

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____
2004 JUN 23 AM 8 44

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: 33-10901
	)	And 33-10523

I. FINDINGS OF FACT

A notice of claim was filed for the above listed water rights 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. Water rights 33-10901 and 33-10523 were claimed as a dual based claims. (i.e. claimed with both a state and federal reserved priority date.

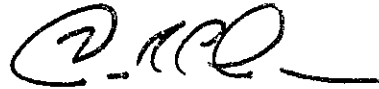
On June 3, 1998, the State of Idaho filed an objection. On July 1, 1999, a *Stipulation to Resolve Objections* was filed by the United States and the State of Idaho. Per the Stipulation a *Special Master's Report and Recommendation* was issued on July 12, 1999, recommending a priority date of June 28, 1934. On December 21 1999, a *Motion to Alter or Amend the Special Master's Report and Recommendation* was filed. An *Order Denying Motion to Alter or Amend* was issued on December 23, 1999. Ultimately, a *Challenge* was filed in subcases 33-10901 and 33-10523 and 10 other subcases. A *Memorandum Decision and Order on Challenge; Order Correcting Clerical Errors in Record; Order of Recommitment to Special Master Cushman* was issued on April 10, 2000. An *Amended Memorandum Decision and Order on Challenge; Order Correcting Clerical Errors in Record; Order of Recommitment to Special Master Cushman* was issued on April 10, 2000. The *Memorandum* states subcases 33-10901, 33-10523 and 10 other

subcases “are hereby stricken from the list of subcases attached as Exhibit 1 to the Stipulation to Resolve Subcases (July 1, 1999)’ and ‘the Special Master is directed to grant leave to the State of Idaho to amend its objections to these twelve water right claims’.” The amended objection was filed on May 16, 2000. On November 14, 2003, an *Affidavit of Fredric W Price* was filed. A Trial was held on December 11, 2003. Lee Leininger appeared on behalf of the United States and David Barber appeared for the State of Idaho. Per the Affidavit the United States requested this water right be issued as PWR 107 with a priority date of 4/17/1926.

II. CONCLUSIONS OF LAW

Therefore based on the file and record herein, IT IS RECOMMENDED that the above listed water right 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

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TWIN FALLS CO., IDAHO
FILED 12

2004 JUN 23 AM 8 44

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
) Water Right 33-10523

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

SOURCE: SPRING TRIBUTARY: UNNAMED STREAM

QUANTITY: 0.02 CFS

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

PRIORITY DATE: 04/17/1926

THIS WATER RIGHT IS CLAIMED BASED ON FEDERAL LAW WITH AN APRIL 17
1926 DATE OF PRIORITY PURSUANT TO AN EXECUTIVE ORDER SIGNED THAT
SAME DATE AND KNOWN AS PUBLIC WATER RESERVE 107

POINT OF DIVERSION: T10N R27E S20 SWSWNE Within Butte 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 Butte County
T10N R27E S20 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.

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

RECOMMENDATION

JUN 23 2004

Q. M. Q.
SPECIAL MASTER

2004 JUN 23 AM 8 44

In Re SRBA)
)
Case No. 39576)
)

Water Right(s): 33-10523
33-10901

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 23, 2004, with sufficient first-class postage prepaid to the following:

STATE OF IDAHO
Represented by:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
PO BOX 44449
BOISE, ID 83711-4449

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

Debbie Lash
DEBBIE LASH
Deputy Clerk

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In Re SRBA)
)
Case No. 39576)
)

)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

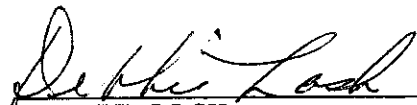
Water Right(s): 33-10523
33-10901

On June 23, 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 23, 2004.



DEBBIE LASH
Deputy Clerk