

2002 SEP 11 AM 11:09

DISTRICT COURT-SR.  
TWIN FALLS CO. IDA.  
FILED

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

|                       |   |                                    |
|-----------------------|---|------------------------------------|
| <b>In Re SRBA</b>     | ) | <b>Subcase: 31-11288</b>           |
|                       | ) |                                    |
| <b>Case No. 39576</b> | ) | <b>SPECIAL MASTER'S REPORT AND</b> |
|                       | ) | <b>RECOMMENDATION</b>              |
|                       | ) |                                    |
|                       | ) | <b>FINDINGS OF FACT AND</b>        |
|                       | ) | <b>CONCLUSIONS OF LAW</b>          |

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**I. PROCEDURAL BACKGROUND**

The above-captioned water right was claimed in the SRBA as a "dual based" claim, pursuant to state law and as a federal reserve water right pursuant to Public Water Reserve 107, by the United States Department of the Interior, Bureau of Land Management. Objections were filed by the State of Idaho and the United States. On June 13, 2002, the State of Idaho and the United States filed a *Standard Form 5*, which, among other things, stipulated to the federal reserve basis for the claim. Because of the federal reserve basis for the claim, IDWR did not sign the *SF-5*.

On August 21, 2002, a hearing was held on this and other subcases pursuant to Idaho Code 42-1411A(14), which requires the United States to demonstrate a *prima facie* showing of the existence of the claimed federal reserve water right. In conjunction with that hearing, the United States filed an *Affidavit of Frederic W. Price* and an *Affidavit of Deena M. Teel*. This Special Master also took sworn testimony of Frederic Price.

**II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the file and record in this subcase, and the evidence presented at the August 21, 2002 hearing on the matter, this Special Master makes the following findings of fact and conclusions of law:

1. Prior to April 17, 1926, the subject water source was located on unreserved federal public domain land.
2. Prior to April 17, 1926, no water rights had been established pursuant to state law for the use of the water from the subject water source.
3. On April 17, 1926, President Coolidge executed Public Water Reserve 107, which withdrew the 40 acre tract of land upon which the subject water source is located from the public domain. The tract of land withdrawn is described as the "place of use" element on the attached *Special Master's Recommendation*.
4. The subject water source consists of a spring or water hole of the type contemplated by Public Water Reserve 107.
5. Contemporaneously with the withdrawal of the land, President Coolidge impliedly reserved enough water to fulfill the primary purpose of the land reservation.
6. The minimum amount of water necessary to fulfill the primary purpose of the land reservation is the amount set forth in the "quantity" element on the attached *Special Master's Recommendation*.
7. The United States has satisfied its burden under Idaho Code section 42-1411A(14) as to the nature and existence of the claimed federal reserve water right.
8. The elements of the federal reserve water right are set forth on the attached *Special Master's Recommendation*.

### III. RECOMMENDATION

Therefore, based on the file and record herein, IT IS RECOMMENDED that water right 31-11288 be decreed as a federal reserve water right with the elements as set forth in the attached *Special Master's Recommendation for Partial Decree Pursuant to I.R.C.P. 54(b) for water right 31-11288*. It is further recommended that the concomitant state-law water right claim not be confirmed in any partial or final decree.

Dated September 11, 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 )  
Case No. 39576 )  
\_\_\_\_\_ )

PARTIAL DECREE PURSUANT TO  
I.R.C.P. 54(b) FOR  
Water Right 31-11288

2002 SEP 11 AM 11:09

NOTED BY COURT-SRBA  
TWIN FALLS CO. IDAHO  
FILED

NAME AND ADDRESS: USDI BLM  
IDAHO STATE OFFICE  
1387 S VINNELL WAY  
BOISE, ID 83709-1657

SOURCE: SPRING TRIBUTARY: SINKS

QUANTITY: 0.02 CFS

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

PRIORITY DATE: 04/17/1926

\*\*\*\*\*  
\* 4/17/1926 CLAIMED UNDER FEDERAL RESERVED WATER RIGHT. \*  
\* \*  
\* THIS WATER RIGHT IS CLAIMED BASED ON FEDERAL LAW \*  
\* WITH AN APRIL 17, 1926, DATE OF PRIORITY PURSUANT TO AN \*  
\* EXECUTIVE ORDER SIGNED THE SAME DATE AND KNOWN AS PUBLIC \*  
\* WATER RESERVE 107. \*  
\*\*\*\*\*

POINT OF DIVERSION: T14N R35E S23 NWSNW Within Clark County

| PURPOSE AND<br>PERIOD OF USE: | PURPOSE OF USE | PERIOD OF USE  | QUANTITY |
|-------------------------------|----------------|----------------|----------|
|                               | Stockwater     | 01-01 TO 12-31 | 0.02 CFS |

PLACE OF USE: Stockwater Within Clark County  
T14N R35E S23 SWNW

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

RECOMMENDATION

SPECIAL MASTER

2002 SEP 11 AM 11:10

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 )

CERTIFICATE OF MAILING

Case No. 39576 )  
\_\_\_\_\_ )

Water Right(s): 31-11288

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 September 11, 2002, with sufficient first-class postage prepaid to the following:

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

USDI BLM

Represented by:  
US DEPARTMENT OF JUSTICE  
ENVIRONMENT & NATL' RESOURCES  
550 WEST FORT STREET, MSC 033  
BOISE, ID 83724  
Phone: 208-387-0835

*[Signature]*  
DEBBIE LASH  
Deputy Clerk

CERTIFICATE OF MAILING

PAGE 1  
09/11/02

2002 SEP 11 AM 11:10

DISTRICT COURT - SRBA  
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 )  
Case No. 39576 )  
\_\_\_\_\_ )

NOTICE OF ISSUANCE OF  
SPECIAL MASTER'S  
RECOMMENDATION

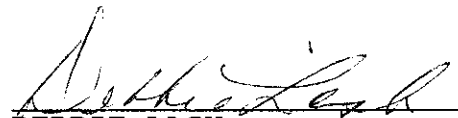
Water Right(s): 31-11288

On September 11, 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 September 11, 2002.

  
DEBBIE LASH  
Deputy Clerk