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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	)	SPECIAL MASTER'S REPORT AND
	)	RECOMMENDATION
Case No. 39576	)	
	)	FOR WATER RIGHT: 55-13111
_____	)	

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.

On December 11, 2004, a trial was held by Special Master Thomas Cushman pursuant to I.C. 42-1411A(12). The *Affidavit of Robert R. Mallis* was filed in conjunction with that hearing. The Affidavit stated that the legal description for the above water right was incorrect as claimed. On June 10, 2004, the United States filed a *Standard Form 5/ Amended Claim* form that amended the legal descriptions for the right but retained the dual based- nature of the right. The *SF5* was signed by the objector and concurred with by I.D.W.R.

The Court rescinded the *Order of Reference to Special Master Cushman* and stated that the Court would proceed with Judge John Melanson presiding in the same manner set forth in *Administrative Order 1* for Special Masters. An I.C. 42-1411A(12) hearing was held on December 21, 2004.

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 The tract of land withdrawn for the claim is described as the "place of use" element on the attached *Special Master's Recommendation*.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.

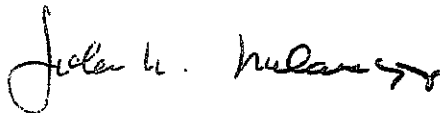
7. The United States has satisfied its burden under Idaho Code section 42-1411A(12) as to the nature and existence of the claimed federal reserve water right for the claim.

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 January 6, 2005.



JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

In Re SRBA) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 55-13111

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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)
)
Case No. 39576)
)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

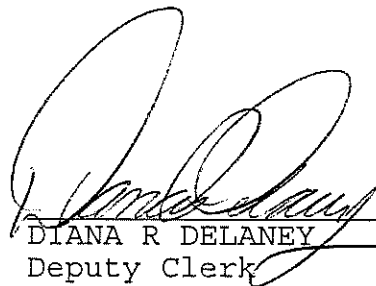
Water Right(s): 55-13111

On January 06, 2005, 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 January 06, 2005.



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)

CERTIFICATE OF MAILING

Case No. 39576)
_____)

Water Right(s): 55-13111

CERTIFICATE OF MAILING

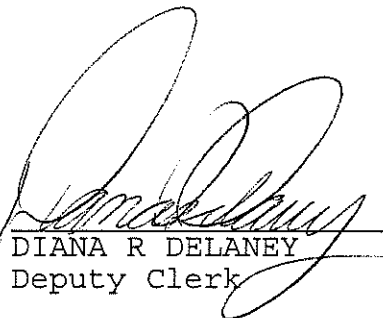
I certify that a true and correct copy of the SPECIAL MASTER'S REPORT, SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on January 06, 2005, with sufficient first-class postage prepaid to the following:

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

UNITED STATES OF AMERICA
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

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