

FILED
TWIN FALLS CO., IDAHO
JAN 1 2003

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 36-00003B

I. FINDINGS OF FACT

A Notice of Claim was filed 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 April 29, 1993, an *Objection* was filed by Robert Gardner. On April 17, 1998, a *Supplemental Director's Report* was filed. On August 5, 1999, a second *Supplemental Director's Report* was filed. Trial was held on June 8, 1998. A *Special Master's Report and Recommendation* was issued February 8, 1999. On March 29, 1999, North Snake Ground Water District filed a *Motion to Alter or Amend (Motion)* the *Special Master's Report and Recommendation*. The *Motion* was denied. North Snake Ground Water filed a *Challenge* to the *Master's Report & Recommendation*, and the State of Idaho also filed a *Challenge*. On November 23, 1999, Judge Barry Wood, issued a *Memorandum Decision and Order on Challenge; Order Granting State of Idaho's Motion for the Court to Take Judicial Notice of Adjudicative Facts; Order of Recommitment with Instructions to Special Master Cushman (Hereafter "Memorandum Decision")*. The *Memorandum Decision* made rulings on certain legal issues with respect to this water right and other claims derivative of 36-00003B. In addition, the *Memorandum Decision* remanded this right back to the Special Master for additional findings and consideration in conjunction with late claims to claims derivative of 36-00005 and 36-00019. An Amended Director's Report was filed on May 18, 2001. Objections were filed by Kingston Properties LLP on June 1, 2001, and North Snake Ground Water District on June 28, 2001. On October 5, 2001, an objection was lodged by Maria Anderson. The *Motion to File Late Objection* was granted at hearing January 14, 2002.

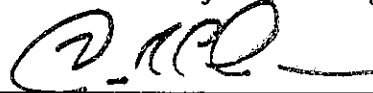
During the time this subcase was recommitted to this Special Master, the parties settled.

Subsequently, on September 17, 2002, a *Standard Form 5/Stipulated Elements of a Water Right* was filed settling the objections to water right 36-00003B. All parties and IDWR are signatures to the *Standard Form 5*.

II. CONCLUSIONS OF LAW

Therefore, based on the file and record herein and pursuant to the *Standard Form 5*, IT IS RECOMMENDED that water right claim 36-00003B be decreed with the elements as set forth in the attached *Special Master's Recommendation for Partial Decree for Water Right 36-00003B*.

DATED: December 18, 2002.



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)
Case No. 39576)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 36-00003B

2002 DEC 18 PM 3:47

FILED
TWIN FALLS CO. IDAHO
PK

NAME AND ADDRESS: KINGSTON PROPERTIES LP
477 SHOUP AVE, STE 207
IDAHO FALLS, ID 83402

SOURCE: BILLINGSLEY CREEK TRIBUTARY: SNAKE RIVER

QUANTITY: 3.84 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER
PURPOSES SHALL NOT EXCEED 13,000 GALLONS PER DAY.
THE APPROPRIATOR IS ENTITLED TO THE QUANTITY OF WATER DESCRIBED
FOR STOCK WATER PURPOSES AT A POINT OF MEASUREMENT WHERE THE
DELIVERY DITCH ENTERS THE PLACE OF USE DESCRIBED.

PRIORITY DATE: 09/10/1884

POINT OF DIVERSION: T07S R13E S11 SESENE Within Gooding County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	02-15 TO 11-30	3.84 CFS
	Stockwater	01-01 TO 12-31	0.05 CFS
	Fish Propagation	01-01 TO 12-31	3.84 CFS

THE PORTION OF THIS RIGHT FOR FISH PROPAGATION PURPOSES IS
SUBORDINATED TO ALL GROUND AND SURFACE WATER RIGHTS WITH
PRIORITY DATES OF AUGUST 15, 2002, OR EARLIER

PLACE OF USE:	Irrigation	Stockwater	Fish Propagation
	T07S R13E S27 S28 LOT 4 129.0 Acres Total	S27 S28 LOT 4	S27 S28
	SWNW 23.0 (SWNE) 9.0 NESE 40.0	SWNW (SWNE) NESE	SWNW SWNE NESE
	Within Gooding County	Within Gooding County	Within Gooding County
	NWSW 9.0 SENE 25.0 (NWSE) 23.0	NWSW SENE (NWSE)	SENE

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 129 ACRES IN A SINGLE
IRRIGATION SEASON. COMBINED RIGHT NOS. 36-00003B, 36-00005B &
36-00019B.

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

THE QUANTITY OF WATER DECREED FOR THIS RIGHT FOR STOCKWATER
USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.
THE PORTION OF THIS WATER RIGHT FOR FISH PROPAGATION PURPOSES
SHALL NOT BE ASSERTED, DELIVERED, USED, ENFORCED, EFFECTIVE, OR
OTHERWISE RECOGNIZED IF IT WOULD CAUSE OR REQUIRE IN ANY WAY
OR OTHERWISE RESULT IN, EITHER DIRECTLY OR INDIRECTLY,
CURTAILMENT OF, INJURY TO, OR MITIGATION FROM ANY SURFACE AND

OTHER PROVISIONS (continued)

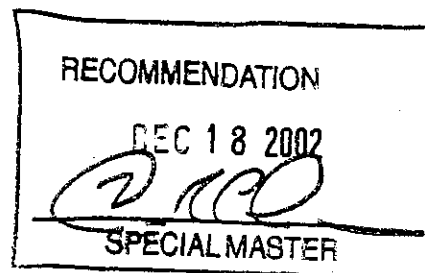
GROUND WATER RIGHTS EXISTING AS OF AUGUST 15, 2002.

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



2002 DEC 18 PM 3:47

INVESTIGATOR AT SRBA
TWIN FALLS CO., 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)

CERTIFICATE OF MAILING

Case No. 39576)

Water Right(s): 36-00003B

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 December 18, 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

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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12/18/02

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TWIN FALLS CO., IDAHO

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
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In Re SRBA)
Case No. 39576)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

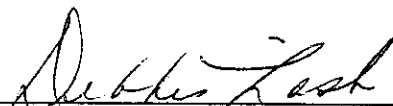
Water Right(s): 36-00003B

On December 18, 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 December 18, 2002.



DEBBIE LASH
Deputy Clerk