

OF THE COURT-REPORTERS
WILL 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**

Case No. 39576

FINDINGS OF FACT AND CONCLUSIONS OF LAW

**FOR WATER RIGHTS: 79-11652,
79- 11656, 79-11661, 79-11666, 79-11668,
79-11716, 79-11718, 79-11720.**

A Special Master' Report was filed on June 23, 2004 in the above subcases. 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. The above listed water rights were claimed by the United States, Department of Interior, Bureau of Land Management as a dual based claim. (i.e. claimed with both a state and federal reserved priority date.

On April 23, 2004, 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 The Court rescinded the *Order of Reference to Thomas R. Cushman* for the above rights, and stated that Judge John Melanson would preside over the above subcases in the same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.

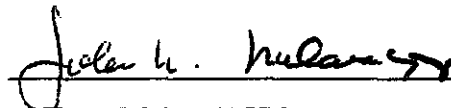
7. The United States has satisfied its burden under Idaho Code section 42-1411A(12) as to the nature and existence of the claimed federal reserve water right for each claim.

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

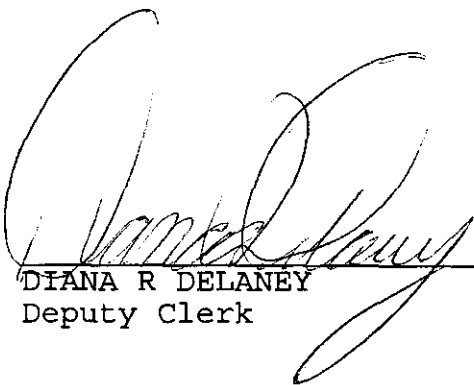
Water Right(s): 79-11652
79-11656 79-11661 79-11666
79-11668 79-11716 79-11718
79-11720

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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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE SRBA
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWINE FALLS CO., IDAHO

In Re SRBA)
Case No. 39576)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

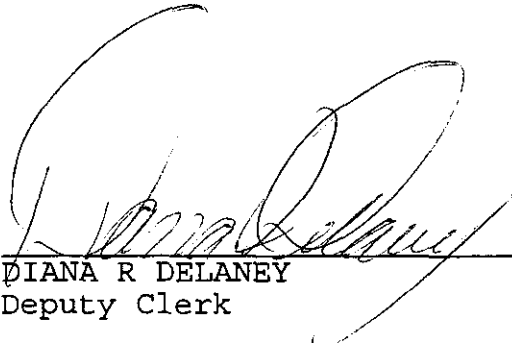
Water Right(s): 79-11652
79-11656 79-11661 79-11666
79-11668 79-11716 79-11718
79-11720

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 (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 23, 2004.



DIANA R DELANEY
Deputy Clerk

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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
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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