

2004 SEP -9 PM 4: 37

FILED
TWIN FALLS CO., IDAHO
ST-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	)	ORDER RESCINDING ORDER OF
	)	REFERENCE
Case No. 39576	)	And
	)	AMENDED SPECIAL MASTER'S
	)	REPORT
	)	
	)	
	)	FOR WATER RIGHT: 69-10749

I. ORDER RESCINDING ORDER OF REFERENCE

- A. Special Master Thomas R. Cushman retired on June 30, 2004. Therefore, the Court finds it appropriate to rescind the Order of Reference to Thomas R. Cushman in the above subcase.
- B. The Court, with Judge John M. Melanson presiding, will proceed in the above subcase in the same fashion as specified in *Administrative Order 1* for proceedings by Special Masters.
- C. If the Court finds it necessary, the above subcase may be referred to another Special Master at a later date.

II. PROCEDURAL HISTORY

The above-captioned water right was claimed by the United States, Department of Interior, Bureau of Land Management (United States) as a state-based stockwater right.

An Objection was filed by the State of Idaho. 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 (the "Ranchers"). On August 29, 2002, the "Ranchers" 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, a *Stipulation to*

Resolve Objections was filed by the State of Idaho and the Claimant. On April 23, 2003 a *Special Master's Report and Recommendation* was filed. On April 24, 2003, the *Special Master's Report and Recommendation* was withdrawn.

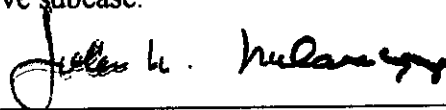
On May 15, 2003, a *Notice Regarding Priority Date* was filed by the Claimant in related cases. The *Notice Regarding Priority Date* listed a subcase numbered 69-10479, which is an invalid subcase number. The placement of the subcase on the exhibit list (between subcases 69-10747 and 69-10750) indicates that the subcase should have been listed as 69-10749. The *Notice Regarding Priority Date* stated that the listed water rights should be given state-based priority dates of June 28, 1934. Since the June 28, 1934 date was reached by settlement with the State of Idaho to determine the priority date for state-based water rights, it appears to the Court that the *Notice Regarding Priority Date* was intended to be filed in the above subcase.

On June 30, 2003 an *Order Dismissing Objections Filed by the State of Idaho and Dismissing State as a Party* was entered.

III. RECOMMENDATION

Therefore, based on the file and record herein and the *Notice Regarding Priority Date*, IT IS RECOMMENDED that the above-captioned water right be decreed as a state-based 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 ordered that the *Notice Regarding Priority Date* be docketed on the Record of Action for the above subcase.

DATED: September 2, 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 69-10749

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FILED
TWIN FALLS CO., IDAHO

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

SOURCE: UNNAMED STREAM TRIBUTARY: WOLF CREEK

QUANTITY: 0.02 CFS

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

PRIORITY DATE: 06/28/1934

POINT OF DIVERSION: T14N R07W S36 NWNENE (Instream Beginning Point) Within Washington County
SWSENE (Instream Ending Point)

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 Washington County
T14N R07W S36 NENE SENE

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.

Recommended:
Sept. 9, 2004
John M. Melanson

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

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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)
_____)

CERTIFICATE OF MAILING

Water Right(s): 69-10749

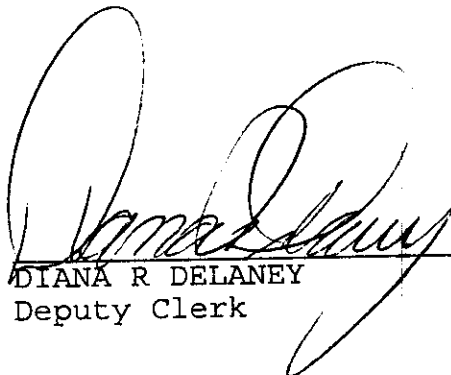
CERTIFICATE OF MAILING

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 September 09, 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



DIANA R DELANEY
Deputy Clerk

CERTIFICATE OF MAILING

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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.

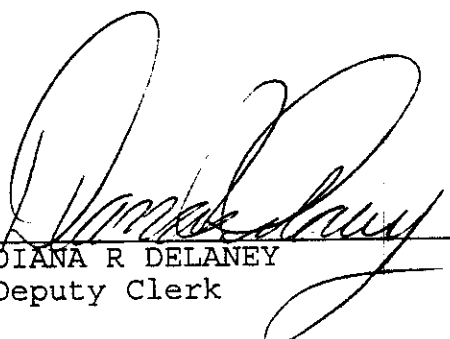
Water Right(s): 69-10749

On September 09, 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 September 09, 2004.



DIANA R DELANEY
Deputy Clerk