

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

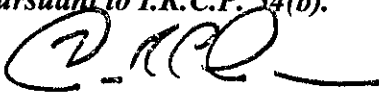
A notice of claim was filed for the above listed water right pursuant to I.C. § 42-1409. The Director of the State of Idaho Department of Water Resources examined the water system for this reporting area. The *Director's Report* contained a recommendation or abstract for the elements of these water rights.

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

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

2004 JUN 22 AM 11 23

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): 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

CERTIFICATE OF MAILING

PAGE 1
06/22/04

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

2004 JUN 22 AM 11 23

In Re SRBA)
)
Case No. 39576)
)
)

Water Right(s): 65-02204
(SEE ATTACHED EXHIBIT A)

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.


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
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DISTRICT COURT - SRBA
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In Re SRBA)
)
Case No. 39576)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 65-07136

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

SOURCE: DRY CREEK TRIBUTARY: BIG WILLOW CREEK

QUANTITY: 5.60 CFS
 980.00 AFY

USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 0.02 CFS AND TO A TOTAL
COMBINED ANNUAL DIVERSION VOLUME OF 3.5 AF PER ACRE AT THE FIELD
HEADGATE. COMBINED RIGHT NOS.: 65-02204, 65-03247, 65-03248,
65-02500, 65-02501, 65-03125, 65-03126, 65-03127, 65-03128,
65-07789, 65-09076, 65-10533, 65-10534, 65-10535, 65-10536,
65-02601, 65-07603.

PRIORITY DATE: 05/12/1970

POINT OF DIVERSION: T09N R02W S27 NESE Within Payette County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation Storage	01-01 TO 12-31	400.00 AFY
	Irrigation	03-01 TO 11-15	5.60 CFS
			980.00 AFY
	Irrigation from Storage	03-01 TO 11-15	400.00 AFY
	Diversion to Storage	11-15 TO 03-01	5.60 CFS

PLACE OF USE:	Irrigation		Within Payette County
	T08N R02W S02	SWNE 17.0	SWNW 4.0
		SENE 10.0	NESW 14.0
		NWSW 28.0	NWSE 3.0
	S03	SENE 12.0	LOT 4 (NWNW) 4.0
		NESW 15.0	SWSW 32.0
		SESW 36.0	NESE 33.0
		NWSE 37.0	SWSE 24.0
		SESE 8.0	
	S04	SWNE 2.0	SENE 24.0
		NESW 22.0	NWSW 23.0
		SWSW 38.0	SESW 38.0
		NESE 7.0	NWSE 23.0
		SWSE 21.0	SESE 15.0
	S05	SWSW 18.0	SESW 21.0
		SWSE 27.0	SESE 36.0
	S07	NENE 19.0	SWNE 5.0
	S08	NENE 4.0	NWNE 10.0
		NENW 11.0	NWNW 31.0
	S09	NENE 3.0	NENW 4.0
		NWNW 1.0	
	S10	NWNE 24.0	SWNE 2.0
		NENW 25.0	NWNW 30.0
		SWNW 19.0	SENE 24.0
	T09N R02W S34	SWNW 12.0	NWSW 14.0
		SWSW 10.0	
	840.0 Acres Total		

PLACE OF USE (continued)

Irrigation Storage Same as Irrigation	Within Payette County
Irrigation from Storage Same as Irrigation	Within Payette County
Diversion to Storage Same as Irrigation	Within Payette County

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 929 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED RIGHT NOS.: 65-02204, 65-03247, 65-03248, 65-02500, 65-02501, 65-03125, 65-03126, 65-03127, 65-03128, 65-07789, 65-09076, 65-10533, 65-10534, 65-10535, 65-10536, 65-02601, 65-07603.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 280 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

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.

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

