

RECEIVED
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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho
JUN 23 2005
By _____ Clerk
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

Case No. 39576

**SPECIAL MASTER'S REPORT AND
RECOMMENDATION**

**FOR WATER RIGHTS: 27-11595,
27-11984 and 27-11985.**

I.

PROCEDURAL BACKGROUND.

Water Right 27-11595 was claimed by the United States, Department of Interior, Bureau of Land Management (United States) as a dual-based stock water 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 hearing was held by Special Master Thomas Cushman pursuant to I.C. § 42-1411A(12). The *Affidavit of Fredric W. Price* was filed in conjunction with that hearing. The Affidavit stated that the claim should be split into two federal reserved rights, one based on PWR 107 and the other based on Executive Order 5389 (Medicinal Springs Public Water Reserve). Special Master Cushman ruled from the bench that the United States met its burden for establishing water rights under both reservations, and requested that IDWR split the federal claims into two separate rights. A *Special Master's Report and Recommendation* was never issued.

This Court rescinded the *Order of Reference to Special Master Cushman* and stated that the Court would proceed with Judge John Melanson presiding in the same manner set forth in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.

In order to split the claims, the United States filed an amended claim on September 22, 2004. The Idaho Department of Water Resources issued a *Supplemental Director's Report* on February 4, 2005. The *Supplemental Director's Report* split water right 27-11595 into two rights: 27-11984 (based on PWR 107), and 27-11985 (based on Executive Order 5389). On December

21, 2004 a status conference was held before this Court. At the status conference so as to avoid any procedural irregularities, this Court concluded that it would issue a *Special Master's Report and Recommendation* consistent with Special Master's Cushman's ruling, parties would then have the opportunity to file any subsequent motions in accordance with *AOI*. This Court would also have the opportunity to review the legal basis for the *Recommendation*.

II.

RECOMMENDATION

Consistent with Special Master Cushman's order from the bench of December 11, 2004, IT IS RECOMMENDED that water rights **27-11984 and 27-11985 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 recommended that **27-11595 be disallowed**, and that said right not be confirmed in any partial or final decree. 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 June 23, 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 27-11984

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

JUN 23 2005

By

Clerk

Deputy Clerk

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: BLACKFOOT 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 CLAIMED UNDER FEDERAL RESERVED WATER RIGHT. *
*
* THIS WATER RIGHT IS BASED ON FEDERAL LAW WITH AN APRIL 17, *
* 1926, DATE OF PRIORITY PURSUANT TO AN EXECUTIVE ORDER SIGNED *
* SIGNED THE SAME DATE AND KNOWN AS PUBLIC WATER RESERVE 107. *

POINT OF DIVERSION:

T05S R40E S14

SESWNW Within Caribou County

PURPOSE AND

PERIOD OF USE:

PURPOSE OF USE
Stockwater

PERIOD OF USE
01-01 TO 12-31

QUANTITY
0.02 CFS

PLACE OF USE:

Stockwater
T05S R40E S14

SWNW

Within Caribou County

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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.

Recommended 6/23/05
John M. Melanson

John M. Melanson
Presiding Judge of the
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 27-11985

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: BLACKFOOT RIVER

QUANTITY:

0.02 CFS

PRIORITY DATE:

07/07/1930

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho
JUN 23 2005
By _____ Clerk
_____ Deputy Clerk

* 7/07/1930 CLAIMED UNDER FEDERAL RESERVED WATER RIGHT. *
* *
* THIS WATER RIGHT IS BASED ON FEDERAL LAW WITH A JULY 7, *
* 1930, DATE OF PRIORITY PURSUANT TO EXECUTIVE ORDER NUMBER *
* 5389 SIGNED THE SAME DATE AND KNOWN AS THE MEDICINAL SPRINGS *
* PUBLIC WATER RESERVE. *

POINT OF DIVERSION:

T05S R40E S14

SESWNW Within Caribou County

PURPOSE AND

PERIOD OF USE:

PURPOSE OF USE
Recreation

PERIOD OF USE
01-01 TO 12-31

QUANTITY
0.02 CFS

PLACE OF USE:

Recreation
T05S R40E S14

SWNW

Within Caribou County

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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

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Recommended 6/23/05
Jack Healy

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

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

JUN 23 2005

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

Clerk

Deputy Clerk

In Re SRBA

Case No. 39576

) NOTICE OF ISSUANCE OF SPECIAL
) MASTER'S RECOMMENDATION
)
) For Water Rights: 27-11595,
) 27-11984 and 27-11985
)
)

On June 23, 2005, Presiding Judge JOHN M. MELANSON issued a *SPECIAL MASTER'S REPORT and 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 REPORT and RECOMMENDATION* shall constitute a waiver of the right to challenge it before the Presiding Judge.

DATED June 23, 2005.


JULIE MURPHY
Deputy Clerk

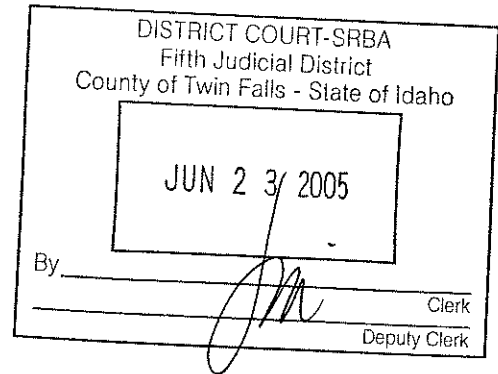
CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT AND RECOMMENDATION was mailed on June 23, 2005, with sufficient first-class postage to the following:

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

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



Julie Murphy