

2004 MAY 27 PM 12:17
DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO
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	)	SPECIAL MASTER'S REPORT
	)	
Case No. 39576	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW
	)	
	)	FOR WATER RIGHT: 65-11326
	)	
	)	

I. FINDINGS OF FACT

A notice of claim was filed for the above listed water right 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 this water right.

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." A Show Cause Hearing was set for January 29, 2004. The claimant did not appear at the hearing. The United States Bureau of Reclamation Motioned, on record, to add General Provision separate streams language to the "other provisions necessary." The Motion was granted on record.

II. CONCLUSIONS OF LAW

Therefore based on the file and record herein, and pursuant to the Motion, IT IS RECOMMENDED that the above water right be decreed with the elements as set forth in the attached *Recommendation for Partial Decree Pursuant to I.R.C.P. 54(b)*.

III.
RECOMMENDATION FOR PLACE OF USE DESCRIPTION USING
DIGITAL BOUNDARY

Effective July 1, 2002, the Idaho Legislature approved the use of a Geographic Information system (GIS) for describing the place of use (digital boundary) for water rights meeting certain criteria. See I.C. §§ 42-219(2) and 42-1411(2)(h). The GIS mapping technology allows the geographic area encompassing the place of use for a water right to be particularly identified and visually displayed in a map overlay format through the aid of computer technology.

Digital Boundary mapping is appropriate for water rights that are for an irrigation purpose of use and also meet one of the following criteria: (1) used in conjunction with an irrigation project where the canals constructed cover an area of twenty-five thousand (25,000) acres or more; (2) the place of use for the water rights is located within an irrigation district organized pursuant to the laws of the state of Idaho; or (3) the water rights are for an irrigation project developed by an association, company, corporation or the United States to divert and deliver or distribute surface water under any annual charge or rental for beneficial use by more than five (5) water users in an area less than twenty-five thousand (25,000) acres.

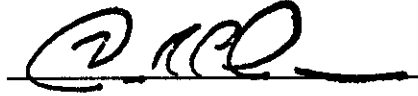
The above water right meets one of the above-stated criteria.¹ Therefore IT IS FURTHER RECOMMENDED that the above water right be decreed using a digital boundary with the partial decree containing the following additional language as set forth in the attached Recommendation for Partial Decree Pursuant to I.R.C.P. 54(b):

The boundary encompassing the place of use for this water right is described with a digital boundary as defined by I.C. §42-202B(2)(2003) and authorized pursuant to I.C. § 42-1411(2)(h)(2003). The data comprising the digital boundary are incorporated herein by reference and are stored on a CD-ROM disk issued in duplicate originals on file with the SRBA District Court and the Idaho Department

¹ In incorporating a digital boundary into a partial decree, the electronic or digital data is what is actually decreed as opposed to the visually displayed map ultimately generated from the data. The data is stored on a CD-ROM. The data on the CD-ROM is incorporated by reference into the partial decree. Duplicate originals of the CD-ROM will be issued. The SRBA District Court retains an original together with the original partial decree, and the Idaho Department of Water Resources (IDWR) retains the other original. Upon request, the claimant can obtain a copy of the CD-ROM from IDWR at no cost, although GIS software will still be required to access the data. Subsequent administrative changes to the place of use will also be stored in a digital format and kept on file and maintained by IDWR. IDWR will maintain all computer software and/or hardware necessary for reducing the data to a usable format that is accessible to the general public, including access through the IDWR Internet website (www.idwr.state.id.us) or its successor Uniform Resource Locator (URL).

of Water Resources. A map depicting the place of use is attached hereto to illustrate the place of use described by the digital boundary.

DATED May 25, 2004.

A handwritten signature in black ink, appearing to read 'T. R. Cushman', written over a horizontal line.

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

2004 MAY 27 PM 12:17

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 65-11326

FILED
TWIN FALLS CO., IDAHO

NAME AND ADDRESS: MAHALA DITCH CO
PO BOX 361
DONNELLY, ID 83615

SOURCE: SPRINGS TRIBUTARY: LAKE FORK CREEK

QUANTITY: 3.00 CFS

PRIORITY DATE: 07/01/1928

POINT OF DIVERSION: T17N R03E S10 NWNWNE Within Valley County
NWSENE

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	05-01 TO 09-15	3.00 CFS

PLACE OF USE:

USE OF THIS RIGHT IS LIMITED TO THE IRRIGATION TOTAL OF 1005 ACRES IN A SINGLE IRRIGATION SEASON.

The boundary encompassing the place of use for this water right is described with a digital boundary as defined by I.C. Section 42-202B(2) (2003) and authorized pursuant to I.C. Section 42-1411 (2) (h) (2003). The data comprising the digital boundary are incorporated herein by reference and are stored on a cd-rom disk issued in duplicate originals on file with the SRBA District Court and the Idaho Department of Water Resources. A map depicting the place of use is attached hereto to illustrate the place of use described by the digital boundary.

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

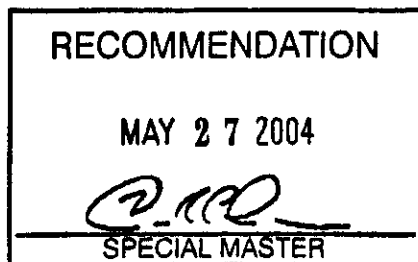
BASIN 65 GENERAL PROVISIONS NO. 3, THE SEPARATE STREAMS GENERAL PROVISION, DOES NOT APPLY TO APPROPRIATIONS OF WATER AFTER OCTOBER 18, 1977.

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.



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

Mahala Ditch Company

Boundary

Townships

Sections

Quarter/Quarters



2000 0 2000 4000 Feet



2005 MAY 27 PM 12:18

UNIT-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)
Case No. 39576)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

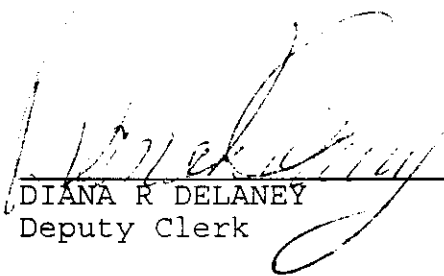
Water Right(s): 65-11326

On May 27, 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 27, 2004.



DIANA R DELANEY
Deputy Clerk

MAY 27 PM 12:18

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)

CERTIFICATE OF MAILING

Case No. 39576)
_____)

Water Right(s): 65-11326

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 27, 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

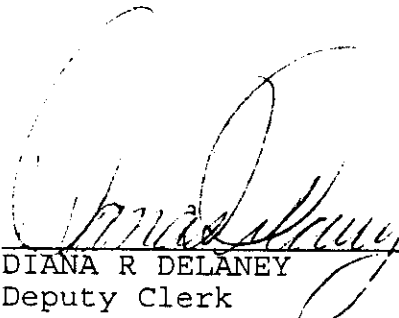
USDI BUREAU OF RECLAMATION

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

CERTIFICATE OF MAILING

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05/27/04

MAHALA DITCH CO
PO BOX 361
DONNELLY, ID 83615
Phone: 208-325-8549



DIANA R DELANEY
Deputy Clerk