

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

In Re SRBA	)	SPECIAL MASTER'S REPORT AND
	)	RECOMMENDATION
Case No. 39576	)	
	)	FOR WATER RIGHTS: 29-12626
	)	29-12987, 29-12997, 32-11205,
	)	33-10521, 33-10519, 33-10716, 33-10891,
	)	33-10708, 72-14215, 72-12269, 72-12279,
	)	72-12089 .
	)	

Procedural Background.

On December 11, 2003, a trial was held by Special Master Thomas Cushman. Affidavits pertaining to the rights were filed in all of the above cases. *Standard Form 5/Amended Claim* forms signed by the United States with IDWR concurrence as to the state-based water right were filed to the rights in June 2004. The *SF5* forms include language that the claims are still dual-based. The purpose of the *SF5s* was to amend the claims because of legal description changes and to change the state-based priority date in accordance with an agreement between the Claimant and the State of Idaho. No objections were filed to the *SF5*'s. The Court rescinded the *Order of Reference to Thomas R. Cushman* for the above rights, and stated that Judge John Melanson

would preside over the above subcases in the same manner set forth in *AOI* for Special Masters.

On November 16, 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 Alan R. Bittner* or the *Affidavit of Fredric Price*, which were admitted into evidence, for each claimed right to meet its burden. The United States elected to choose the PWR 107 priority date if the Court found a right to have a valid PWR 107 basis.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the file and record in this subcase, and the affidavits 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 The tract of land withdrawn for each claim is described as the “place of use” element on the attached *Special Master’s Recommendations*.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.

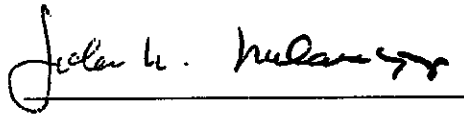
7. The United States has satisfied its burden under Idaho Code section 42-1411A(12) as to the nature and existence of the claimed federal reserve water right for each claim.

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

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 November 18 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)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 33-10716

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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
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NAME AND ADDRESS: UNITED STATES OF AMERICA
USDI BUREAU OF LAND MANAGEMENT
IDAHO STATE OFFICE
1387 S VINNELL WAY
BOISE, ID 83709-1657

SOURCE: SPRING TRIBUTARY: 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 DECREED FEDERAL RESERVED WATER RIGHT. *
* * * * *
* THIS WATER RIGHT IS DECREED BASED ON FEDERAL LAW WITH *
* AN APRIL 27, 1926, DATE OF PRIORITY PURSUANT TO AN *
* EXECUTIVE ORDER SIGNED THE SAME DATE AND KNOWN AS PUBLIC *
* WATER RESERVE 107. *
* * * * *

POINT OF DIVERSION: T10N R24E S25 NWNWSE Within Lemhi County

THE RANGE 24 EAST LISTED ABOVE IS ACTUALLY 24 1/2 EAST.

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 Lemhi County
T10N R24E S25 NWSE

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
Nov. 18, 2004

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

John M. Melanson

2004 NOV 18 AM 11: 28

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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): 29-12626
(SEE ATTACHED EXHIBIT A)

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 18, 2004, with sufficient first-class postage prepaid to the following:

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

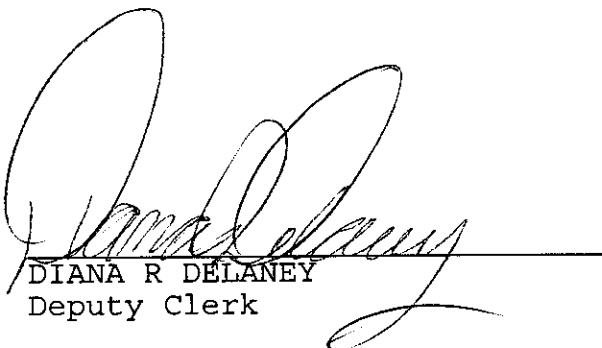
STATE OF IDAHO
Represented by:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
PO BOX 44449
BOISE, ID 83711-4449

CERTIFICATE OF MAILING

PAGE 1
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UNITED STATES OF AMERICA
UNITES STATES OF AMERICA
USDI BLM

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



DIANA R DELANEY
Deputy Clerk

Exhibit A

Subcase Nos:

29-12626
29-12987
29-12997
32-11205
33-10519
33-10521
33-10708
33-10716
33-10891
72-12089
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In Re SRBA)

Case No. 39576)
_____))

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

Water Right(s): 29-12626
(SEE ATTACHED EXHIBIT A)

On November 18, 2004, Special Master JOHN M MELANSON issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s) pursuant to SRBA Administrative Order 1 (A01), 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 18, 2004.

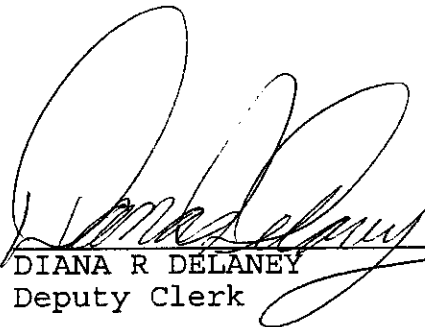

DIANA R DELANEY
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Exhibit A

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