

DISTRICT COURT - SRBA  
TWIN FALLS CO., IDAHO  
FILED \_\_\_\_\_

2004 JUN 22 AM 9 41

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     | ) | SECOND AMENDED SPECIAL          |
|                | ) | MASTER'S REPORT                 |
| Case No. 39576 | ) |                                 |
|                | ) | FINDINGS OF FACT AND            |
|                | ) | CONCLUSIONS OF LAW              |
|                | ) |                                 |
|                | ) | FOR WATER RIGHTS: 69-10529, 69- |
|                | ) | 10556, 69-10570, 69-10572       |
|                | ) |                                 |
|                | ) |                                 |

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**PROCEDURAL HISTORY**

*Special Master's Report and Recommendations* were issued on May 17, 2004 in the above subcases.

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 rights were claimed as dual based rights, with both a federal and state-law basis. 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 June 2, 1999, an objection was filed by the State of Idaho. On September 17, 1999, objections were filed to the above water right by 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 and the United States 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 Master's Report and Recommendation** was issued, along with an **Order Requesting Standard Form 5's**. 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.

#### **State-Law Basis**

A. On June 11, 1999, and on July 1, 1999, the United States and the State of Idaho filed stipulations resolving objections raised with respect to the state-basis for the claims not covered under consolidated subcases 72-11767, 51-04031, 55-04072 and 61-04057. See **Stipulation to Resolve Objections, Consolidated Subcase Nos. 23-10859, 24-10221, 25-13659, 27-11604 (June 11, 1999)** (resolving state-bases for dual-based claims); **Stipulation to Resolve Objections (July 1, 1999)** (resolving claims made solely pursuant to state law).

B. As a result, the priority dates for the state-law basis for those subcases subject to the **Special Master's Order Granting Summary Judgment on Consolidated Subcases 51-04031, 55-04072, 61-04057 and 72-11767** is June 28, 1934.

#### **Federal Reserved Basis**

C. As concerns the federal reserved basis for the claims, in *U.S. v. Idaho*, 131 Idaho 468, 959 P.2d 449 (1998), the Idaho Supreme Court held that PWR 107 created a valid basis for federal reserved water rights. In **Memorandum Decision and Order on Challenge (Scope of PWR 107 Reserved Rights Consolidated Subcase Nos. 23-10872 et. al. (December 28, 2001)**, Judge Burdick, then presiding, resolved certain issues pertaining to the elements of a PWR 107 federal reserved water right.

E. Pursuant to I.C. 42-1411(A) a hearing was held on the federal reserved basis for the above-captioned rights on April 23, 2004. Prior to the hearing the *Affidavit of Robert R. Mallis* and the *Affidavit of Fredric Price* were filed by the United States in support of the elements of the water right claim.

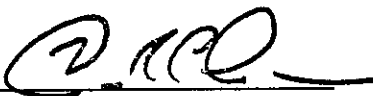
F. According to the *Mallis* affidavit, at the time PWR 107 was executed, in the above water rights there were pending homestead applications for each of the lands to which the above water rights are appurtenant. This Special Master previously ruled in Subcases 25-13635, 25-13637, 25-13653, 65-19960, and 65-19962 that a pending homestead application defeated a reservation under PWR 107. Therefore, the water rights are state-based with a June 28, 1934 priority date.

## II. CONCLUSIONS OF LAW

Therefore based on the file and record herein and pursuant to the 1411A(12) hearing, IT IS RECOMMENDED the May 17, 2004 *Special Master's Report and Recommendation* be **Withdrawn** as it pertains to the above water rights.

IT IS FURTHER 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 22, 2004.



THOMAS R. CUSHMAN  
Special Master  
Snake River Basin Adjudication

Water rights 69-10529, 69-10556, 69-10570 and 69-10572

DISTRICT COURT - SRBA  
TWIN FALLS CO, IDAHO  
FILED                     

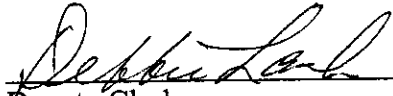
**CERTIFICATE OF MAILING**

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I certify that a true and correct copy of the AMENDED SPECIAL MASTER'S REPORT AND AMENDED RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF AMENDED SPECIAL MASTER'S REPORT AND RECOMMENDATION was mailed with sufficient first-class postage to the following:

Director of IDWR  
P O Box 83720  
Boise, Idaho 83720-0098

United States of America  
Department of Justice  
550 West Fort Street, MSC 033  
Boise, Idaho 83724

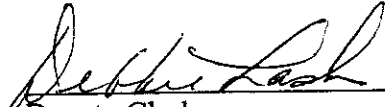
  
Deputy Clerk

**NOTICE OF ISSUANCE**

On June 22, 2004, Special Master Thomas R Cushman issued an Amended Special Master's Report and Recommendation to the above listed 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 28<sup>th</sup> 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.

  
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

DISTRICT COURT-SRBA  
TWIN FALLS CO. IDAHO  
FILED *PL*

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In Re SRBA )  
                  ) PARTIAL DECREE PURSUANT TO  
                  ) I.R.C.P. 54(b) FOR  
Case No. 39576 )  
\_\_\_\_\_) Water Right 69-10572

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

SOURCE: SPRING TRIBUTARY: GROUSE CREEK

QUANTITY: 0.02 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000  
GALLONS PER DAY.

PRIORITY DATE: 06/28/1934

POINT OF DIVERSION: T12N R07W S26 SWSW Within Washington 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 Washington County  
T12N R07W S26 SESW

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.

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

