TWIN FALLS CO., IDAHO
FILED
2004 JUN 22 AM 11 22

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 RIGHTS: (SEE ATTACHED EXHIBIT A)**
	)	

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 these water rights.

On January 17, 2002, the United States of America, Bureau of Reclamation filed an objection to "General Provisions Basin 65 Irrigation & Other Part III (3) Separate Streams Administration" in all the above listed subcases. The United States of America, Bureau of Land Management also filed an objection to the place of use element in subcases 65-2204, 65-2500, 65-2501, 65-2601, 65-3125, 65-3126, 65-3127, 65-3128, 65-3247, 65-3248, 65-7136, 65-7603, 65-7789, 65-9076, 54-10533, 65-10534, 65-10535 and 65-10536. A *Standard Form 5/Stipulated Elements* was filed by the Bureau of Land Management and the claimants, JG and Kristin Schwarz for the place of use elements on July 26, 2002, settling objection 2. A Show Cause Hearing was set for January 28, 2004. A ***Trial Schedule Order*** was issued on February 3, 2004, for the Bureau of Reclamation objections. On March 30, 2004, the parties filed a *Standard Form 5* settling objection 1 to all the above listed subcases.

II. CONCLUSIONS OF LAW

Therefore based on the file and record herein, and pursuant to the Standard Form's 5, 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 June 21, 2004.

THOMAS R. CUSHMAN
Special Master
Snake River Basin Adjudication

EXHIBIT A

Subcase Nos:

65-02204
65-02500
65-02501
65-02601
65-03124A
65-03125
65-03126
65-03127
65-03128
65-03247
65-03248
65-04486B
65-04983
65-07136
65-07603
65-07789
65-09076
65-10533
65-10534
65-10535
65-10536

(Subcase list: FILE 795)
6/21/04

DISTRICT COURT-SRBA
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)	CERTIFICATE OF MAILING
)	
Case No. 39576)	
)	Water Right(s): 65-02204 (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 June 22, 2004, with sufficient first-class postage prepaid to the following:

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

UNITED STATES OF AMERICA
Represented by:
DAVID W GEHLERT
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATRUAL RESOURCE
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

JG SCHWARZ
KRISTIN SCHWARZ
Represented by:
SCOTT L. CAMPBELL
101 S CAPITOL BLVD, 10TH FLOOR
PO BOX 829
BOISE, ID 83701-0829
Phone: 208-345-2000

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

JG SCHWARZ
KRISTIN SCHWARZ
6000 BIG WILLOW RD
PAYETTE, ID 83661
Phone: 208-278-3898

DEBBIE LASH
Deputy Clerk

DISTRICT COURT-SRBA
TWIN FALLS CO, IDAHO
FILED

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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	NOTICE OF ISSUANCE OF SPECIAL MASTER'S RECOMMENDATION Water Right(s): 65-02204 (SEE ATTACHED EXHIBIT A)

On June 22, 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 June 22, 2004.

DEBBIE LASH
Deputy Clerk

Exhibit A

Subcase Nos:

65-02204
65-02500
65-02501
65-02601
65-03124A
65-03125
65-03126
65-03127
65-03128
65-03247
65-03248
65-04486B
65-04983
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65-07603
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65-09076
65-10533
65-10534
65-10535
65-10536

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DISTRICT COURT-SRBA
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In Re SRBA	)	PARTIAL DECREE PURSUANT TO
	)	I.R.C.P. 54(b) FOR
Case No. 39576	)	
	)	Water Right 65-03124A

NAME AND ADDRESS: JG SCHWARZ
KRISTIN SCHWARZ
6000 BIG WILLOW RD
PAYETTE, ID 83661

SOURCE: BIG WILLOW CREEK TRIBUTARY: PAYETTE RIVER

QUANTITY: 0.04 CFS

PRIORITY DATE: 05/01/1871

POINT OF DIVERSION: T08N R02W S01 SENW Within Payette County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Irrigation	03-15 TO 11-15	0.04 CFS

PLACE OF USE: Irrigation Within Payette County
T08N R02W S02 SENE 2.0
2.0 Acres Total

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 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.

RECOMMENDATION

JUN 22 2004

SPECIAL MASTER

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