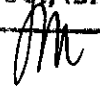


2004 OCT 26 AM 11: 53

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

Case No. 39576

) **SPECIAL MASTER'S REPORT AND**
) **RECOMMENDATION ON FEDERAL**
) **RESERVED WATER RIGHT**
) **PURSUANT TO PWR 107**
)
) **FINDINGS OF FACT AND**
) **CONCLUSIONS OF LAW**
)
) **For subcases: 32-10562, ~~32-10470~~**
)
)

I. PROCEDURAL BACKGROUND

The above-captioned water rights were claimed by the United States, Department of Interior, Bureau of Land Management as dual based water rights, meaning the rights were claimed as state law-based beneficial use water rights and alternatively as federal reserve water rights pursuant to Public Water Reserve 107 (PWR 107). Notice of the elements of each claim was reported by the Idaho Department of Water Resources. Objections were filed by the State of Idaho.

On June 10th and 11th, 2004, *Standard Form 5/Amended Claim* forms signed by the claimant and the objector with IDWR concurrence were filed in each of the above subcases. The *SF5* forms resolved the objections, and retained the dual basis for each right. No objections were filed to the *Amended Director's Reports*. An *Order Rescinding Order of Reference to Thomas R. Cushman* was entered on June 23, 2004, stating Judge John M. Melanson would proceed in the above subcases in the manner specified by *Administrative Order 1* for Special Masters.

On October 19, 2004, a hearing was held on these claims pursuant to Idaho Code 42-1411A(12), 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 the *Affidavit of Fredric Price*.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the file and record in this subcase, and the affidavit presented at the hearing on the matter, the Court makes the following findings of fact and conclusions of law:

1. 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 for each claim.

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 for the claims is located from the public domain. The tract of land withdrawn for each claim is described as the "place of use" element on the attached *Special Master's Recommendations*.

4. The subject water sources for the claims consist 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 for each claim.

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* for each claim.

7. The United States has satisfied its burden under Idaho Code section 42-1411A(12) as to the nature and existence of the claimed federal reserve water right for each claim.

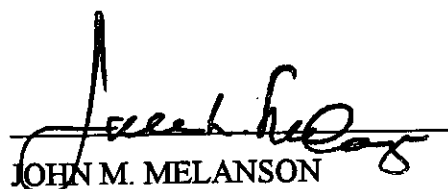
8. The elements of the federal reserved water right for each claim are set forth on the attached *Special Master's Recommendations*.

III. RECOMMENDATION

Therefore, based on the file and record herein, IT IS RECOMMENDED that the above-captioned water right be decreed as a federal reserved 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)*. It is further recommended that to the extent any concomitant state-law water rights were

claimed in the alternative for the above-captioned right, that said right not be confirmed in any partial or final decree.

Dated October 26 2004. .


JOHN M. MELANSON
Presiding Judge
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 32-10470

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

SOURCE: SPRING TRIBUTARY: MIDDLE 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

THIS WATER RIGHT IS 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 R34E S06 NWSWNE 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
T12N R34E S06 SWNE

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

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT 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.

Recommendation 10/26/2004

James H. Kellogg

John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

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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)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

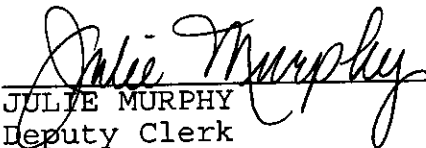
Water Right(s): 32-10470

On October 26, 2004, Special Master JOHN M MELANSON
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 26, 2004.


JULIE MURPHY
Deputy Clerk

2004 OCT 26 AM 11: 53

DISTRICT COURT - SRBA
TWIN FALLS CO, IDAHO
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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)

CERTIFICATE OF MAILING

Case No. 39576)

Water Right(s): 32-10470

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 26, 2004, with sufficient first-class postage prepaid to the following:

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

STATE OF IDAHO

Represented by:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
PO BOX 44449
BOISE, ID 83711-4449

USDI BLM

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

CERTIFICATE OF MAILING


JULIE MURPHY
Deputy Clerk

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10/26/04