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Department of Water Resources

2002 OCT 28 AM 9:36

CLERK OF DISTRICT COURT
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 57-11574
	)
Case No. 39576	) SPECIAL MASTER'S REPORT AND
	) RECOMMENDATION
	)
	) FINDINGS OF FACT AND
_____	) CONCLUSIONS OF LAW

I. FINDINGS OF FACT

A late notice of claim was filed for this water right pursuant to Idaho Code § 42-1409. The Idaho Department of Water Resources examined the water system for this reporting area. The *Director's Report for Late Claims* contained a recommendation that this water right claim be disallowed. On June 22, 2001, the claimants filed an *Objection* to subcase 57-11574, objecting to the water right not being recommended. On July 22, 2002, a *Standard Form 5/Stipulated Elements of a Water Right* with an attached *Amended Director's Report* recommending the water right was filed. Objections to the *Amended Director's Report* were due August 30, 2002. No objections were filed to the *Amended Director's Report* and the time for filing has expired.

II. CONCLUSIONS OF LAW AND RECOMMENDATION

Therefore, based on the file and record herein, IT IS RECOMMENDED that this 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) for Water Right 57-11574*.

Dated October 28, 2002.



THOMAS CUSHMAN
Special Master
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 57-11574

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TWIN FALLS CO. IDAHO

NAME AND ADDRESS: JACQUELINE L BENSON
THOMAS E BENSON
HC 88, BOX 1050
MURPHY, ID 83650-9601

SOURCE: COTTEL CREEK TRIBUTARY: MACK'S CREEK

QUANTITY: 4.92 CFS

PRIORITY DATE: 09/01/1948

POINT OF DIVERSION: T02S R04W S14 SENWSW Within Owyhee County
S15 NESWSE

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	02-15 TO 07-15	4.92 CFS

PLACE OF USE:	Irrigation	Within Owyhee County
	T02S R04W S14	NESW 12.0 NWSW 3.0
		SWSW 34.0 SESW 29.0
		SWSE 4.0
	82.0 Acres Total	

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

THE USE OF WATER UNDER THIS RIGHT BEFORE MARCH 15 IS
SUBORDINATE TO WATER RIGHTS 57-2325 AND 57-7040.

THIS RIGHT SHALL NOT BE DELIVERED IF THE FLOW AT THE UPPER
BASIN TOLLGATE WEIR (T03S, R04W, S24, SESW) IS AT OR LESS THAN
37 CFS, OR THE FLOW AT THE OUTLET WEIR (T02S, R04W, S12, NESW) IS
AT OR LESS THAN 57 CFS.

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 28 2002

SPECIAL MASTER

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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)

Case No. 39576)
_____)

CERTIFICATE OF MAILING

Water Right(s): 57-11574

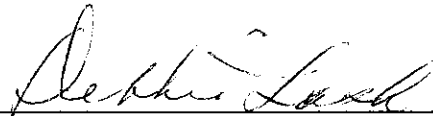
CERTIFICATE OF MAILING

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 28, 2002, with sufficient first-class postage prepaid to the following:

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

THOMAS AND JACKIE BENSON
HC 79 BOX 94
MELBA, ID 83641
Phone: 208-250-2988

JACQUELINE L BENSON
THOMAS E BENSON
HC 88, BOX 1050
MURPHY, ID 83650-9601
Phone: 208-340-1006



DEBBIE LASH
Deputy Clerk

CERTIFICATE OF MAILING

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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

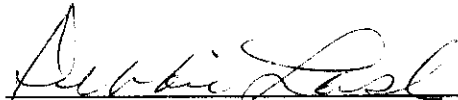
Water Right(s): 57-11574

On October 28, 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 28, 2002.


DEBBIE LASH
Deputy Clerk