

2004 NOV 23 PM 1: 22

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS, IDAHO
FILED

In Re SRBA	)	THIRD AMENDED SPECIAL
	)	MASTER'S REPORT
Case No. 39576	)	
	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW
	)	
	)	FOR WATER RIGHTS 67-12382, 67-
	)	12431, 67-12433, 67-12435, 67-12492, 67-
	)	12738, 67-12874, 67-12876, 67-12892.
	)	

I. PROCEDURAL HISTORY

Second Amended Special Master's Report and Recommendations were issued on June 18, 2004 in the above subcases.

A notice of claim was filed for the above water rights by the United States, through the Department of Interior, Bureau of Land Management (United States) pursuant to I.C. § 42-1409. The rights were claimed as dual based rights, with both a federal and state-law basis. 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.

On June 2, 1999, an objection was filed by the State of Idaho. On September 17, 1999, objections were filed to the above water right by Pickett Ranch & Sheep Co, Western Stockgrowers Assoc., Joe Tugaw, Michael Poulton, Gary Poulton, Karl Bedke, Jared Bedke, Scott Bedke, Bruce Bedke, Jerry Hoagland and Joyce Livestock Company. On August 29, 2002, the parties filed a *Stipulation and Joint Motion for Order Approving Stipulation, Notice of Withdrawal of Objections and Responses* filed by Norman Semanko for Bruce Bedke et al, *Notice of Withdrawal of Objections and Responses* filed by Norman Semanko for Western Stockgrowers et al. On September 18, 2002, an *Order Dismissing Objections and Responses with Prejudice; and Order Dismissing Parties* was issued. On March 11, 2003, the State of Idaho and the United States filed a *Stipulation to Resolve*

Objections. On April 23, 2003, a *Special Master's Report and Recommendation* was issued. On April 23, 2003, an *Order Withdrawing Master's Report and Recommendation* was issued, along with an *Order Requesting Standard Form 5's*. On May 15, 2003, the United States filed a *Notice Regarding Priority Date*. The *Notice* states the claims are federal reserve water rights based on Public Water Reserve 107. An *Order Dismissing Objections and Dismissing the State of Idaho as a Party* was issued on June 30, 2003.

On July 31, 2003, a trial was held on these and other 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 trial, the United States filed affidavits, which were admitted into evidence.

The affidavits showed the rights would have been proper for a PWR 107 reservation; however, the affidavits showed that homestead entries were pending at the time of PWR 107. Pursuant to Special Master Cushman's ruling in Subcases 25-13635 *et al*, the *Special Master's Report and Recommendation* entered in the above subcases denied the federal reserve portion of the rights because of the pending homestead entries. Following the United States *Notice of Challenge* in Subcases 25-13635 *et al*, the Court stayed proceedings in the above subcases. 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.

In the Court's *Order on Challenge* for subcases 25-13635 *et al*, issued on October 5, 2004, the Court ruled that a pending homestead entry that eventually failed did not defeat a PWR 107 reservation. Therefore, the Court finds it appropriate to amend the *Special Master's Reports* in the following manner:

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 the above claims.

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 each claim 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 source for each of the claims 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 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.

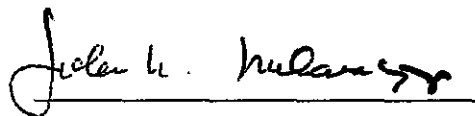
7. The United States has satisfied its burden under Idaho Code section 42-1411A(12) as to the nature and existence of the claimed federal reserve water right for each claim.

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 rights be decreed as federal reserved water rights 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 rights, that said rights not be confirmed in any partial or final decree.

Dated November 23 2004. .



JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

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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)
_____)

CERTIFICATE OF MAILING

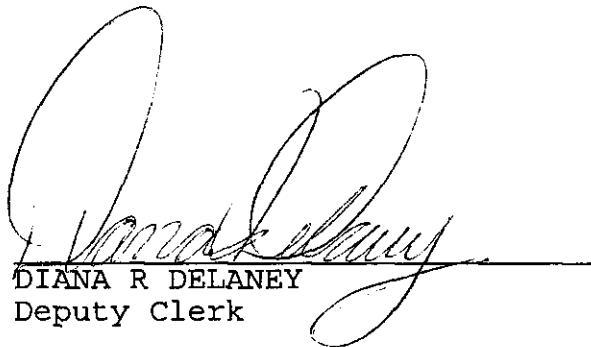
Water Right(s): 67-12431
67-12433 67-12435 67-12492
67-12738 67-12874 67-12876
67-12892

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 23, 2004, with sufficient first-class postage prepaid to the following:

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

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


DIANA R DELANEY
Deputy Clerk

CERTIFICATE OF MAILING

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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)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

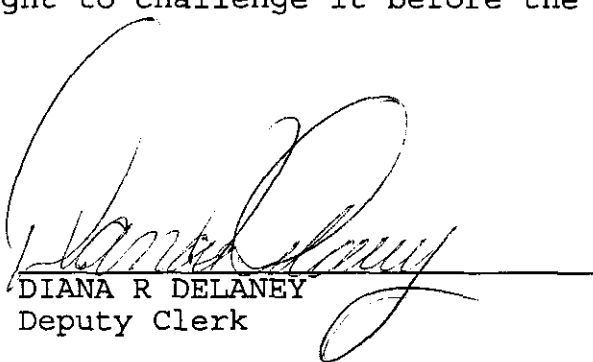
Water Right(s): 67-12431
67-12433 67-12435 67-12492
67-12738 67-12874 67-12876
67-12892

On November 23, 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 November 23, 2004.


DIANA R DELANEY
Deputy Clerk

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 67-12435

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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: WEISER RIVER

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: T12N R04W S35 NENWNE Within Washington 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 Washington County
T12N R04W S35 NWNE

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.

*Amended
Recommendation*

*Nov. 23, 2004
John M. Melanson*

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