

AUG 24 2004

DEPARTMENT OF  
WATER RESOURCES

AUG 23 PM 1:23

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

) SPECIAL MASTER'S REPORT AND  
) RECOMMENDATION ON FEDERAL  
) RESERVED WATER RIGHT  
) PURSUANT TO PWR 107  
)  
) FINDINGS OF FACT AND  
) CONCLUSIONS OF LAW  
)  
) For subcases: 78-10928, 77-11144,  
) 77-11158, 77-11200, 77-11230, 77-11240,  
) 77-11360, 77-11480, 77-11488

# I. PROCEDURAL BACKGROUND

The above-captioned water rights were claimed by the United States, Department of Interior, Bureau of Land Management as dual-based stockwater rights, meaning the rights were claimed as federal reserved water rights pursuant to Public Water Reserve (PWR) 107 and alternatively as state-law based rights. Notice of the elements of each claim was reported by the Idaho Department of Water Resources. Objections were filed by the State of Idaho regarding whether the claimed right met the criteria for a federal reserved right pursuant to PWR 107. Objections were filed by the claimant as to the reported legal descriptions.

On September 17, 1999, objections were filed to the above water rights 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. On August 29, 2002, the parties filed a *Stipulation and Joint Motion for Order Approving Stipulation, Notice of Withdrawal of Objections and Responses* filed by Mr. Norman Semanko for Bruce Bedke et al, *Notice of Withdrawal of Objections and Responses* filed by Mr. Norman 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 and the United States 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 June 8, 2004, a *Standard Form 5/Amended Claim* signed by the claimant with IDWR concurrence was filed. The *SF5* resolved the United States' objection, and stated that the rights were still claimed on a dual basis. An *Order Rescinding Order of Reference to Thomas R. Cushman* was entered on June 9, 2004, stating Judge John M. Melanson would proceed in the above subcases in the manner specified by *Administrative Order 1* for Special Masters. No objections were filed to the *Amended Director's Report*.

On August 18, 2004, a trial was held on these claims pursuant to Idaho Code 42-1411A(12), which requires the United States to demonstrate a *prima facie* showing of the existence of the claimed federal reserve water right. In conjunction with that trial, the United States filed affidavits, which were admitted into evidence, for each claimed right to meet its burden.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the file and record in this subcase, and the affidavits presented at the hearing on the matter, this Special Master makes the following findings of fact and conclusions of law:

1. Prior to April 17, 1926, no water rights had been established pursuant to state law for the use of the water from the subject water source for each claim.
3. On April 17, 1926, President Coolidge executed Public Water Reserve 107, which withdrew the 40 acre tract of land upon which the subject water source for the claims is located from the public domain. The tract of land withdrawn for each claim is described as the "place of use" element on the attached *Special Master's Recommendations*.
4. The subject water sources for the claims consist of a spring or water hole of the type contemplated by Public Water Reserve 107.
5. Contemporaneously with the withdrawal of the land, President Coolidge impliedly reserved enough water to fulfill the primary purpose of the land reservation for each claim.
6. The minimum amount of water necessary to fulfill the primary purpose of the land reservation is the amount set forth in the "quantity" element on the attached *Special Master's Recommendation* for each claim.
7. The United States has satisfied its burden under Idaho Code section 42-1411A(12) as to the nature and existence of the claimed federal reserve water right for each claim.

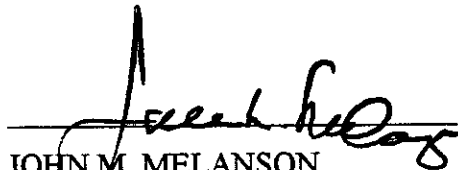
8. The elements of the federal reserved water right for each claim are set forth on the attached *Special Master's Recommendation*.

### III. RECOMMENDATION

Therefore, based on the file and record herein, IT IS RECOMMENDED that the above-captioned water rights be decreed as a federal reserved water right with the elements as set forth in the attached *Special Master's Recommendation for Partial Decree Pursuant to I.R.C.P.*

*54(b)*. It is further recommended that to the extent any concomitant state-law water rights were claimed in the alternative for the above-captioned rights, that said right not be confirmed in any partial or final decree.

Dated August 23 2004. .

  
JOHN M. MELANSON  
Presiding Judge  
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 )  
Case No. 39576 )

PARTIAL DECREE PURSUANT TO  
I.R.C.P. 54(b) FOR  
Water Right 77-11360

2004 AUG 23 PM 1:23  
FILED  
TWIN FALLS CO., IDAHO  
jm

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

SOURCE: SPRING TRIBUTARY: CAREY 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

\*\*\*\*\*  
\* THIS WATER RIGHT IS 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: T24N R05E S33 NWNWN 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  
T24N R05E S33 NWNW

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.

Recommendation 08/23/2004



John M. Melanson  
Presiding Judge of the  
Snake River Basin Adjudication

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FILED  
TWIN FALLS CO., IDAHO  
RT-SRBA

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): 77-11360

On August 23, 2004, Special Master JOHN M MELANSON 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 23, 2004.

  
\_\_\_\_\_  
JULIE MURPHY  
Deputy Clerk

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FILED T-SRBA  
TWIN FALLS CO., IDAHO

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 )

CERTIFICATE OF MAILING

Case No. 39576 )

Water Right(s): 77-11360

CERTIFICATE OF MAILING

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

DIRECTOR OF IDWR  
PO BOX 83720  
BOISE, ID 83720-0098

USDI BLM

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

  
JULIE MURPHY  
Deputy Clerk

CERTIFICATE OF MAILING

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08/23/04