

2002 OCT 25 AM 9:55

FILED
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	)	Subcase 57-01113
	)	
Case No. 39576	)	SPECIAL MASTER'S REPORT AND
	)	RECOMMENDATION
	)	
	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW

I. PROCEDURAL BACKGROUND

A *Partial Decree* was entered for the above-captioned irrigation water right on January 8, 1998. The period of use element was decreed as "irrigation season." In *A&B Irrigation Dist. v. Idaho Conservation League*, 131 Idaho 411, 423, 958 P.2d 568, 580 (1998), the Idaho Supreme Court remanded to the SRBA Court with the directive to include specific dates for the period of use element. Following remand, on July 26, 1999, IDWR filed a *Supplemental Director's Report, Reporting Area 2, IDWR Basin 57, Regarding Revision of Period of Use (For Irrigation Water Uses) and Conjunctive Management General Provisions*, which included an irrigation period of use recommendation for this water right. The recommendation also contained the following "subordination language."

DIVERTING WATER BEFORE OR AFTER THE PERIOD OF USE UNDER
THIS RIGHT IS ALLOWED PROVIDED:

- A. THE WATERS SO DIVERTED ARE APPLIED TO A BENEFICIAL USE, AND
- B. THE EXISTING RIGHTS AND FUTURE APPROPRIATIONS ARE FIRST SATISFIED.

On December 21, 2001, the SRBA District Court issued an *Order of Reference Appointing Thomas Cushman Special Master* to determine the issues regarding the use of "excess" water in the Reynolds Creek basin.

On May 1, 2002, at a status conference, the claimant, Tom Hook, made an oral motion to withdraw objections, such motion having been granted.

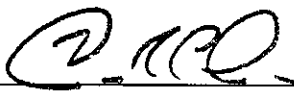
II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This "subordination language" was recommended by IDWR in an attempt to satisfy the issues raised by the Idaho Supreme Court in *State of Idaho v. Idaho Conservation League*, 131 Idaho 329, 955 P.2d 1108 (1998), regarding "excess water." However, because the use of "excess water" is no longer being recommended as a general provision¹, this Special Master finds that the subordination language is no longer necessary and should not be included in the partial decree for this water right.

III. RECOMMENDATION

Therefore, based on the file and record herein, and all objections having been withdrawn, IT IS RECOMMENDED that an amended partial decree be issued for this water right with the elements as set forth in the attached *Special Master's Recommendations for Amended Partial Decree Pursuant to I.R.C.P. 54(b) for water right 57-01113*.

Dated October 25, 2002.


THOMAS CUSHMAN
Special Master
Snake River Basin Adjudication

¹ For a comprehensive discussion regarding the "excess water" general provision, see the *Special Master's Report and Recommendation, Findings of Fact and Conclusions of Law, For General Provisions in Basin 57 Designated as Basin-Wide Issue 5-57* (September 11, 2002).

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AMENDED

In Re SRBA

Case No. 39576

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 57-01113

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NAME AND ADDRESS: TOM HOOK
HC 88 BOX 1095
MURPHY, ID 83650

SOURCE: REYNOLDS CREEK TRIBUTARY: SNAKE RIVER

QUANTITY: 0.06 CFS

PRIORITY DATE: 06/01/1965

POINT OF DIVERSION: T03S R04W S12 NESE Within Owyhee County

PURPOSE AND	PURPOSE OF USE	PERIOD OF USE	QUANTITY
PERIOD OF USE:	Irrigation	03-15 TO 11-15	0.06 CFS

PLACE OF USE: Irrigation Within Owyhee County
T03S R04W S01 SENE 3.0
3.0 Acres Total

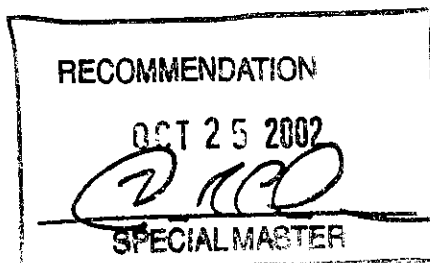
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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.

Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication



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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)
_____)

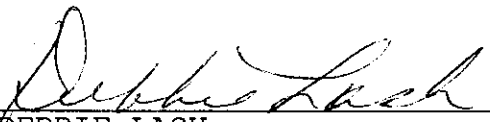
Water Right(s): 57-01113

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 October 25, 2002, with sufficient first-class postage prepaid to the following:

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

TOM HOOK
HC 88 BOX 1095
MURPHY, ID 83650


DEBBIE LASH
Deputy Clerk

CERTIFICATE OF MAILING

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CLERK

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): 57-01113

On October 25, 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 October 25, 2002.


DEBBIE LASH
Deputy Clerk