

2004 SEP 23 PM 4:41

FILED
TWIN FALLS CO. IDAHO
DISTRICT COURT - 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	)	SPECIAL MASTER'S REPORT
	)	
Case No. 39576	)	FOR WATER RIGHT: 78-11046
	)	
_____	)	

Special Master's Report

The above-captioned water right was claimed by the United States, Department of Interior, Bureau of Land Management (United States) as a dual-based stockwater right meaning the right was claimed as a federal-reserved water right pursuant to Public Water Reserve (PWR) 107 and alternatively as a state-law based right. The state-based portion of the right was recommended disallowed by the Idaho Department of Water Resources.

An Objection was filed by the claimant. Responses were filed by the State of Idaho, Scott Bedke, Karl Bedke, Bruce Bedke, Joe Tugaw, Jared Bedke, Gary Poulton, Flying Triangle, Luther Gardner, Michael Poulton, Pickett Ranch and Sheep Co., Jerry Hoagland, Joyce Livestock, Western Stock Growers, Eugene Mathews, Shoulders Three Ranches, A.L. Cattle and Betty and Willis D. Devany, all represented by Norman Semanko (the ranchers). On April 23, 2004, the State of Idaho and Mr. Semanko's clients withdrew their responses at a hearing before Special Master Thomas Cushman. On June 30, 2004, a *Standard Form 5/ Stipulated Elements of a Water Right* form was filed signed by the Claimant with IDWR concurrence, overcoming IDWR's recommended disallowance. On July 8, 2004, an *Order Rescinding Order of Reference to Thomas R. Cushman* was entered, stating that the Court would proceed in the above Subcase in the same manner as specified in *Administrative Order 1* for proceeding by Special Masters with Judge John Melanson presiding.

On September 21, 2004 a trial was held on this 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.

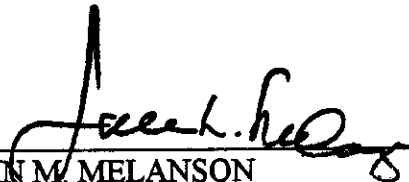
Based on the trial, the Court concludes the following:

1. Prior to April 17, 1926, the subject water source for the claim was located on unreserved federal public domain land.
2. 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 the 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 claim is located from the public domain. The tract of land withdrawn for the claim is described as the "place of use" element on the attached *Special Master's Recommendation*.
4. The subject water source for the claim consists 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 the 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 the 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 the claim.
8. The elements of the federal reserved water right for the 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 right 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 right was claimed in the alternative for the above-captioned right, that said right not be confirmed in any partial or final decree.

DATED: September 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 78-11046

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DISTRICT COURT-SRBA
TWIN FALLS CO, IDAHO
FILED

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

SOURCE: SPRING TRIBUTARY: LITTLE SALMON RIVER

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: T22N R01E S35 SWNW Within Idaho County

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 Idaho County
T22N R01E S35 SWNW

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.

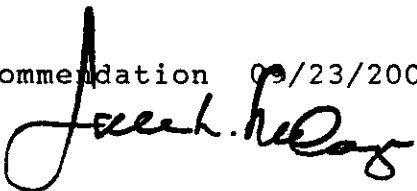
BASIS OF CLAIM - BENEFICIAL USE
BLM RECORD ID = 7806582107

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 09/23/2004



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

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In Re SRBA)
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_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

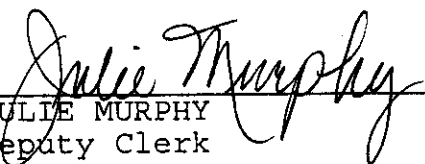
Water Right(s): 78-11046

On September 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 September 23, 2004.



JULIE MURPHY
Deputy Clerk

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CERTIFICATE OF MAILING

Water Right(s) : 78-11046

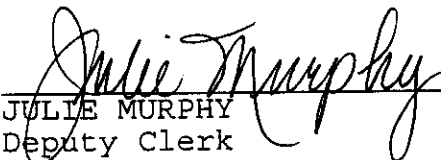
CERTIFICATE OF MAILING

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 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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09/23/04