

2004 JUN 23 AM 9 11

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
	)	
	)	FINDINGS OF FACT AND
Case No. 39576	)	CONCLUSIONS OF LAW
	)	
	)	FOR WATER RIGHTS: (SEE
	)	ATTACHED EXHIBITS A & B, BASIN
	)	79 FILE NUMBER 10)

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. The above listed water rights were claimed as a dual based claim. (i.e. claimed with both a state and federal reserved priority date.

On September 17, 1999, an objection was filed to the above listed 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. The State of Idaho also filed an objection on June 2, 1999. On August 29, 2001, the parties filed a *Stipulation and Joint Motion for Order Approving Stipulation, Notice of Withdrawal of Objections and Responses* filed by Semanko for Bruce Bedke et al, *Notice of Withdrawal of Objections and Responses* filed by 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 filed a *Stipulation to Resolve Objections*. An **Order Dismissing Objections and Dismissing the State of Idaho as a Party** was issued on June 30, 2003.

On April 21, 2004, an Affidavit of Craig A Johnson was filed. A 42-1411(a) was held on April 23, 2004. 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 the water rights on exhibits A &

B be issued as PWR 107 with a priority date of 4/17/1926. The Affidavit indicated that at the time PWR 107 was executed, there was a pending homestead application for the lands to which the water rights on exhibit B are appurtenant. Therefore, this Special Master recommends a state based priority date for the water rights on exhibit B and a federal reserved priority date for the water rights listed on exhibit A.

II. CONCLUSIONS OF LAW

Therefore based on the file and record herein, IT IS RECOMMENDED that the water rights listed on Exhibit A and B 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 18, 2004.


THOMAS R. CUSHMAN
Special Master
Snake River Basin Adjudication

EXHIBIT B BASIN 79 FN 10 HOMESTEAD CASES

Subcase Nos:

79-11652
79-11656
79-11661
79-11666
79-11668
79-11716
79-11718
79-11720

EXHIBIT A BASIN 79 FED RESERVE RIGHTS

Subcase Nos:

79-11598	79-11708
79-11600	79-11709
79-11601	79-11711
79-11603	79-11712
79-11605	79-11714
79-11608	79-11722
79-11610	79-11724
79-11612	79-11726
79-11614	79-11728
79-11616	79-11730
79-11618	79-11734
79-11620	79-11749
79-11622	79-11751
79-11624	79-11783
79-11626	79-11784
79-11628	79-13681
79-11630	79-13682
79-11632	79-13683
79-11634	79-13685
79-11636	79-13687
79-11638	79-13691
79-11642	
79-11644	
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79-11700	
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79-11704	
79-11706	
79-11707	

(Subcase list: 79TRIB)
6/18/04

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In Re SRBA)
)
Case No. 39576)
)

Water Right(s): 79-11598
(SEE ATTACHED EXHIBIT A)

DEBBIE LASH
Deputy Clerk

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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): 79-11598
(SEE ATTACHED EXHIBIT A)

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

DISTRICT COURT-SRB.
TWIN FALLS CO., IDAHO
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NAME AND ADDRESS: USDI BLM
 IDAHO STATE OFFICE
 1387 S VINNELL WAY
 BOISE, ID 83709-1657

SOURCE: SPRING TRIBUTARY: JOHN DAY CREEK

QUANTITY: 0.02 CFS

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

PRIORITY DATE: 04/17/1926

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*****
* 4/17/1926 CLAIMED UNDER FEDERAL RESERVED WATER RIGHT *
*
* THIS WATER RIGHT IS CLAIMED BASED ON FEDERAL LAW *
* WITH AN APRIL 17, 1926, DATE OF PRIORITY PURSUANT TO AN *
* EXECUTIVE ORDER SIGNED THE SAME DATE AND KNOWN AS PUBLIC *
* WATER RESERVE 107. *
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POINT OF DIVERSION: T26N R02E S28 SWNENW Within Idaho 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 Idaho County
T26N R02E S28 NENW

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

SPECIAL MASTER