

RECEIVED

NOV 16 2004

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

2004 NOV 10 AM 10 07

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

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

FOR WATER RIGHT 61-11377

I. FINDINGS OF FACT

A notice of claim was filed for the above listed water right 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 this water right. This water right was claimed by the United States of America, Bureau of Land Management, based upon state-law, and as a federal reserve water right pursuant to Public Water Reserve 107.

On June 10, 2004, the United States and the objector, the State of Idaho, filed a *Standard Form 5* regarding the elements of the state-law based portion of the water right. On November 9, 2004, the parties to the subcase participated in a hearing pursuant to I.C. § 42-1411A(12) regarding the federal reserve basis of the claim. At the hearing, this Special Master considered the *Affidavit of Robert R. Mallis*, filed on July 31, 2003, which demonstrates that the above-captioned water right claim meets the elements of a valid federal reserve water right pursuant to PWR-107.

II. CONCLUSIONS OF LAW

Therefore based on the file and record herein and pursuant to the information contained in the *Affidavit of Robert R. Mallis*, and upon the comments of counsel at the hearing, IT IS

RECOMMENDED that water right 61-11377 be **decreed** with the elements as set forth in the attached *Recommendation for Partial Decree Pursuant to I.R.C.P. 54(b)*.

Dated ~~October 4~~, 2004.

November 9



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 *[Signature]*

2004 NOV 10 AM 10 07

In Re SRBA)

Case No. 39576)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 61-11377

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

SOURCE: SIMPKINS SPRING TRIBUTARY: BENNETT 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 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: T05S R08E S14 SWSE Within Elmore 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 Elmore County
T05S R08E S14 SWSE

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.

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

RECOMMENDATION

NOV 10 2004

[Signature]
SPECIAL MASTER

SRBA PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 61-11377 File Number: 00015

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

2004 NOV 10 AM 10 07

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): 61-11377

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 10, 2004, with sufficient first-class postage prepaid to the following:

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

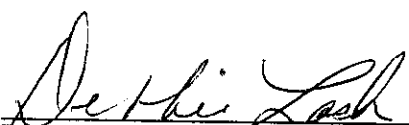
STATE OF IDAHO

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


DEBBIE LASH
Deputy Clerk

PAGE 1
11/10/04

2004 NOV 10 AM 10 07

In Re SRBA)
)
Case No. 39576)
)
)

Water Right(s) : 61-11377

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.

Debbie Lash
DEBBIE LASH
Deputy Clerk