

2003 MAY 17 PM 11:17
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	)	AMENDED SPECIAL MASTER'S
	)	REPORT
	)	
	)	FINDINGS OF FACT AND
Case No. 39576	)	CONCLUSIONS OF LAW
	)	
	)	FOR WATER RIGHT: See Exhibit A
	)	and 69-10743
	)	

I. PROCEDURAL HISTORY

A notice of claim was filed for the above water rights by the United States, through the Department of Interior, Bureau of Land Management (United States) 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 these water rights.

On September 17, 1999, objections were filed to the above water rights by the State of Idaho, Pickett Ranch & Sheep Co, Western Stockgrowers Assoc., Joe Tugaw, Michael Poulton, Gary Poulton, Karl Bedke, Jared Bedke, Scott Bedke, Bruce Bedke, Jerry Hoagland and Joyce Livestock Company. On August 29, 2002, the parties filed a *Stipulation and Joint Motion for Order Approving Stipulation, Notice of Withdrawal of Objections and Responses* filed by Norman Semanko for Bruce Bedke et al, *Notice of Withdrawal of Objections and Responses* filed by Norman Semanko for Western Stockgrowers et al. On September 18, 2002, an *Order Dismissing Objections and Responses with Prejudice; and Order Dismissing Parties* was issued. On March 11, 2003, the State of Idaho filed a *Stipulation to Resolve Objections*. On April 23, 2003, a *Special Master's Report and Recommendation* was issued. On April 24, 2003, an *Order Withdrawing Special Master's*

Report and Recommendation was issued. On May 15, 2003, the United States filed a ***Notice Regarding Priority Date*** to the water rights listed on Exhibit A. The ***Notice*** states the claims listed on Exhibit A are federal reserve water rights based on Public Water Reserve 107. An ***Order Dismissing Objections and Dismissing the State of Idaho as a Party*** was issued on June 30, 2003.

On April 23, 2004, 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 each of the claimed rights to meet its burden.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Based upon the file and record in these subcases, and the affidavits presented at the 1411 A hearing on the matter, this Special Master makes the following findings of fact and conclusions of law for the water rights listed on Exhibit A:

1. Prior to April 17, 1926, the subject water source for each claim was 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 each claim.
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 each claim is located from the public domain. The tract of land withdrawn for each claim is described as the "place of use" element on each of the attached *Special Master's Recommendations*.
4. The subject water source for each claim 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 each claim.
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 each of the attached *Special Master's Recommendations*.
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 each claim.
8. The elements of the federal reserved water right for each claim are set forth on each of

the attached *Special Master's Recommendation*.

B. For the water right 69-10743, this Special Master makes the following findings of fact and conclusions of law:

1. On June 11, 1999, and on July 1, 1999, the United States and the State of Idaho filed stipulations resolving objections raised with respect to the state-basis for the claims not covered under consolidated subcases 72-11767, 51-04031, 55-04072 and 61-04057. See *Stipulation to Resolve Objections, Consolidated Subcase Nos. 23-10859, 24-10221, 25-13659, 27-11604 (June 11, 1999)* (resolving state-bases for dual-based claims); *Stipulation to Resolve Objections (July 1, 1999)* (resolving claims made solely pursuant to state law).
2. As a result, the priority dates for the state-law basis for those subcases subject to the *Special Master's Order Granting Summary Judgment on Consolidated Subcases 51-04031, 55-04072, 61-04057 and 72-11767* is June 28, 1934.
3. According to the *Affidavit of Frederic Price* filed on March 11, 2004, the land appurtenant to water right 67-10743 was not unreserved federal land on April 17, 1926 and therefore does not qualify as a federal reserve water right.

II. CONCLUSIONS OF LAW

Therefore based on the file and record herein and pursuant to the 1411A hearing, and affidavits IT IS RECOMMENDED that the above water rights 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 17, 2004.



THOMAS R. CUSHMAN
Special Master
Snake River Basin Adjudication

EXHIBIT A

Subcase Nos:

69-10529
69-10531
69-10533
69-10537
69-10539
69-10554
69-10556
69-10566
69-10570
69-10572
69-10574
69-10576
69-10578
69-10581

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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

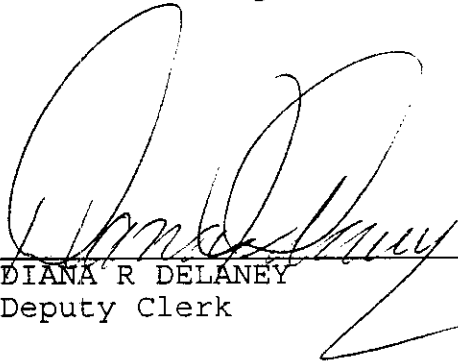
Water Right(s): 69-10529
(SEE ATTACHED EXHIBIT A)

On May 17, 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 17, 2004.



DIANA R DELANEY
Deputy Clerk

Exhibit A

Subcase Nos:

69-10529
69-10531
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CERTIFICATE OF MAILING

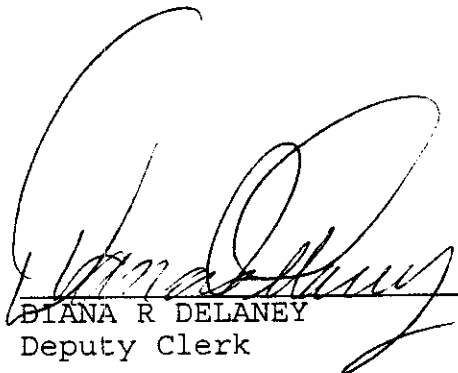
Water Right(s): 69-10529
(SEE ATTACHED EXHIBIT A)

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 May 17, 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



BIANA R DELANEY
Deputy Clerk

CERTIFICATE OF MAILING

PAGE 1
05/17/04

Exhibit A

Subcase Nos:

69-10529
69-10531
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69-10743

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)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 69-10570

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

SOURCE: DEVILS HOLE SPRING TRIBUTARY: GROUSE 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: T12N R07W S22 NWSWSE Within Washington 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 Washington County
T12N R07W S22 SWSE

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

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

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 17 2004


SPECIAL MASTER

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