

2004 JUN 30 PM 2 05

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 RIGHT 72-12271 |

I. FINDINGS OF FACT

A notice of claim was filed for this water right pursuant to I.C. § 42-1409 (1990). 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 this water right.

On August 29, 19978, an objection was filed to water right 72-12271 by the State of Idaho. The United States of America, Bureau of Land Management also filed an objection on September 3, 1997. On November 14, 2003, an *Affidavit of Alan R Bittner* was filed, a Trial was held on December 11, 2003, and a *Second Affidavit of Alan R Bittner* was filed on December 11, 2003. The United States and the State of Idaho filed a *Standard Form 5* agreeing to the elements of this water right. IDWR also signed the *Standard Form 5*.

II. CONCLUSIONS OF LAW

Therefore, based on the file and record herein and pursuant to the *Standard Form 5*, *Affidavit* and *Trial*, IT IS RECOMMENDED that this water right be **decreed** with the elements as set forth in the *Recommendation for Partial Decree Pursuant to I.R.C.P. 54(b)*.

DATED: June 30, 2004.

  
\_\_\_\_\_  
THOMAS R. CUSHMAN  
Special Master  
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

In Re SRBA )  
 ) PARTIAL DECREE PURSUANT TO  
 ) I.R.C.P. 54(b) FOR  
Case No. 39576 )  
 )  
 ) Water Right 72-12271

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

SOURCE: SPRING TRIBUTARY: CHERRY GULCH

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  
THE SAME DATE AND KNOWN AS PUBLIC WATER RESERVE 107.

POINT OF DIVERSION: T10N R18E S26 SESWNE Within Custer 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 Custer County  
T10N R18E S26 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 30 2004

  
SPECIAL MASTER

2004 JUN 30 PM 2 05

In Re SRBA )  
 )  
Case No. 39576 )  
 )

Water Right(s) : 72-12271

*Debbie Lash* PAGE 1  
06/30/04  
DEBBIE LASH  
Deputy Clerk

2004 JUN 30 PM 2 06

In Re SRBA )  
 )  
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Water Right(s) : 72-12271

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.

  
DEBBIE LASH  
Deputy Clerk