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Department of Water Resources

2004 MAY 14 PM 4:13
SRBA
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 CONCLUSIONS OF LAW**
Case No. 39576	)	
	)	**FOR WATER RIGHT: See Exhibit A**
	)	
	)	

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 right 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*. The *Notice* states the claims 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

Based upon the file and record in these subcases, 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 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*.

II. CONCLUSIONS OF LAW

Therefore based on the file and record herein and pursuant to the 1411A hearing, IT IS RECOMMENDED that the above water right 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 14, 2004.

THOMAS R. CUSHMAN
Special Master
Snake River Basin Adjudication

2004 MAY 14 PM 4:21

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): 77-11084 (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 14, 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

DIANA R DELANEY
Deputy Clerk

Exhibit A

Subcase Nos:

77-11084	77-11190	77-11296	77-11398	77-11507
77-11086	77-11192	77-11298	77-11400	77-11508
77-11088	77-11194	77-11300	77-11402	77-11510
77-11090	77-11196	77-11302	77-11404	77-13933
77-11092	77-11198	77-11304	77-11406	
77-11094	77-11202	77-11306	77-11408	
77-11096	77-11204	77-11308	77-11410	
77-11098	77-11206	77-11310	77-11412	
77-11100	77-11208	77-11312	77-11414	
77-11102	77-11210	77-11314	77-11416	
77-11104	77-11212	77-11316	77-11418	
77-11106	77-11214	77-11318	77-11420	
77-11108	77-11216	77-11320	77-11422	
77-11110	77-11218	77-11322	77-11424	
77-11112	77-11220	77-11324	77-11426	
77-11114	77-11222	77-11326	77-11428	
77-11116	77-11224	77-11328	77-11430	
77-11118	77-11226	77-11330	77-11432	
77-11120	77-11228	77-11332	77-11434	
77-11122	77-11232	77-11334	77-11436	
77-11124	77-11234	77-11336	77-11438	
77-11126	77-11236	77-11338	77-11440	
77-11128	77-11238	77-11340	77-11442	
77-11130	77-11242	77-11342	77-11444	
77-11132	77-11244	77-11344	77-11446	
77-11134	77-11246	77-11346	77-11448	
77-11136	77-11248	77-11348	77-11450	
77-11138	77-11250	77-11350	77-11454	
77-11140	77-11252	77-11352	77-11456	
77-11142	77-11254	77-11354	77-11457	
77-11146	77-11256	77-11356	77-11458	
77-11148	77-11258	77-11358	77-11462	
77-11150	77-11260	77-11362	77-11465	
77-11152	77-11262	77-11364	77-11466	
77-11154	77-11264	77-11366	77-11472	
77-11156	77-11266	77-11368	77-11474	
77-11160	77-11268	77-11370	77-11476	
77-11162	77-11270	77-11372	77-11478	
77-11164	77-11272	77-11374	77-11482	
77-11166	77-11274	77-11376	77-11484	
77-11168	77-11276	77-11378	77-11486	
77-11170	77-11278	77-11380	77-11490	
77-11172	77-11280	77-11382	77-11492	
77-11174	77-11282	77-11384	77-11494	
77-11176	77-11284	77-11386	77-11496	
77-11178	77-11286	77-11388	77-11498	
77-11180	77-11288	77-11390	77-11502	
77-11182	77-11290	77-11392	77-11503	
77-11186	77-11292	77-11394	77-11505	
77-11188	77-11294	77-11396	77-11506	

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DISTRICT COURT-SRBA
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	)	NOTICE OF ISSUANCE OF SPECIAL MASTER'S RECOMMENDATION
Case No. 39576	)	
	)	Water Right(s): 77-11084 (SEE ATTACHED EXHIBIT A)

On May 14, 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 14, 2004.

DIANA R DELANEY
Deputy Clerk

Exhibit A

Subcase Nos:

77-11084	77-11190	77-11296	77-11398	77-11507
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77-11188	77-11294	77-11396	77-11506	

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DISTRICT COURT - SRBA
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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	)	PARTIAL DECREE PURSUANT TO
	)	I.R.C.P. 54(b) FOR
Case No. 39576	)	
	)	Water Right 77-11128

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

SOURCE: SPRING TRIBUTARY: MAXWELL 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: T24N R05E S28 SENWNW Within Idaho 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 Idaho County
T24N R05E S28 NWNW

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
AMENDED
MAY 14 2004
SPECIAL MASTER

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