

RECEIVED

AUG 29 2002

Department of Water Resources

702 AUG 28 PM 4:08

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)	Subcase 92-00002
)	and
Case No. 39576)	Subcases 36-02680, <i>et al.</i> (see list attached)
)	(Rim View Trout Company, Idaho Power
)	Company and IDF&G)
)	
)	SPECIAL MASTER REPORT
)	AND RECOMMENDATION

FINDINGS OF FACT

• 92-00002

Rim View Trout Company filed its *Consolidated Alternative Motions for Writ of Mandamus, Preliminary or Permanent Injunctions and Interim Administration* on November 18, 1992. The action was filed in the main SRBA case (Case No. 39576) with Rim View Trout named as plaintiff and the Idaho Department of Fish and Game (IDF&G) and the Idaho Department of Water Resources (IDWR) named as defendants. The subcase number is 92-00002.

On December 4, 1992, former-Presiding Judge Daniel C. Hurlbutt, Jr., entered his *Order Granting Preliminary Injunction in Part, Granting Mandamus*. Then, on December 23, 1992, Judge Hurlbutt entered an *Order Granting United States Motion to Intervene*.¹

• Director's Reports

The Director of the Idaho Department of Water Resources filed his *Director's Report, Part I, for Reporting Area 3 (Basin 36)* on November 2, 1992. Most of the above claims were recommended for various uses including: fish propagation, irrigation, domestic, fire protection,

¹ On September 30, 1993, Daria J. Zane, attorney for the United States, wrote to counsel for the other parties to say: "Should the Court approve the agreement and vacate the trial date, the United States will withdraw its intervention in this matter." *Motion for Approval of Amended Stipulation to Consolidate Subcases Relating to Niagara Springs for Trial; Motion for Approval of Agreement Resolving Water Rights from Niagara Springs; and Motion to Dismiss Mandamus Action*, filed October 1, 1993, Attachment 1.

wildlife and wildlife storage. Subcases 36-04032C and 36-10819 were recommended disallowed. The claimants are: Rim View Trout Company, 1301 Vista Avenue, Boise, Idaho 83705; Idaho Power Company, P.O. Box 70, Boise, Idaho 83707; and the State of Idaho, Department of Fish & Game, 600 S. Walnut, P.O. Box 25, Boise, Idaho 83707.

On January 8, 1993, the Director filed his *Recommendations of IDWR in Response to Rim View Trout Company Objection to Recommended Water Right No. 36-04020 as Listed in the Director's Report for Reporting Area 3 (Basin 36)*. The Director recommended 36-04020 be split into 36-04020A, 36-04020B and 36-04020C.

On September 30, 1993, the Director and the other parties signed the "Niagara Springs Agreement" in which the Director amended his recommendation of 36-04032A, 36-04032B and 36-04032C to include 36-04032D, but without an increase in quantity. For all practical purposes, the "Agreement" constituted an amended Director's report for those 4 claims.

On September 19, 1997, the Director filed an *Amended Director's Report Pursuant to July 11, 1997 Court Order Reporting Area 3, IDWR Basin 36* recommending claim 36-04020C to IDF&G as an enlargement of 36-04020A and 36-04020B for wildlife and wildlife storage.

- **Consolidation**

On October 1, 1993, Rim View Trout, Idaho Power and IDF&G filed a *Motion for Approval of Amended Stipulation to Consolidate Subcases Relating to Niagara Springs for Trial; Motion for Approval of Agreement Resolving Water Rights from Niagara Springs; and Motion to Dismiss Mandamus Action*. On January 12, 1994, Judge Hurlbutt entered his *Memorandum Decision and Order Granting Motion for Approval of Amended Stipulation to Consolidate Subcases Relating to Niagara Springs for Trial and Staying Disposition of Motion for Approval of Agreement Resolving Water Rights from Niagara Springs; and Motion to Dismiss Mandamus Action*. The *Memorandum Decision and Order* consolidated subcases 36-02680, 36-02704, 36-04020, 36-04032A, 36-04032B, 36-04032C and 36-07167. On March 28, 1997, Presiding Judge Hurlbutt entered an *Order Granting Joint Motion to Consolidate* adding subcase 36-02711 to the consolidation.

- **Order of Reference**

On January 13, 1999, former-Presiding Judge Barry Wood entered an *Order of Reference to Special Master Terrence A. Dolan* for subcases 92-00002, 36-02680, 36-02704,

36-02711, 36-04020, 36-04020C, 36-04032A, 36-04032B, 36-04032C, 36-07167 and 36-15221, plus “all other related or overlapping subcases.”

