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DISTRICT COURT
TWIN FALLS CO., IDAHO

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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	)	AMENDED SPECIAL MASTER'S
	)	REPORT AND RECOMMENDATION
Case No. 39576	)	
	)	FOR WATER RIGHT: 24-10263
	)	
	)	
_____	)	

I.

Procedural Background.

The above-captioned water right was claimed by the United States, Department of Interior, Bureau of Land Management (United States) as a dual-based stockwater right, meaning the right was claimed as a federal reserved water right pursuant to Public Water Reserve (PWR) 107 and alternatively as a state-law based right. The Idaho Department of Water Resources reported the state and federal claims in a *Director's Report*. An objection was filed by the State of Idaho. The subcase was originally heard by the Court on a *Notice of Challenge* to decide legal issues related to PWR 107, then recommitted to Special Master Thomas Cushman on December 28, 2001.

On May 27, 2004, a trial was held by Special Master Thomas Cushman pursuant to I.C. 42-1411A(12). The *Affidavit of Fredric Price* was filed in conjunction with that hearing. The *Affidavit* showed the right would have been proper for a PWR 107 reservation; however, the affidavit showed that a homestead entry was 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* denied the federal reserve portion of the right because of the pending homestead entry. Following the United States *Notice of Challenge* in Subcases 25-13635 *et al*, the Court stayed proceedings in the above subcase. The Court rescinded the *Order of Reference*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 subcase in the same manner set forth in *AO1* 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 Report* 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 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 claim is located from the public domain. The tract of land withdrawn for the claim is described as the "place of use" element on the attached *Special Master's Recommendation*.

4. The subject water source for the claim 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 the 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 the claim.

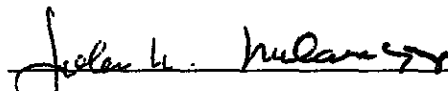
7. The United States has satisfied its burden under Idaho Code section 42-1411A(12) as to the nature and existence of the claimed federal reserve water right for the claim.

8. The elements of the federal reserved water right for the 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 22 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)
Case No. 39576)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 24-10263

2004 NOV 22 PM 12:07
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NAME AND ADDRESS: USDI BLM
IDAHO STATE OFFICE
1387 S VINNELL WAY
BOISE, ID 83709-1657

SOURCE: SPRING TRIBUTARY: STUMP 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: T07S R46E S15 SWSWNE Within Caribou 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 Caribou County
T07S R46E S15 SWNE

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.

Final recommendation
Nov. 22, 2004
John M. Melanson

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

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In Re SRBA)
Case No. 39576)
_____)

CERTIFICATE OF MAILING

Water Right(s): 24-10263

CERTIFICATE OF MAILING

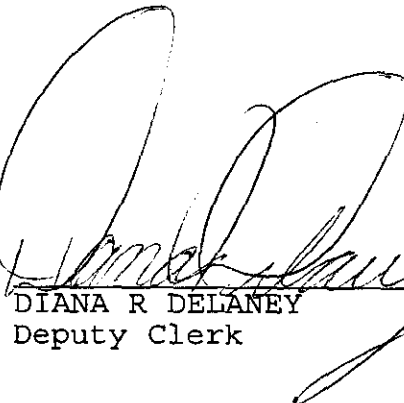
I certify that a true and correct copy of the SPECIAL MASTER'S REPORT, SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on November 22, 2004, with sufficient first-class postage prepaid to the following:

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



DIANA R DELANEY
Deputy Clerk

PAGE 1
11/22/04

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FILED

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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

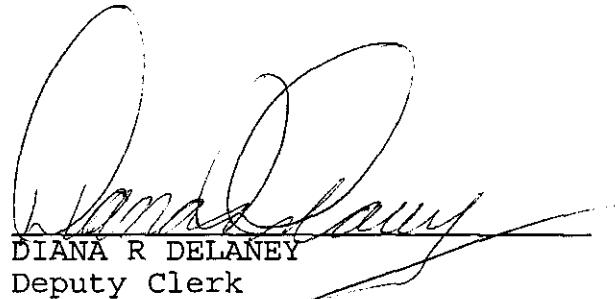
Water Right(s): 24-10263

On November 22, 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 22, 2004.


DIANA R DELANEY
Deputy Clerk