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Department of Water Resources

2002 SEP 17 AM 10:31

DISTRICT COURT-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

) Subcase: 31-11118

Case No. 39576

)
) SPECIAL MASTER'S REPORT AND
) RECOMMENDATION

)
) FINDINGS OF FACT AND
) CONCLUSIONS OF LAW

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. An objection was filed by the State of Idaho.

On May 24, 2002, the United States filed a *Motion for Summary Judgment* in this and numerous other subcases involving PWR 107 claims. At the hearing on the United States' *Motion* (July 19, 2002), this Special Master ruled that the legal issues raised by the State of Idaho have previously been addressed by the SRBA District Court and the Idaho Supreme Court, and the only issue that remains with respect to the PWR 107 claims is for the United States to make a showing as to the underlying factual basis for the claims as required by Idaho Code section 42-1411A(14). Further, this Special Master ruled that because the State's objection raised only legal issues, and because all legal issues have been addressed and disposed of, that the State of Idaho is dismissed as a party to the subcases that were the subject of the United States' May 24, 2002 *Motion for Summary Judgment*.

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 31-11118 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 31-11118*. It is further recommended that the concomitant state-law water right claim not be confirmed in any partial or final decree.

Dated September 17, 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 31-11118

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

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Department of Water Resources

SOURCE: SPRING TRIBUTARY: MIDDLE DRY CREEK

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: T12N R36E S21 SENENW Within Clark County

PURPOSE AND 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
T12E R36E S21 NENW

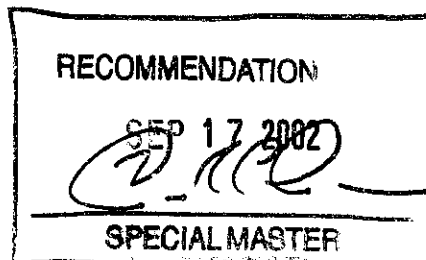
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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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In Re SRBA)
Case No. 39576)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

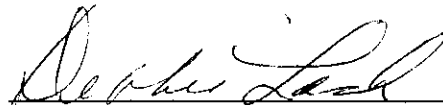
Water Right(s): 31-11118

On September 17, 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 17, 2002.



DEBBIE LASH
Deputy Clerk

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In Re SRBA)

CERTIFICATE OF MAILING

Case No. 39576)

Water Right(s): 31-11118

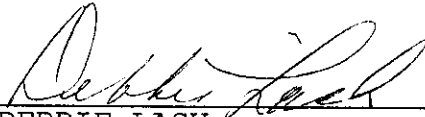
CERTIFICATE OF MAILING

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 17, 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


DEBBIE LASH
Deputy Clerk

CERTIFICATE OF MAILING

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09/17/02