- **Amended Niagara Springs Agreement**

On July 24, 2002, Rim View Trout, Idaho Power and IDF&G filed a *Stipulation and Motion for Approval of Niagara Springs Agreement, as Amended*. In the *Stipulation and Motion*, the parties agreed that the September 30, 1993 “Niagara Springs Agreement” and the July 23, 2002 “Amendment to Niagara Springs Agreement” “resolve all remaining issues before the court in the above-captioned subcase [subcases 36-02680, *et al.*, and *Rim View Trout Company v. Idaho Department of Fish and Game, et al.*] pertaining to the allocation and adjudication of the waters of Niagara Springs and Niagara Springs Creek.” The parties then asked the Court to approve the “Agreement.” as amended.

In the “Amendment,” the parties agreed to: 1) removal of the facility volume remarks from Rim View Trout’s and Idaho Power’s fish propagation claims; 2) amendment of recommendations of 36-04020C (IDF&G) and 36-15221 (Idaho Power); and 3) the Court partially decreeing the water rights as described in attachments to the “Niagara Springs Agreement” (36-02711, 36-04020A and 36-04020B) and the “Amendment to Niagara Springs Agreement” (the other 9 water rights).

- **Standard Form 5 (36-15221)**

On July 30, 2002, Idaho Power and IDWR filed a *Standard Form 5* in subcase 36-15221 agreeing to .04 cfs for year-round domestic use with a priority date of March 3, 1982.

- **Draft Special Master Report and Recommendation**

On July 31, 2002, the Special Master entered a *Draft Special Master Report and Recommendation* for the purpose of receiving suggestions from counsel for the parties and IDWR. No one submitted a suggestion by the deadline of August 23, 2002.

CONCLUSIONS OF LAW

Rim View Trout Company, Idaho Power Company and the State of Idaho, Department of Fish & Game are entitled to partial decrees adjudicating water rights under claims 36-02680, 36-

04032A, 36-04032B, 36-04032C, 36-04032D and 36-07167 (Rim View Trout), 36-02704 and 36-15221 (Idaho Power Company) and 36-02711, 36-04020A, 36-04020B and 36-04020C (IDF&G) as described in the "Niagara Springs Agreement," the "Amendment to Niagara Springs Agreement," the *Standard Form 5* for claim 36-15221 and the attached *Special Master Recommendations for Partial Decrees for Water Rights 36-02680, 36-02704, 36-02711, 36-04020A, 36-04020B, 36-04020C, 36-04032A, 36-04032B, 36-04032C, 36-04032D, 36-07167 and 36-15221.*²

RECOMMENDATIONS

THEREFORE, IT IS RECOMMENDED that in subcase 92-00002, the Court:

1. **Grant** the parties' *Motion for Approval of Niagara Springs Agreement, as Amended*;
2. **Dismiss** the *Consolidated Alternative Motions for Writ of Mandamus, Preliminary or Permanent Injunctions and Interim Administration* filed by Rim View Trout Company on November 18, 1992; and
3. **Vacate** its *Order Granting Preliminary Injunction in Part, Granting Mandamus*, dated December 4, 1992.

IT IS FURTHER RECOMMENDED that:

4. Claim 36-04020 **not** be adjudicated as a water right, the claim having been split into 36-04020A, 36-04020B and 36-04020C; and
5. Claim 36-10819 **not** be adjudicated as a water right.

DATED August 28, 2002.



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

² The *Recommendations* include the Court's standard language concerning future general provisions, plus the following remark: "Use of this water right shall be subject to the terms and conditions of the 'Niagara Springs Agreement,' dated September 30, 1993, and the 'Amendment to Niagara Springs Agreement,' dated July 24, 2002."

Rim View Trout Co. v. Idaho Department of Fish and Game, et al.
39576 / 92-00002

Rim View Trout Company

36-02680
36-04032A
36-04032B
36-04032C
36-04032D
36-07167
36-10819 (disallow, recommended as part of 36-02680)

Idaho Power Company

36-02704
36-15221

State of Idaho, Department of Fish & Game

36-02711
36-04020 (disallow, split into 36-04020A, 36-04020B and 36-04020C)
36-04020A
36-04020B
36-04020C

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 36-02680

2002 AUG 28 PM 4:08
DISTRICT COURT-SRBA
TWIN FALLS CO. IDAHO
FILED *[Signature]*

NAME AND ADDRESS: RIM VIEW TROUT
1301 VISTA AVENUE
BOISE, ID 83705

SOURCE: NIAGARA SPRINGS TRIBUTARY: SNAKE RIVER

QUANTITY: 60.00 CFS
43438.60 AFY

PRIORITY DATE: 06/06/1966

POINT OF DIVERSION: T09S R15E S10 LOT 1 (SENE) Within Gooding County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Fish Propagation	01-01 TO 12-31	60.00 CFS 43438.60 AFY

