

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     | ) | <b>SPECIAL MASTER'S REPORT</b>            |
|                | ) |                                           |
|                | ) | <b>FINDINGS OF FACT AND</b>               |
| Case No. 39576 | ) | <b>CONCLUSIONS OF LAW</b>                 |
|                | ) |                                           |
|                | ) | <b>FOR WATER RIGHTS: (SEE</b>             |
|                | ) | <b>ATTACHED EXHIBITS A &amp; B, BASIN</b> |
|                | ) | <b>79 FILE NUMBER 10)</b>                 |

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**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 |          |
| 79-11648 |          |
| 79-11650 |          |
| 79-11654 |          |
| 79-11658 |          |
| 79-11662 |          |
| 79-11664 |          |
| 79-11667 |          |
| 79-11669 |          |
| 79-11670 |          |
| 79-11673 |          |
| 79-11677 |          |
| 79-11678 |          |
| 79-11679 |          |
| 79-11681 |          |
| 79-11683 |          |
| 79-11685 |          |
| 79-11689 |          |
| 79-11691 |          |
| 79-11693 |          |
| 79-11694 |          |
| 79-11696 |          |
| 79-11698 |          |
| 79-11700 |          |
| 79-11702 |          |
| 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

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 *[Signature]*

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In Re SRBA )  
 ) PARTIAL DECREE PURSUANT TO  
 ) I.R.C.P. 54(b) FOR  
Case No. 39576 )  
 )  
 ) Water Right 79-11662

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

SOURCE: SPRING TRIBUTARY: DIVIDE CREEK, EAST FORK

QUANTITY: 0.02 CFS

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

PRIORITY DATE: 04/17/1926

\*\*\*\*\*  
\* 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. \*  
\*\*\*\*\*

POINT OF DIVERSION: T30N R02W S33 NWSNW Within Idaho 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 Idaho County  
T30N R02W S33 SENW

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

*[Signature]*  
SPECIAL MASTER