

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	)	SPECIAL MASTER'S REPORT
	)	
Case No. 39576	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW
	)	
	)	FOR WATER RIGHTS 63-31289 &
	)	63-7529

I. FINDINGS OF FACT

A notice of claim was filed for these water rights pursuant to I.C. § 42-1409. The Director of the State of Idaho Department of Water Resources examined the water system for this reporting area. The *Director's Report* contained a recommendation or abstract for the elements of these water rights.

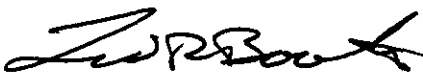
An objection was filed by the United States of America, Bureau of Reclamation and an objection was filed by the Boise Project Board of Control. Both objections were filed on January 31, 2003.

On October 5, 2004, Judge Melanson issued an *Order Setting Trial Dates and Deadlines; Order to Show Cause and Notice of Hearing Thereon*, which stated that failure to appear at the *Show Cause* hearing will result in the claimant being deemed to have consented to the settlement language proposed by the objectors. Hearing on the *Order to Show Cause* was set for November 3, 2004. The claimant failed to appear. Accordingly this Special Master found that the claimant has consented to the additional language.

II. CONCLUSIONS OF LAW

Therefore, based on the file and record herein and pursuant to the findings made at the November 3, 2004, hearing, IT IS RECOMMENDED that water rights 63-31289 and 63-7529 be decreed with the elements as set forth in the attached *Recommendation for Partial Decree Pursuant to I.R.C.P. 54(b)*.

DATE November 4, 2004.



THEODORE R BOOTH
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

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED *PK*

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 63-31289

2004 NOV 5 AM 10 57

NAME AND ADDRESS: THELMA E NICHOLS
WALTER M NICHOLS
14 COUGAR LANE
BOISE, ID 83716

SOURCE: MORES CREEK TRIBUTARY: BOISE RIVER

QUANTITY: 0.05 CFS

THIS RIGHT WHEN COMBINED WITH RIGHT NO. 63-7529 SHALL PROVIDE NO
MORE THAN .03 CFS PER ACRE.

PRIORITY DATE: 12/26/1898

POINT OF DIVERSION: T05N R04E S26 LOT 3 (SWSE) Within Boise County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Irrigation	03-15 TO 11-15	0.05 CFS

DIVERSION FOR IRRIGATION UNDER THIS WATER RIGHT PRIOR TO APRIL 1
AND AFTER OCTOBER 31 SHALL OCCUR ONLY AS AUTHORIZED BY THE WATER
DISTRICT 63 WATERMASTER AND ONLY WHEN WATER IS BEING RELEASED
FOR FLOOD CONTROL BY THE UNITED STATES FROM THE LUCKY PEAK DAM
OUTLET UNDER PROCEDURES AND REQUIREMENTS FOR THE MEMORANDUM OF
AGREEMENT BETWEEN THE U.S. DEPARTMENT OF THE ARMY AND THE U.S.
DEPARTMENT OF THE INTERIOR FOR FLOOD CONTROL OPERATIONS OF THE
BOISE RIVER RESERVOIRS, DATED NOVEMBER 20, 1953, THE WATER
CONTROL MANUAL FOR BOISE RIVER RESERVOIR DATED APRIL 1985 AND
ANY FUTURE AMENDMENTS OR REVISIONS MADE THERETO PURSUANT TO
STATE OR FEDERAL PROCEDURES OR LAW; PROVIDED THAT ANY SUCH USE
OF THIS WATER RIGHT PRIOR TO APRIL 1 AND AFTER OCTOBER 31 SHALL
BE SUBORDINATED TO WATER RIGHTS FOR STORAGE IN LUCKY PEAK
RESERVOIR AND/OR LAKE LOWELL AS DECREED IN SRBA CASE NO. 39576

PLACE OF USE: Irrigation Within Boise County
T05N R04E S26 LOT 3 (SWSE) 1.5
1.5 Acres Total

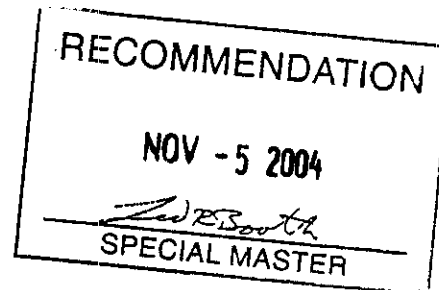
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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.

