

2004 SEP 24 PM 4:38
DISTRICT COURT - SRBA
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: 63-05332
	)	
	)	
	)	

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 18, 2003, a *Notice of Completed Administrative Proceeding/I.C. §42-222* was filed.

On July 6, 2004, the Court rescinded the *Order of Reference to Special Master Thomas Cushman* and set a Status Conference for August 17, 2004.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 Claimant's attorney 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

2004 SEP 24 PM 4:38

DISTRICT COURT-SRBA
TWIN FALLS CO. IDAHO
FILED

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

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)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
) Water Right 63-05332

2004 SEP 24 PM 4:38
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

NAME AND ADDRESS: OSPREY LAND CO
737 N 7TH ST
BOISE, ID 83702

SOURCE: CORRAL CREEK TRIBUTARY: MORES CREEK
MORES CREEK TRIBUTARY: BOISE RIVER

QUANTITY: 0.20 CFS
59.60 AFY

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

DIVERSION FROM MORES CREEK UNDER THIS RIGHT IS LIMITED TO THOSE
TIMES WATER IS AVAILABLE FOR DIVERSION UNDER THIS RIGHT AND
PRIORITY FROM CORRAL CREEK. AVAILABILITY OF WATER FROM CORRAL
CREEK SHALL BE DETERMINED BASED ON THE LESSER OF THE FLOW IN
CORRAL CREEK AT THE AUTHORIZED POINT OF DIVERSION OR AT THE
MOUTH OF CORRAL CREEK. THE TOTAL INSTANTANEOUS DIVERSION OF
WATER FROM ALL POINTS OF DIVERSION UNDER THIS RIGHT SHALL NOT
EXCEED 0.20 CFS.

THE TOTAL DIVERSION OF WATER FROM MORES CREEK UNDER RIGHTS
63-5332 AND 63-5334 SHALL NOT EXCEED 1.12 CFS.

THIS RIGHT WHEN COMBINED WITH ALL OTHER RIGHTS SHALL PROVIDE NO
MORE THAN 0.02 CFS PER ACRE NOR MORE THAN 4.5 AFA PER ACRE AT THE
FIELD HEADGATE FOR IRRIGATION OF THE LANDS.

THE TOTAL INSTANTANEOUS DIVERSION OF WATER FROM ALL POINTS OF
DIVERSION UNDER RIGHTS 63-5332 AND 63-5334 SHALL NOT EXCEED
2.14 CFS, NOR TOTAL COMBINED ANNUAL VOLUME OF 266.6 AF.

PRIORITY DATE: 07/23/1900

POINT OF DIVERSION: T04N R04E S02 SENE Within Boise County
T05N R04E S35 NWNESW

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 11-01	0.10 CFS
			45.00 AFY
	Stockwater	01-01 TO 12-31	0.10 CFS
			14.60 AFY

THE PERIOD OF USE FOR THE IRRIGATION DESCRIBED IN THIS
APPROVAL MAY BE EXTENDED TO A BEGINNING DATE OF 3/1 AND AN
ENDING DATE OF 11/15 PROVIDED THAT BENEFICIAL USE OF THE WATER
CAN BE SHOWN AND OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED.
THE USE OF WATER BEFORE 4/1 AND AFTER 11/1 IS SUBORDINATE TO ALL
WATER RIGHTS HAVING NO SUBORDINATED EARLY OR LATE IRRIGATION
USE AND A PRIORITY DATE EARLIER THAN THE DATE OF THIS APPROVAL.
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

PURPOSE AND PERIOD OF USE (continued)

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 LOT 2	(NWNE) 10.0	SWNE 10.0
	SENE 4.0	LOT 3 (NENW) 10.0
T05N R04E S35	NWSW 5.0	SWSW 15.0
	SESW 5.0	SWSE 1.0
60.0 Acres Total		

Stockwater Within Boise County
Same as Irrigation

USE OF THIS RIGHT WITH RIGHT NO. 63-5334 IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 56 ACRES IN A SINGLE
IRRIGATION SEASON.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 10 ACRES WITHIN THE
PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

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

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR
STOCKWATER USE 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.

Recommendation
Sept 24, 2004
John M. Melanson

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

2004 SEP 24 PM 4:38

DISTRICT COURT-SRBA
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): 63-05332

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

OSPREY LAND CO

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

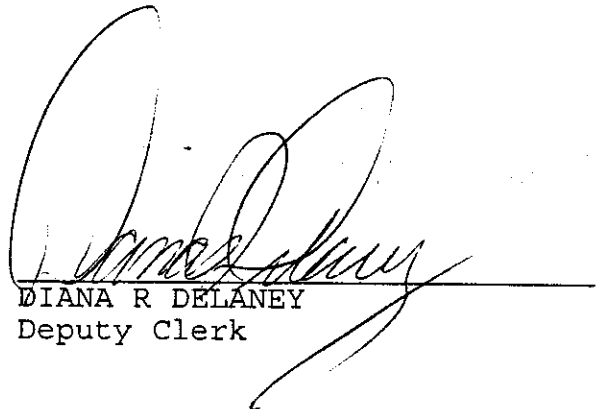
CERTIFICATE OF MAILING

PAGE 1
09/24/04

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

2004 SEP 24 PM 4:38

DISTRICT COURT - SRBA
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)
Case No. 39576)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

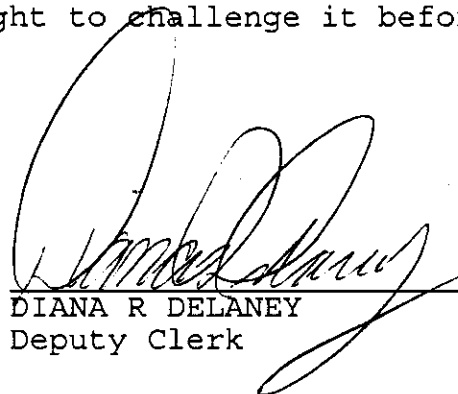
Water Right(s): 63-05332

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