03W S13 SNNW Within Owyhee County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Stockwater	04-01 TO 11-30	0.01 CFS
			0.10 APY
	Wildlife	01-01 TO 12-31	0.01 CFS
			0.10 APY

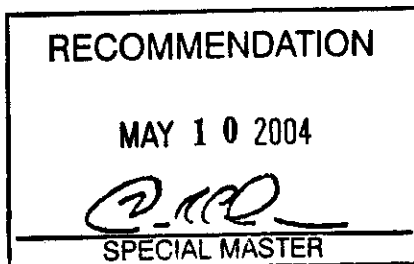
PLACE OF USE:	Stockwater		Within Owyhee County
	T05S R03W S13	SNNW	
	Wildlife		Within Owyhee County
	Same as Stockwater		

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

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In Re SRBA)
Case No. 39576)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

Water Right(s): 57-07230

On May 10, 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 May 10, 2004.


JULIE MURPHY
Deputy Clerk

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STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
Case No. 39576)
_____)

CERTIFICATE OF MAILING

Water Right(s): 57-07230

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 10, 2004, with sufficient first-class postage prepaid to the following:

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

USDI BLM

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

Julie Murphy

JULIE MURPHY
Deputy Clerk

CERTIFICATE OF MAILING