2004 SEP 24 PM 4:36
CLERK DISTRICT COURT
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	)	**SPECIAL MASTER'S REPORT**
	)	
Case No. 39576	)	**FOR WATER RIGHT: 63-31074**
	)	
	)	
	)	

I. PROCEDURAL HISTORY

The above-captioned subcase was claimed 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 and filed a *Director's Report.* The *Director's Report* contained a recommendation for these water rights.

Objections were filed to the recommendation for the above right by the United States, Department of Interior, Bureau of Reclamation (United States) and the Boise Project Board of Control (Board of Control) regarding the season of use, period of year element recommended for the water right. The Idaho Department of Water Resources filed a *Case Management Report* on March 10, 2003 in the above captioned subcase.

On July 6, 2004, the Court rescinded the ***Order of Reference to Special Master Thomas Cushman*** and set a Status Conference for August 17, 2004. The Court ruled that Judge John M. Melanson would preside over the subcase in the same manner as specified in ***Administrative Order 1*** for proceedings by Special Masters. A Status Conference was held on August 17, 2004. On September 17, 2004, a *Standard Form 5/Stipulated Elements of a Water Right* form was filed signed by the Claimants and the Objectors. IDWR concurred in the *SF5*.

II. CONCLUSIONS OF LAW

It appears from the record that all objections have been resolved. Therefore, based on the file and record herein and pursuant to the *Standard Form 5,* IT IS RECOMMENDED that the

above water right be **decreed** with the elements as set forth in the attached ***Recommendation for Partial Decree Pursuant to I.R.C.P. 54(b).***

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

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In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
) Water Right 63-31074

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

NAME AND ADDRESS: BARRY MARCUS
737 N 7TH ST
BOISE, ID 83702

SOURCE: MORES CREEK TRIBUTARY: BOISE RIVER

QUANTITY: 0.15 CFS

PRIORITY DATE: 12/31/1940

POINT OF DIVERSION: T04N R04E S02 SWSWSW Within Boise County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Irrigation	03-15 TO 11-15	0.15 CFS

DIVERSION FOR IRRIGATION UNDER THIS WATER RIGHT PRIOR TO APRIL 1 AND AFTER OCTOBER 31 SHALL OCCUR ONLY AS AUTHORIZED BY THE WATER DISTRICT 63 WATERMASTER AND ONLY WHEN WATER IS BEING RELEASED FOR FLOOD CONTROL BY THE UNITED STATES FROM THE LUCKY PEAK DAM OUTLET UNDER PROCEDURES AND REQUIREMENTS FOR THE MEMORANDUM OF AGREEMENT BETWEEN THE U.S. DEPARTMENT OF THE ARMY AND THE U.S. DEPARTMENT OF THE INTERIOR FOR FLOOD CONTROL OPERATIONS OF THE BOISE RIVER RESERVOIRS, DATED NOVEMBER 20, 1953, THE WATER CONTROL MANUAL FOR BOISE RIVER RESERVOIR DATED APRIL 1985 AND ANY FUTURE AMENDMENTS OR REVISIONS MADE THERETO PURSUANT TO STATE OR FEDERAL PROCEDURES OR LAW; PROVIDED THAT ANY SUCH USE OF THIS WATER RIGHT PRIOR TO APRIL 1 AND AFTER OCTOBER 31 SHALL BE SUBORDINATED TO WATER RIGHTS FOR STORAGE IN LUCKY PEAK RESERVOIR AND/OR LAKE LOWELL AS DECREED IN SRBA CASE NO. 39576.

PLACE OF USE: Irrigation Within Boise County

T04N R04E S02	SWSW	2.0
S11	NWNW	3.0

5.0 Acres Total

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

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

Sept. 24, 2004

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

2004 SEP 24 PM 4:36

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	CERTIFICATE OF MAILING
Case No. 39576	Water Right(s): 63-31074

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 24, 2004, with sufficient first-class postage prepaid to the following:

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

BOISE PROJECT BOARD OF CONTROL
Represented by:
ALBERT P. BARKER
205 N 10TH ST, STE 520
PO BOX 2139
BOISE, ID 83701-2139
Phone: 208-336-0700

BARRY MARCUS
Represented by:
BARRY L MARCUS
737 N 7TH STREET
BOISE, ID 83702
Phone: 208-342-3563

BOISE PROJECT BOARD OF CONTROL
Represented by:
CHESTNUT, AMY D
205 N 10TH ST, STE 520
PO BOX 2139
BOISE, ID 83701-2139
Phone: 208-336-0700

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

DIANA R DELANEY
Deputy Clerk

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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): 63-31074

On September 24, 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 24, 2004.

DIANA R DELANEY
Deputy Clerk