PLACE OF USE:	Fish Propagation	Within Gooding County
	T09S R15E S10 LOT 1 (NENE)	LOT 2 (NWNE)
	LOT 10 (SWNE)	LOT 9 (SENE)

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

USE OF THIS WATER RIGHT SHALL BE SUBJECT TO THE TERMS AND CONDITIONS OF THE "NIAGARA SPRINGS AGREEMENT," DATED SEPTEMBER 30, 1993, AND THE "AMENDMENT TO NIAGARA SPRINGS AGREEMENT," DATED JULY 24, 2002.
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.

Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

RECOMMENDATION

AUG 28 2002
[Signature]
SPECIAL MASTER

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 36-04032C

2002 AUG 28 PM 4:08
DISTRICT COURT-SRBA
TWIN FALLS, IDAHO
FILED *[Signature]*

NAME AND ADDRESS: RIM VIEW TROUT
1301 VISTA AVENUE
BOISE, ID 83705

SOURCE: NIAGARA SPRINGS TRIBUTARY: SNAKE RIVER

QUANTITY: 5.00 CFS
3619.90 AFY

PRIORITY DATE: 04/01/1952

POINT OF DIVERSION: T09S R15E S10 LOT 1 (SENE) Within Gooding County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Fish Propagation	01-01 TO 12-31	5.00 CFS

PLACE OF USE: Fish Propagation Within Gooding County

T09S R15E S10 LOT 1 (NENE)	LOT 2 (NWNE)
LOT 10 (SWNE)	LOT 9 (SENE)

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

USE OF THIS WATER RIGHT SHALL BE SUBJECT TO THE TERMS AND
CONDITIONS OF THE "NIAGARA SPRINGS AGREEMENT," DATED SEPTEMBER
30, 1993, AND THE "AMENDMENT TO NIAGARA SPRINGS AGREEMENT,"
DATED JULY 24, 2002.

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.

Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

RECOMMENDATION

AUG 28 2002
[Signature]
SPECIAL MASTER

2002 AUG 28 PM 4: 00

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

DISTRICT COURT-SR THE TWIN FALLS CO. IDAHO FILED *AM*

In Re SRBA) PARTIAL DECREE PURSUANT TO)
) I.R.C.P. 54(b) FOR)
Case No. 39576))
) Water Right 36-07167)

NAME AND ADDRESS: RIM VIEW TROUT
1301 VISTA AVENUE
BOISE, ID 83705

SOURCE: NIAGARA SPRINGS TRIBUTARY: SNAKE RIVER

QUANTITY: 50.00 CFS
36198.90 AFY

PRIORITY DATE: 03/18/1971

POINT OF DIVERSION: T09S R15E S10 LOT 1 (SENE) Within Gooding County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Fish Propagation	01-01 TO 12-31	50.00 CFS 36198.90 AFY

PLACE OF USE: Fish Propagation Within Gooding County

T09S R15E S10 LOT 1 (NENE)	LOT 2 (NWNE)
LOT 10 (SWNE)	LOT 9 (SENE)

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

USE OF THIS WATER RIGHT SHALL BE SUBJECT TO THE TERMS AND CONDITIONS OF THE "NIAGARA SPRINGS AGREEMENT," DATED SEPTEMBER 30, 1993, AND THE "AMENDMENT TO NIAGARA SPRINGS AGREEMENT," DATED JULY 24, 2002.

RETURN FLOW SHALL BE TREATED TO INSURE THAT THE EFFLUENT MEETS IDAHO WATER QUALITY STANDARDS.

A MEASURING DEVICE OF A TYPE APPROVED BY IDWR SHALL BE MAINTAINED AS A PART OF THE DIVERTING WORKS.

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

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RECOMMENDATION

AUG 28 2002

Thomas A. Burdick
SPECIAL MASTER

Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

2002 AUG 28 PM 4:09

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
FILED [Signature]

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 36-02704

NAME AND ADDRESS: IDAHO POWER COMPANY
P.O. BOX 70
BOISE, ID 83707-0070

SOURCE: NIAGARA SPRINGS TRIBUTARY: SNAKE RIVER

QUANTITY: 120.00 CFS
48180.00 AFY

USE OF THIS RIGHT WITH RIGHT NO. 36-15221 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 120 CFS AND A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 48,180 AF.