John M. Melanson
Presiding Judge of the
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

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

2004 NOV 5 AM 10 57

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 63-07529

NAME AND ADDRESS: THELMA E NICHOLS
WALTER M NICHOLS
14 COUGAR LANE
BOISE, ID 83716

SOURCE: SPRING TRIBUTARY: WILD CAT GULCH

QUANTITY: 0.06 CFS
7.30 AFY

THE QUANTITY OF WATER UNDER THIS RIGHT FOR DOMESTIC USE SHALL
NOT EXCEED 13,000 GALLONS PER DAY.
THIS RIGHT WHEN COMBINED WITH RIGHT NO.63-31289 SHALL PROVIDE NO
MORE THAN .03 CFS PER ACRE.

PRIORITY DATE: 12/03/1971

POINT OF DIVERSION: T05N R04E S26 LOT 3 (SESWSE) Within Boise County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Irrigation	04-01 TO 11-01	0.03 CFS 6.70 AFY
Domestic	01-01 TO 12-31	0.03 CFS 0.60 AFY

DIVERSION FOR IRRIGATION UNDER THIS WATER RIGHT PRIOR TO APRIL 1
AND AFTER OCTOBER 31 SHALL OCCUR ONLY AS AUTHORIZED BY THE WATER
DISTRICT 63 WATERMASTER AND ONLY WHEN WATER IS BEING RELEASED
FOR FLOOD CONTROL BY THE UNITED STATES FROM THE LUCKY PEAK DAM
OUTLET UNDER PROCEDURES AND REQUIREMENTS FOR THE MEMORANDUM OF
AGREEMENT BETWEEN THE U.S. DEPARTMENT OF THE ARMY AND THE U.S.
DEPARTMENT OF THE INTERIOR FOR FLOOD CONTROL OPERATIONS OF THE
BOISE RIVER RESERVOIRS, DATED NOVEMBER 20, 1953, THE WATER
CONTROL MANUAL FOR BOISE RIVER RESERVOIR DATED APRIL 1985 AND
ANY FUTURE AMENDMENTS OR REVISIONS MADE THERETO PURSUANT TO
STATE OR FEDERAL PROCEDURES OR LAW; PROVIDED THAT ANY SUCH USE
OF THIS WATER RIGHT PRIOR TO APRIL 1 AND AFTER OCTOBER 31 SHALL
BE SUBORDINATED TO WATER RIGHTS FOR STORAGE IN LUCKY PEAK
RESERVOIR AND/OR LAKE LOWELL AS DECREED IN SRBA CASE NO. 39576
THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS
EARLY AS MARCH 15 AND MAY CONTINUE TO AS LATE AS NOVEMBER 15,
PROVIDED OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED. THE USE
OF WATER BEFORE APRIL 1 AND AFTER NOVEMBER 1 UNDER THIS REMARK
IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED EARLY
OR LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN THE DATE
A PARTIAL DECREE IS ENTERED FOR THIS RIGHT.

PLACE OF USE: Irrigation Within Boise County
T05N R04E S26 LOT 3 (SWSE) 1.5
1.5 Acres Total
Domestic Within Boise County
Same as Irrigation

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

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR DOMESTIC

RECOMMENDATION
NOV - 5 2004
SPECIAL MASTER

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

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.

USE 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).

OTHER PROVISIONS (continued)

SRBA Partial Decree Pursuant to I.R.C.P. 54(b) (continued)

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED OK

2004 NOV 5 AM 10 57

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): 63-07529
63-31289

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 November 05, 2004, with sufficient first-class postage prepaid to the following:

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

BOISE PROJECT BOARD OF CONTROL

Represented by:
ALBERT P. BARKER
205 N 10TH ST, STE 520
PO BOX 2139
BOISE, ID 83701-2139
Phone: 208-336-0700

BOISE PROJECT BOARD OF CONTROL

Represented by:
CHESTNUT, AMY D
205 N 10TH ST, STE 520
PO BOX 2139
BOISE, ID 83701-2139
Phone: 208-336-0700

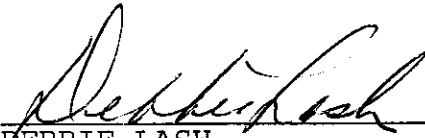
CERTIFICATE OF MAILING

PAGE 1
11/05/04

UNITED STATES OF AMERICA

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

THELMA E NICHOLS
WALTER M NICHOLS
14 COUGAR LANE
BOISE, ID 83716
Phone: 208-392-4451


DEBBIE LASH
Deputy Clerk

DISTRICT COURT-SRBA
TWIN FALLS CO. IDAHO
FILED

2004 NOV 5 AM 10 57

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

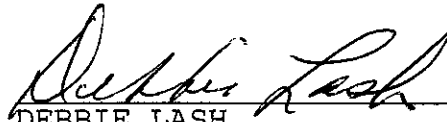
Water Right(s): 63-07529
63-31289

On November 05, 2004, Special Master THEODORE R. BOOTH 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 November 05, 2004.



DEBBIE LASH
Deputy Clerk