

2002 OCT 25 AM 9:55

FILED  
TWIN FALLS, IDAHO  
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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 57-00275            |
|                | )                             |
| Case No. 39576 | ) SPECIAL MASTER'S REPORT AND |
|                | ) RECOMMENDATION              |
|                | )                             |
|                | ) FINDINGS OF FACT AND        |
|                | ) CONCLUSIONS OF LAW          |

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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 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 March 27, 2002, the SRBA District Court issued an *Order of Reference Appointing Thomas Cushman Special Master* to determine the issue regarding the period of use subordination language for these water rights.

On March 28, 2002, IDWR filed a *Notice of Completed Administrative Proceeding*, changing the ownership of the water right from Benson to Young.

On July 2, 2002, the claimant, J. Lavar Young, filed a *Notice of Withdrawal of Objection*.

## 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 provision<sup>1</sup>, 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 pursuant to the *Supplemental Director's Report* and the *Notice of Administrative Proceeding* changing ownership, 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 Recommendation for Amended Partial Decree Pursuant to I.R.C.P. 54(b) for water right 57-00275*.

Dated October 25, 2002.



THOMAS CUSHMAN  
Special Master  
Snake River Basin Adjudication

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<sup>1</sup> 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 9:55

In Re SRBA )  
 )  
Case No. 39576 )  
\_\_\_\_\_ )

PARTIAL DECREE PURSUANT TO  
I.R.C.P. 54(b) FOR  
Water Right 57-00275

NOT RECORDED  
TWIN FALLS CO., IDAHO  
FILED

NAME AND ADDRESS: J LAVAR YOUNG  
JANET B YOUNG  
M DEAN YOUNG  
HC 79 BOX 58  
MELBA, ID 83641

SOURCE: REYNOLDS CREEK TRIBUTARY: SNAKE RIVER

QUANTITY: 1.40 CFS

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

PRIORITY DATE: 10/28/1887

POINT OF DIVERSION: T01S R03W S02 SESWSE Within Owyhee County

| PURPOSE AND<br>PERIOD OF USE: | PURPOSE OF USE | PERIOD OF USE  | QUANTITY |
|-------------------------------|----------------|----------------|----------|
|                               | Irrigation     | 03-15 TO 11-15 | 1.40 CFS |
|                               | Stockwater     | 01-01 TO 12-31 | 0.03 CFS |

PLACE OF USE: Irrigation Within Owyhee County  
T01S R03W S01 LOT 3 (NENW)24.0 SWNW 12.0  
SENW 39.0  
75.0 Acres Total

Stockwater Within Owyhee County  
Same as Stockwater

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

RECOMMENDATION

OCT 25 2002

SPECIAL MASTER

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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): 57-00275

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

J LAVAR YOUNG  
JANET B YOUNG  
M DEAN YOUNG  
HC 79 BOX 58  
MELBA, ID 83641

THOMAS BENSON  
HC 88, BOX 1050  
MURPHY, ID 83650  
Phone: 208-495-2270

  
DEBBIE LASH  
Deputy Clerk

CERTIFICATE OF MAILING

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10/25/02

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FILED  
TWIN FALLS CO., IDAHO  
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

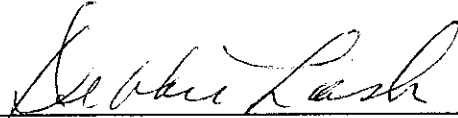
Water Right(s): 57-00275

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