PRIORITY DATE: 01/31/1966

POINT OF DIVERSION: T09S R15E S10 LOT 1 (NENENE) Within Gooding County
LOT 1 (SENE)

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-15 TO 11-15	0.04 CFS
	Domestic	01-01 TO 12-31	8.00 AFY
	Fire Protection	01-01 TO 12-31	0.04 CFS
			1.80 AFY
	Fish Propagation	01-01 TO 12-31	120.00 CFS
			48180.00 AFY
			120.00 CFS
			48180.00 AFY

PLACE OF USE: Irrigation Within Gooding County
T09S R15E S10 LOT 9 (SENE) 2.0
2.0 Acres Total

Fish Propagation Within Gooding County
T09S R15E S10 LOT 1 (NENE) LOT 9 (SENE)

Domestic Within Gooding County
T09S R15E S10 LOT 1 (NENE) LOT 9 (SENE)

Fire Protection Within Gooding County
T09S R15E S10 LOT 1 (NENE) LOT 9 (SENE)

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

USE OF THIS WATER RIGHT SHALL BE SUBJECT TO THE TERMS AND CONDITIONS OF THE "NIAGARA SPRINGS AGREEMENT," DATED SEPTEMBER 30, 1993, AND THE "AMENDMENT TO NIAGARA SPRINGS AGREEMENT," DATED JULY 24, 2002.

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.

RECOMMENDATION
AUG 28 2002
Thomas C. Olsen
SPECIAL MASTER

Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

RULE 54(b) CERTIFICATE

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RECOMMENDATION

AUG 28 2002

Thomas A. DeLo

SPECIAL MASTER

Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

USE OF THIS WATER RIGHT SHALL BE SUBJECT TO THE TERMS AND CONDITIONS OF THE "NIAGARA SPRINGS AGREEMENT," DATED SEPTEMBER 30, 1993, AND THE "AMENDMENT TO NIAGARA SPRINGS AGREEMENT," DATED JULY 24, 2002.

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

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RECOMMENDATION

AUG 28 2002

Thomas G. Allen

SPECIAL MASTER

Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

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

AUG 28 PM 4:09
DISTRICT COURT-SRBA
TWIN FALLS, IDAHO
FILED

In Re SRBA)
)
Case No. 39576)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 36-04020B

NAME AND ADDRESS: STATE OF IDAHO
DEPT OF FISH & GAME
PO BOX 25
BOISE, ID 83707

SOURCE: NIAGARA SPRINGS TRIBUTARY: SNAKE RIVER

QUANTITY: 1.28 CFS
256.00 AFY

PRIORITY DATE: 03/15/1959

USE OF THIS RIGHT WITH RIGHT NUMBERS 36-04020A AN D36-04020C IS
LIMITED TO A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 5998.3 AFY
AND TOTAL COMBINED DIVERSION RATES OF: 10 CFS FROM 5/1 TO 10/31
7 CFS FROM 11/1 TO 2/29 8 CFS FROM 3/1 TO 4/30.

POINT OF DIVERSION: T09S R15E S10 LOT 1 (NENENE) Within Gooding County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-15 TO 11-15	1.28 CFS 256.00 AFY

PLACE OF USE:	Irrigation	Within Gooding County
	T09S R15E S03	SWSW 23.0
	S04 LOT 7 (SWSE)	3.0 LOT 8 (SESE) 19.0
	S10 LOT 2 (NWNE)	2.0 LOT 3 (NENW) 3.0
	50.0 Acres Total	

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

USE OF THIS WATER RIGHT SHALL BE SUBJECT TO THE TERMS AND
CONDITIONS OF THE "NIAGARA SPRINGS AGREEMENT," DATED SEPTEMBER
30, 1993, AND THE "AMENDMENT TO NIAGARA SPRINGS AGREEMENT,"
DATED JULY 24, 2002.

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.

RECOMMENDATION

AUG 28 2002

Roger Burdick

SPECIAL MASTER

Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

2002 AUG 28 PM 4: 09

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 SEC. IDAHO
FILED *MA*

In Re SRBA)
PARTIAL DECREE PURSUANT TO
Case No. 39576)
I.R.C.P. 54(b) FOR
Water Right 36-04020C

NAME AND ADDRESS: STATE OF IDAHO
DEPT OF FISH & GAME
PO BOX 25
BOISE, ID 83707

SOURCE: NIAGARA SPRINGS TRIBUTARY: SNAKE RIVER

QUANTITY: 8.70 CFS
5997.70 AFY

STORAGE CAPACITY OF THE PONDS IS LIMITED TO 28 AF.
USE OF THIS RIGHT WITH RIGHT NUMBERS 36-04020A AND 36-04020B IS LIMITED TO A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 5998.3 AF AND TOTAL COMBINED DIVERSION RATES OF: 10 CFS FROM 5/1 TO 10/31 7 CFS FROM 11/1 TO 2/29 8 CFS FROM 3/1 TO 4/30

