

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 AND
	)	RECOMMENDATION
Case No. 39576	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW
	)	FOR WATER RIGHTS 24-10263, 24-
	)	10331 AND 24-10373

I. PROCEDURAL HISTORY

On November 12, 1999, a *Special Master's Report and Recommendation* was issued in the above listed subcases. On December 27, 1999, the United States, Bureau of Land Management (United States) filed a *Motion to Alter or Amend* the master's report and recommendation. April 27, 2000, an *Order Denying Motion of the United States to Alter or Amend the Special Master's Recommendation* was issued. Subsequently, the United States filed a *Notice of Challenge* on May 11, 2000. A *Memorandum Decision and Order on Challenge and Order of Recommitment-Special Master Cushman* was issued on December 28, 2002. An Affidavit of Fredric W Price was and filed on May 27, 2004, and a 42-1411(A) hearing was held that same day.

II. FINDINGS OF FACT

At the hearing, the United States motioned to withdraw the claim for water right 24-10373, as the United States is no longer the owner of the appurtenant land. The motion was granted. The Affidavit showed that there was an active homestead entry on the land appurtenant to water right 24-10263 on April 17, 1926. No such active entry was present on April 17, 1926 on the land appurtenant to water right 24-10331.

III. CONCLUSIONS OF LAW

Federal Reserved Basis

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.

According to the *Price* affidavit, at the time PWR 107 was executed, there was a pending homestead application for the land to which water right 24-10263 is 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.

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.

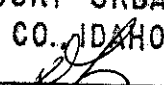
Therefore based on the file and record herein, IT IS RECOMMENDED that water right 24-10263 be **decreed** with the elements as set forth in the attached *Special Master's Recommendation* issued November 12, 1999, water right 24-10373 be **decreed** as **disallowed** and water right 24-10331 be **decreed** with the elements as set forth in the attached *Amended Recommendation for Partial Decree Pursuant to I.R.C.P. 54(b)*.

DATED June 21, 2004.



THOMAS R. CUSHMAN
Special Master
Snake River Basin Adjudication

Water rights 24-10263 per 11/12/99 master's report and recommendation
24-10331 amended from state priority to pwr 107
24-10373 recommended disallowed

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED 

2004 JUN 22 AM 10 14

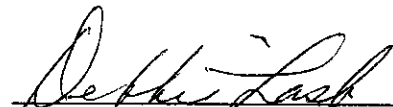
CERTIFICATE OF MAILING

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

State of Idaho
Office of the Attorney General
P O Box 44449
Boise, Idaho 83711-4449

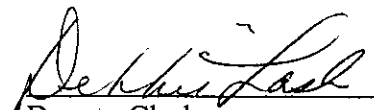

Deputy Clerk

NOTICE OF ISSUANCE

On June 15, 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 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.


Deputy Clerk

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)
_____)

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

Water Right 24-10263

1999 NOV 12 PM 3:38
DISTRICT COURT SRBA
TWIN FALLS IDAHO
FILED

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

SOURCE: SPRING TRIBUTARY: STUMP 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: T07S R46E S15 SWSWNE Within Caribou County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Stockwater	01-01 TO 12-31	0.02 CFS

PLACE OF USE: Stockwater Within Caribou County
T07S R46E S15 SWNE

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.

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

NOV 12 1999

SPECIAL MASTER

Barry Wood
Administrative District Judge
Presiding Judge of the
Snake River Basin Adjudication