

2002 OCT 25 AM 9: 56

FILED
TWIN FALLS CO., IDAHO
JUL 25 2002

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: 57-00273
	)
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 February 9, 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 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.

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 amended partial decree issued for this water right. Furthermore, all objections related to the season of use on Reynolds Creek having been resolved, this Special Master finds that the specific dates for the season of use for this water rights should be decreed as recommended in the *Supplemental Director's Report*.

III. RECOMMENDATION

Therefore, based on the file and record herein, IT IS RECOMMENDED that an amended partial decree be issued for this water right as set forth in the attached *Special Master's Recommendation for Amended Partial Decree Pursuant to I.R.C.P. 54(b) for water right 57-00273*.

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

2002 OCT 25 AM 9:56

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
_____) Water Right 57-00273

DISTRICT COURT - SRBA
TWIN FALLS CO. IDAHO
FILED

NAME AND ADDRESS: CALVIN C JOHNSTON
HC 79 BOX 88
MELBA, ID 83641

SOURCE: REYNOLDS CREEK TRIBUTARY: SNAKE RIVER

QUANTITY: 3.20 CFS

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

PRIORITY DATE: 01/27/1888

POINT OF DIVERSION: T01S R03W S02 SWSE Within Owyhee County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-15 TO 11-15	3.20 CFS
	Stockwater	01-01 TO 12-31	0.05 CFS

PLACE OF USE: Irrigation Within Owyhee County
 T01S R03W S01 NESW 34.0 NWSW 37.0
 SWSW 25.0 SESW 40.0
 136.0 Acres Total

Stockwater Within Owyhee County
Same as Irrigation

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

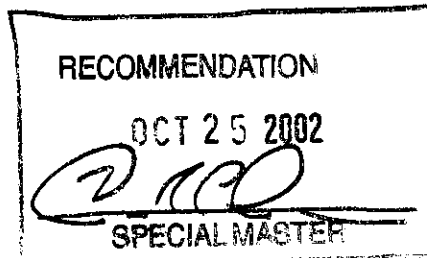
THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR
STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL
USE.

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.

Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication



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TWIN FALLS CO., IDAHO

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)

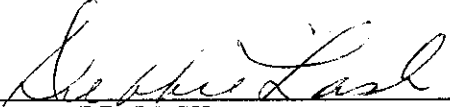
Water Right(s): 57-00273

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

CALVIN C JOHNSTON
HC 79 BOX 88
MELBA, ID 83641
Phone: 208-495-2595


DEBBIE LASH
Deputy Clerk

CERTIFICATE OF MAILING

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TWO PAIRS OF IDAHO



Water Right(s) : 57-00273

Debbie Lash
DEBBIE LASH
Deputy Clerk