PRIORITY DATE: 06/07/1983

THIS WATER RIGHT IS SUBORDINATE TO ALL WATER RIGHTS WITH A PRIORITY DATE EARLIER THAN APRIL 12, 1994, THAT ARE NOT DECREED AS ENLARGEMENTS PURSUANT TO SECTION 42-1426, IDAHO CODE. AS BETWEEN WATER RIGHTS DECREED AS ENLARGEMENTS PURSUANT TO SECTION 42-1426, IDAHO CODE, THE EARLIER PRIORITY RIGHT IS THE SUPERIOR RIGHT.

POINT OF DIVERSION: T09S R15E S10 LOT 1 (NENENE) Within Gooding County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Wildlife Storage	05-01 TO 11-15	3.24 CFS
	Wildlife Storage	11-16 TO 02-29	1278.90 AFY
	Wildlife Storage	03-01 TO 04-30	7.00 CFS
	Wildlife Storage	03-01 TO 04-30	1457.90 AFY
	Wildlife Storage	03-01 TO 04-30	8.00 CFS
	Wildlife	03-15 TO 11-15	967.90 AFY
	Wildlife	03-15 TO 11-15	5.46 CFS
	Wildlife	03-15 TO 11-15	2293.00 AFY

PONDS AND DITCHES ARE USED FOR HABITAT.

PLACE OF USE:	Wildlife	Wildlife Storage
	T09S R15E S03 SWSW	Within Gooding County
	S04 LOT 11 (SWSW)	LOT 10 (SESW)
	LOT 7 (SWSE)	LOT 8 (SESE)
	S05 LOT 15 (NESW)	LOT 17 (NESE)
	LOT 16 (NWSE)	LOT 18 (SESE)
	S10 LOT 1 (NENE)	LOT 2 (NWNE)
	LOT 3 (NENW)	
	T09S R15E S04 LOT 11 (SWSW)	Within Gooding County
	S05 LOT 17 (NESE)	LOT 16 (NWSE)
	LOT 18 (SESE)	

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:
USE OF THIS WATER RIGHT SHALL BE SUBJECT TO THE TERMS AND CONDITIONS OF THE "NIAGARA SPRINGS AGREEMENT," DATED SEPTEMBER

SRBA Partial Decree Pursuant to I.R.C.P. 54(b) (continued)

OTHER PROVISIONS (continued)

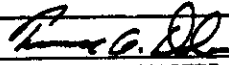
30, 1993, AND THE "AMENDMENT TO NIAGARA SPRINGS AGREEMENT,"
DATED JULY 24, 2002.
THIS RIGHT IS BASED UPON AN ENLARGEMENT OF RIGHT NOS. 36-04020A
AND 36-04020B PURSUANT TO SECTION 42-1426, IDAHO CODE.
THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS 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.

RECOMMENDATION

AUG 28 2002


SPECIAL MASTER

Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

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AUG 29 2002

Department of Water Resources

2002 AUG 28 PM 4:09

DISTRICT COURT-SRBA
TWIN FALLS, IDAHO
FILED [Signature]

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

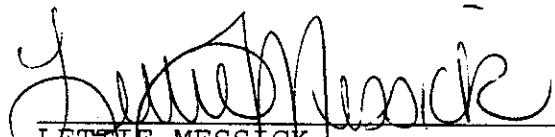
Water Right(s): 36-02680
(SEE ATTACHED EXHIBIT A)

On August 28, 2002, Special Master TERRENCE A. DOLAN 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 August 28, 2002.



LETTIE MESSICK
Deputy Clerk

Exhibit A

Subcase Nos:

36-02680
36-02704
36-02711
36-04020A
36-04020B
36-04020C
36-04032A
36-04032B
36-04032C
36-04032D
36-07167
36-15221

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER REPORT AND RECOMMENDATION AND NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION was mailed on August 28, 2002, with sufficient first-class postage to the following:

2002
AUG 28 PM 4:09
DISTRICT CLERK
TWIN FALLS, IDAHO
FILED

IDAHO DEPT OF FISH & GAME
IDAHO DEPT OF WATER RESOURCES
STATE OF IDAHO

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NATURAL RESOURCES
DEP AG OFFICE OF ATTY GEN
STATEHOUSE MAIL
BOISE, ID 83720-0010
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RIM VIEW TROUT

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STATE OF IDAHO

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