

2002 OCT 25 AM 9: 57

FILED  
TWIN FALLS, IDAHO  
ST-SRBA  
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: 57-00280           |
|                | ) |                             |
| 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 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**

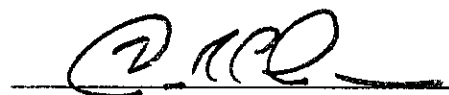
This "subordination language" was recommended by IDWR in an attempt to satisfy the issues raised by the Idaho Supreme Court in *State of Idaho v. Idaho*

*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 provision<sup>1</sup>, 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 57-00280*.

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**

In Re SRBA )  
                  ) PARTIAL DECREE PURSUANT TO  
                  ) I.R.C.P. 54(b) FOR  
Case No. 39576 )  
                  ) Water Right 57-00280

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FILED

NAME AND ADDRESS: RICHARD H & CONNIE M BRANDAU  
HC 79 BOX 61  
MELBA, ID 83641

SOURCE: REYNOLDS CREEK                      TRIBUTARY: SNAKE RIVER

QUANTITY: 2.00 CFS

PRIORITY DATE: 05/21/1879

POINT OF DIVERSION: T01S R03W S22              SWNW              Within Owyhee County

PURPOSE AND  
PERIOD OF USE:              PURPOSE OF USE              PERIOD OF USE              QUANTITY  
                                 Irrigation              03-15 TO 11-15              2.00 CFS

PLACE OF USE:              Irrigation                      Within Owyhee County  
                                 T01S R03W S15              SWNE 17.0              NESW 6.0  
                                              SESW 15.0              NWSE 18.0  
                                              S22 LOT 3              (NENW) 7.0              LOT 4              (NWNW) 2.0  
                                              65.0 Acres Total

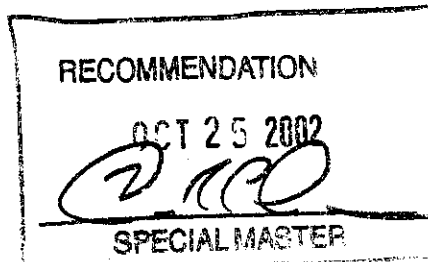
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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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CLERK OF DISTRICT COURT - SRBA  
TWIN FALLS CO., IDAHO  
FILED *[Signature]*

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 )  
\_\_\_\_\_ )

CERTIFICATE OF MAILING

Water Right(s): 57-00280

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

RICHARD H & CONNIE M BRANDAU  
HC 79 BOX 61  
MELBA, ID 83641  
Phone: 208-495-2529

*[Signature of Debbie Lash]*

DEBBIE LASH  
Deputy Clerk

CERTIFICATE OF MAILING

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FILED  
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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): 57-00280

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