

2004 SEP 24 PM 4: 39
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

) **SPECIAL MASTER'S REPORT**
)
)
) **FOR WATER RIGHT: 63-05334**
)
)
)

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.

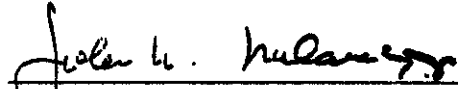
On July 6, 2004, the Court rescinded the *Order of Reference to Special Master Thomas Cushman* and set a Status Conference for August 17, 2004. The Court ruled that Judge John M. Melanson would preside over the subcase in the same manner as specified in *Administrative Order 1* for proceedings by Special 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

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 24, 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)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 63-05334

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

SOURCE: MINNEHA CREEK TRIBUTARY: MORES CREEK
MORES CREEK TRIBUTARY: BOISE RIVER

QUANTITY: 1.94 CFS
221.60 AFY

DIVERSION FROM MORES CREEK UNDER THIS RIGHT IS LIMITED TO THOSE
TIMES WATER IS AVAILABLE FOR DIVERSION UNDER THIS RIGHT AND
PRIORITY FROM MINNEHA CREEK. AVAILABILITY OF WATER FROM
MINNEHA CREEK SHALL BE DETERMINED BASED ON THE LESSER OF THE FLOW
IN MINNEHA CREEK AT THE AUTHORIZED POINT OF DIVERSION OR AT THE
MOUTH OF MINNEHA CREEK. THE TOTAL INSTANTANEOUS DIVERSION OF
WATER FROM ALL POINTS OF DIVERSION UNDER THIS RIGHT SHALL NOT
EXCEED 1.94 CFS.

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

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

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.

THE PORTION OF RIGHT 63-5334 USED FOR CONVEYANCE LOSSES LIMITED
TO DIVERSION FROM MINNEHA CREEK IS 1.02 CFS.

PRIORITY DATE: 08/15/1889

POINT OF DIVERSION: T05N R04E S35 NWNESW Within Boise County
S36 NWSE

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-15 TO 11-15	1.94 CFS 207.00 AFY
	Stockwater	01-01 TO 12-31	0.03 CFS 14.60 AFY

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.

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.

PURPOSE AND PERIOD OF USE (continued)

THE USE OF WATER BEFORE 5/1 AND AFTER 10/1 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.

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 63-5332 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 46 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.

Recommended

Sept. 24, 2004

John M. Melanson

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

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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

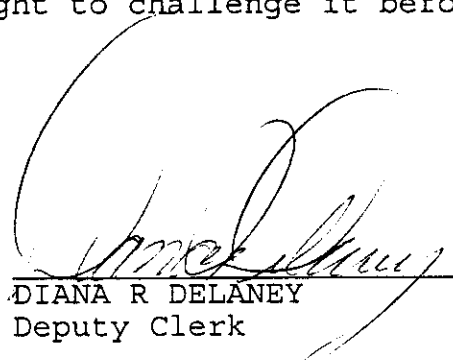
Water Right(s): 63-05334

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

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In Re SRBA)

CERTIFICATE OF MAILING

Case No. 39576)

Water Right(s): 63-05334

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

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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

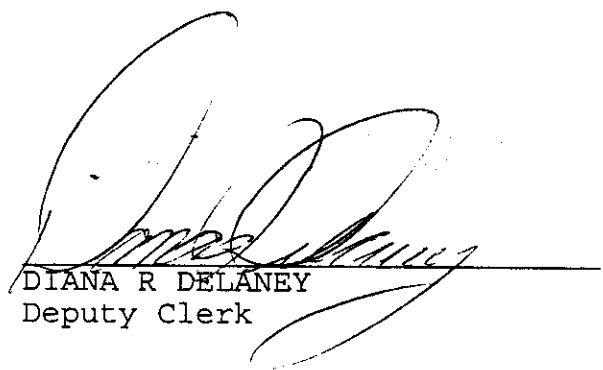
Represented by:

US DEPARTMENT OF JUSTICE

ENVIRONMENT & NATL' RESOURCES

550 WEST FORT STREET, MSC 033

BOISE, ID 83724



DIANA R DELANEY
Deputy Clerk