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Department of Water Resources

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FILED  
TWIN FALLS CO., IDAHO

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 |
|                | ) |                                |
|                | ) |                                |

**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

274 MAY 14 PM 4:21

77-11084-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 )

CERTIFICATE OF MAILING

Case No. 39576 )  
\_\_\_\_\_ )

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

CERTIFICATE OF MAILING

PAGE 1  
05/14/04

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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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): 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:

|          |          |          |          |          |
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| 77-11122 | 77-11232 | 77-11334 | 77-11436 |          |
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| 77-11146 | 77-11256 | 77-11356 | 77-11458 |          |
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| 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 |          |

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 77-11274

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

SOURCE: SPRING TRIBUTARY: LAKE 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 S33 NWSWS Within Idaho County

| PURPOSE AND<br>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 S33 SWSW

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