

DISTRICT COURT - SRBA
TWIN FALLS CO. IDAHO
FILED _____

2005 OCT 26 AM 11 33

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

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

FOR WATER RIGHTS 84-02047
and 84-04283

I. FINDINGS OF FACT

A notice of claim was filed for the above listed water rights pursuant to I.C. § 42-1409. 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.

On March 16, 2005, the claimant of these water rights, the United States of America, Department of Interior, Bureau of Land Management, filed objections to the *Director's Report*, seeking dismissal of 84-04283 on the basis that it is redundant to the claim for 84-02047 and 84-11924¹, and further seeking deletion of any remarks in 84-02047 that referenced 84-04283. On March 28, 2005, the claimant filed *Standard Form's 5 - Stipulated Elements of a Water Right*, agreeing to dismiss water right 84-04283 and agreeing to the changes for water right 84-02047. The Idaho Department of Water Resources concurred in the stipulations.

On March 19, 2005, a hearing was held for the purpose determining whether the issuance of a partial decree for water right 84-02047 -- where a partial decree has previously been issued for a water right with the same source pursuant to PWR 107 -- is consistent with Judge Hurlbutt's *Memorandum Decision and Order Re: Basin Wide Issue 12*, Subcase 91-00012 (April 25, 1997). At hearing, counsel for the United States represented that the PWR 107 water

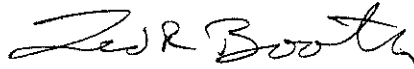
¹ Water right 84-11924 was claimed by the United States as a dual-based claim (beneficial use and Public Water Reserve 107), and a *Partial Decree* has been issued under the PWR-107 basis.

right is premised upon the unaltered condition of the water source, whereas the claim under water right 84-02047 is based upon a license issued in connection with physical improvements consisting of a headbox, pipe, and water troughs, with the water being physically diverted from the source.

II. CONCLUSIONS OF LAW

This Special Master concludes that the issuance of a partial decree for water right 84-02047 is consistent with the decision in Basin Wide Issue 12. This conclusion is based upon the factual differences between the two claims as set forth above. Therefore based on the file and record herein and pursuant to the *Standard Form's 5*, IT IS RECOMMENDED that water right 84-02047 be decreed with the elements as set forth in the attached ***Recommendation for Partial Decree Pursuant to I.R.C.P. 54(b)*** It is further recommended that an order be issued **disallowing** water right claim 84-04283 **with prejudice**.

Dated October 24, 2005.



Theodore R. Booth
Special Master
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

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED *SL*

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
) Water Right 84-02047

2005 OCT 26 AM 11 33

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: CLEARWATER RIVER

QUANTITY: 0.01 CFS

The quantity of water under this right shall not exceed 13,000
gallons per day.

PRIORITY DATE: 10/02/1953

POINT OF DIVERSION: T34N R03E S06 LOT 7 (SENESEW) Within Idaho County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Stockwater	01-01 TO 12-31	0.01 CFS

PLACE OF USE: Stockwater Within Idaho County
T34N R03E S06 LOT 7 (NESW)

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

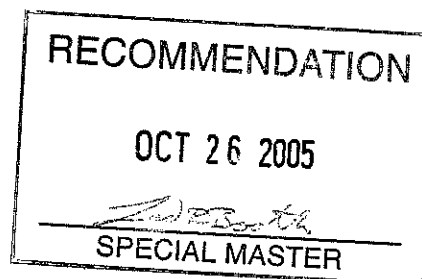
The quantity of water decreed for this water right is not a
determination of historical beneficial use.

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.

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



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STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

CERTIFICATE OF MAILING

Case No. 39576

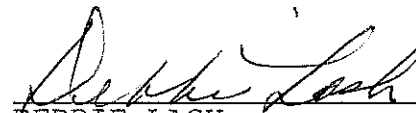
Water Right(s): 84-02047
84-04283

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 October 26, 2005, 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


DEBBIE LASH
Deputy Clerk

CERTIFICATE OF MAILING

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10/26/05

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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)
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NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

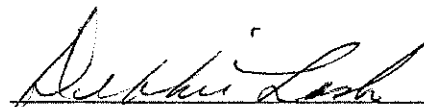
Water Right(s) : 84-02047
84-04283

On October 26, 2005, Special Master THEODORE R. BOOTH
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 October 26, 2005.



DEBBIE LASH
Deputy Clerk