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DEPARTMENT OF
WATER RESOURCES

2005 MAR -1 AM 11: 57

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	)	SPECIAL MASTER'S REPORT AND
	)	RECOMMENDATION
Case No. 39576	)	
	)	FOR WATER RIGHT: 78-12025
	)	
	)	
_____	)	

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 (Idaho). Objections were filed by Pickett Ranch and Sheep, Western Stockgrowers Association, Joe Tugaw, Michael Poulton, Gary Poulton, Karl Bedke, Jared Bedke, Scott Bedke, Jerry Hoagland and Joyce Livestock (the Ranchers).

A *Standard Form 5/Amended Claim* form was filed, signed by the Claimant and Idaho as objector, on August 15, 2002. The *SF5* amended the claim to being solely a federal based water right. On August 29, 2002, a *Notice of Withdrawal of Objections and Responses* was filed by the Ranchers. On September 18, 2002, an *Order Dismissing Objections and Responses with Prejudice* was entered by Special Master Thomas Cushman. On May 15, 2003, a *Notice Regarding Priority Date* was filed by the Claimant, stating that the above right was a dual-based right. On April 21, 2004 an *Affidavit of Craig A. Johnson* was filed in conjunction with an April 23 2004 42-1411A(12) hearing before Special Master Thomas Cushman. The *Affidavit* appeared

to show that the above water right was located on after-acquired land. At the hearing, it was noted that an *SF5* would be submitted in the above subcase.

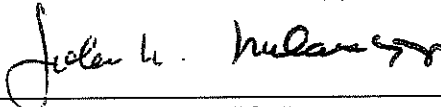
On June 10, 2004 a *SF5/Amended Claim* was submitted, which stated that the right was dual based with a June 28, 1934 state-based priority date and a PWR 107 priority date of April 17, 1926. No objections were filed to the *SF5*. The Court rescinded the *Order of Reference to Thomas R. Cushman* for the above rights, stating that the Court, with Judge John Melanson presiding, would proceed in the above subcase in the same manner set forth in *Administrative Order 1* for Special Masters. At the December 21, 2004 status conference, Mr. Lee Leininger, representing the Claimant, stated that a *Standard Form 5* was circulating among the parties. The Court ordered that the Status Conference would be held for January 18, 2005 if the *SF5* was not filed before that date. On December 30, 2004, a *SF5/Amended Claim* form was filed signed by the Claimant and the Objector. I.D.W.R. concurred on the *SF5*. The *SF5* withdrew the federal reserved water right basis and amended the priority date for the state-base water right. No objections were filed to the *SF5*.

II.

RECOMMENDATION

Therefore, based on the file and record herein and pursuant to the *SF5*. IT IS RECOMMENDED that the above water right be **decreed** with the elements as set forth in the attached *Recommendation for Partial Decree Pursuant to I.R.C.P. 54(b)*.

DATED: March 1, 2005



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 78-12025

2005 MAR -1 AM 11: 57
DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

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: HAZARD CREEK

QUANTITY: 0.02 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

PRIORITY DATE: 12/29/1904

POINT OF DIVERSION: T21N R01E S01 SWNESW Within Idaho 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 Idaho County
T21N R01E S01 NESW

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

March 1, 2005
John M. Melanson

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

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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

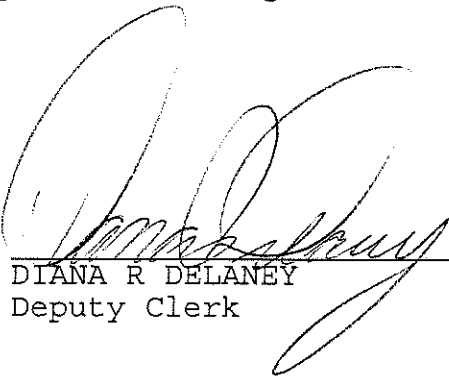
Water Right(s): 78-12025

On March 01, 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 March 01, 2005.



DIANA R DELANEY
Deputy Clerk

2005 MAR -1 AM 11: 58

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)

CERTIFICATE OF MAILING

Case No. 39576)

Water Right(s): 78-12025

CERTIFICATE OF MAILING

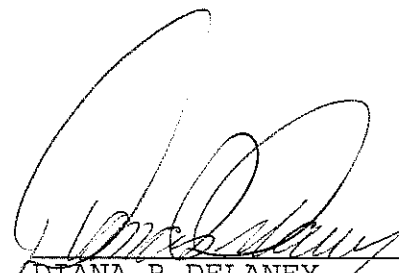
I certify that a true and correct copy of the SPECIAL MASTER'S REPORT, SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on March 01, 2005, with sufficient first-class postage prepaid to the following:

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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03/01/05