

2002 APR 11 AM 10:41

ENTERED BY-SREB  
TWIN FALLS, IDAHO  
FILED *PR*

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     | ) | SECOND AMENDED SPECIAL    |
|                | ) | MASTER'S REPORT           |
| Case No. 39576 | ) |                           |
|                | ) | FINDINGS OF FACT AND      |
|                | ) | CONCLUSIONS OF LAW        |
|                | ) |                           |
|                | ) | FOR WATER RIGHT 36-00029B |

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I. FINDINGS OF FACT

Danny, Evelyn and Brian Peterson filed a notice of claim for this water right 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 this water right.

On May 10, 1999, then Special Master Fritz X. Haemmerle issued a ***Special Master's Report and Recommendation*** in subcase 36-00029B. The ***Special Master's Report*** was based on an *Amended Standard Form 5/Stipulated Elements of a Water Right* changing "address", "quantity" and the "priority date" from "1916" to "1896". However, the ***Special Master's Report and Recommendation*** incorrectly listed the priority date as "1916."

On June 28, 1999, North Snake Ground Water District filed a *Motion to Alter or Amend*. Subsequently, on December 21, 2000, a *Second Amended Standard Form 5 (Second Amended SF5)* was filed. All parties and IDWR are signatures to the *Second Amended SF5*.

On December 27, 2000, an ***Amended Master's Report and Recommendation*** was issued. The ***Amended Master's Report and Recommendation*** incorrectly listed the priority date as "1916." Ultimately an ***Order of Partial Decree*** was issued on February 7, 2001, listing the priority date as "1916."

## II. CONCLUSIONS OF LAW

Therefore, based on the file and record herein and pursuant to I.R.C.P. 60(a), IT IS RECOMMENDED that water right claim 36-00029B be decreed in accordance with the *Standard Form 5* with the elements as set forth in the *Second Amended Special Master's Recommendation for Partial Decree for Water Right 36-00029B*, with priority date as "1896."

DATED: April 11, 2002.



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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  
Case No. 39576 ) I.R.C.P. 54(b) FOR  
                  ) Water Right 36-00029B

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DISTRICT COURT - SRBA  
TWIN FALLS, IDAHO  
FILED

NAME AND ADDRESS: DANNY & BRIAN PETERSEN  
EVELYN PETERSEN  
P O BOX 614  
WENDELL, ID 83355

SOURCE: THREE SPRINGS                      TRIBUTARY: BILLINGSLEY CREEK  
QUANTITY: 1.00 CFS

THE PORTION OF THIS RIGHT IN EXCESS OF 0.70 CFS IS  
SUBORDINATED TO ALL GROUND WATER AND SURFACE WATER RIGHTS WITH  
PRIORITY DATES OF DECEMBER 31, 1999 OR EARLIER.

PRIORITY DATE: 02/17/1896

POINT OF DIVERSION: T07S R13E S24              SESENW              Within Gooding County

| PURPOSE AND<br>PERIOD OF USE: | PURPOSE OF USE  | PERIOD OF USE  | QUANTITY |
|-------------------------------|-----------------|----------------|----------|
|                               | Domestic 1 HOME | 01-01 TO 12-31 | 0.04 CFS |
|                               | Irrigation      | 02-15 TO 11-30 | 1.00 CFS |

THE IRRIGATION USE UNDER THIS RIGHT IN EXCESS OF 0.70 CFS IS  
SUBORDINATED TO ALL WATER RIGHTS WITH PRIORITY DATES OF  
DECEMBER 31, 1999 OR EARLIER.

PLACE OF USE: Irrigation                      Within Gooding County  
                  T07S R13E S24              SESW 35.0  
                  35.0 Acres Total  
  
Domestic                      Within Gooding County  
                  T07S R13E S24              SESW

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

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR  
DOMESTIC USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

THE SUBORDINATED PORTION OF THIS WATER RIGHT SHALL NOT BE  
ASSERTED, DELIVERED, HONORED, USED, ENFORCED, EFFECTIVE OR  
OTHERWISE RECOGNIZED AS VALID IF IT WOULD CAUSE OR REQUIRE EITHER  
DIRECTLY OR INDIRECTLY, CURTAILMENT OF, INJURY TO, OR MITIGATION  
FROM ANY WATER RIGHTS WITH PRIORITY DATES EARLIER THAN  
DECEMBER 31, 1999. THE SUBORDINATION SHALL RUN WITH AND BE  
PERPETUAL SERVITUDES UPON THIS WATER RIGHT AND THE ASSOCIATED  
LANDS, INCLUDING ANY NEW LANDS TO WHICH ALL OR ANY PORTIONS OF  
THIS WATER RIGHT IS TRANSFERRED.

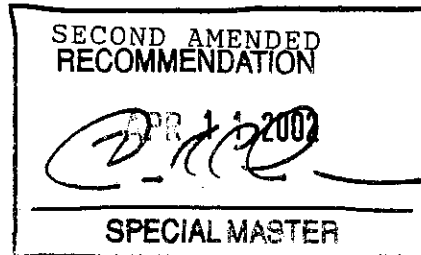
THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS  
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT  
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY  
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE  
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

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.

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Roger Burdick  
Presiding Judge of the  
Snake River Basin Adjudication



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TWIN FALLS CO., IDAHO  
FILED

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): 36-00029B

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 April 11, 2002, with sufficient first-class postage prepaid to the following:

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

STATE OF IDAHO  
Represented by:  
CLIVE STRONG  
NATURAL RESOURCES  
DEP AG OFFICE OF ATTY GEN  
STATEHOUSE MAIL  
BOISE, ID 83720-0010  
Phone: 208-334-2400

JOSEPHINE BEEMAN  
NORTH SNAKE GROUND WATER DIST  
Represented by:  
JOSEPHINE P. BEEMAN  
409 WEST JEFFERSON STREET  
BOISE, ID 83702  
Phone: 208-331-0950

CERTIFICATE OF MAILING

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04/11/02

DANNY & BRIAN PETERSEN  
EVELYN PETERSEN  
P O BOX 614  
WENDELL, ID 83355

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\_\_\_\_\_  
DEBBIE LASH  
Deputy Clerk

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DISTRICT COURT - SRBA  
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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

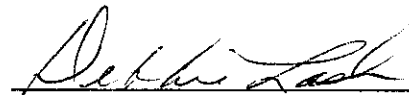
Water Right(s): 36-00029B

On April 11, 2002, 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 April 11, 2002.

  
DEBBIE LASH  
Deputy Clerk