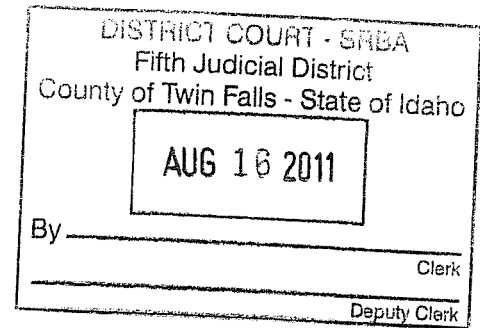


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AUG 17 2011

DEPARTMENT OF
WATER RESOURCES



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	)	Subcases 03-6, 03-7 and 03-8
	)	(State of Idaho)
	)	
Case No. 39576	)	SPECIAL MASTER REPORT
	)	AND RECOMMENDATION
_____	)	

Findings of Fact

Partial Decrees

On July 9, 2007, former SRBA Presiding Judge John M. Melanson entered uncontested *Partial Decrees* in the above three subcases to the State of Idaho, Idaho Water Resources Board, 322 E. Front Street, P.O. Box 83720, Boise, Idaho 83720-0098, for year-'round minimum stream flows in the Snake River:

- 03-6 4,750 cfs with the average daily flow measured by the Weiser gaging station in Washington County with a priority date of December 29, 1976.
- 03-7 5,000 cfs with the average daily flows to be maintained 95% of the time at the Johnson Bar gaging station located in Oregon across the Snake River from Idaho County with a priority date of July 1, 1978.
- 03-8 13,000 cfs with the average daily flows to be maintained 95% of the time measured at Lime Point in Nez Perce County with a priority date of July 1, 1985.

Motion to Set Aside

The State filed a *Motion to Set Aside and Amend Partial Decrees* and an *Amended Motion to Set Aside and Amend Partial Decrees* in the three subcases on July 18 and August 4, 2011. The State sought to amend the *Partial Decrees* "1) to include a provision in each decree that clarifies the waters and water rights subject to administration to satisfy each respective minimum flow water right in times of shortage, and 2) to amend other elements of the partial

decrees to provide clarity and to ensure consistency between the description of the three stream flow water rights." *Memorandum in Support*, at 1. The State attached proposed partial decrees with the changes it sought.

Order of Reference

On July 18, 2011, SRBA Presiding Judge Eric J. Wildman entered an *Order of Reference Appointing Special Master Terrence A. Dolan* to "conduct all proceedings necessary to issue a recommendation . . . as to the *Motion* and to the underlying merits as to how the *Partial Decrees* should be amended, if it is determined that said *Partial Decrees* should be set aside or amended."

Hearing

A hearing on the State of Idaho's *Amended Motion to Set Aside and Amend Partial Decrees* was held by telephone conference on August 8, 2011. Clive J. Strong appeared for the State; James C. Tucker appeared for Idaho Power Company; Candice M. McHugh appeared for various groundwater entities; Josephine P. Beeman appeared for the Water Resource Coalition; Dana L. Hofstetter appeared for the Harpers; and Chris M. Bromley appeared for IDWR, along with Carter Fritschle.

Before the hearing, the State invited counsel for interested non-parties to ensure their knowledge of the proceedings even though no one responded to the State's *Motion* or *Amended Motion*. During the hearing, there was some concern with insufficient time to review documents filed the day of the hearing, so it was agreed the Special Master would withhold for ten days entering a report and recommendation on the State's *Amended Motion*.

The Special Master entered an *Order Re: Comment Deadline* on August 5, 2011, requiring interested non-parties to file written comments on the State's *Amended Motion* no later than August 15, 2011. No one filed comments.

Conclusions of Law

The State has shown good cause to have the *Partial Decrees* set aside and modified because the changes will clarify administration of the water rights and ensure consistency of how these minimum stream flow rights are described. No one opposed the State's *Amended Motion* and there is no evidence the changes expand the rights in any way.

Recommendation

THEREFORE, IT IS RECOMMENDED the *Partial Decrees* in subcases 03-6, 03-7 and 03-8 be set aside and amended as described in the proposed partial decrees attached to the State's *Amended Motion*.

DATED August 16, 2011.



TERRENCE A. DOLAN
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

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 03-00008

NAME AND ADDRESS: STATE OF IDAHO
IDAHO WATER RESOURCE BOARD
322 E FRONT ST
PO BOX 83720
BOISE, ID 83720-0098

SOURCE: SNAKE RIVER TRIBUTARY: COLUMBIA RIVER

QUANTITY: 13000.00 CFS

PRIORITY DATE: 07/01/1985

POINT OF DIVERSION: T31N R05W S10 LOT 1 (NENE) Within Nez Perce County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Minimum Stream Flow	01-01 TO 12-31	13000.00 CFS

PLACE OF USE: Satisfaction of flow for this right is determined at Lime Point,
described below.

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

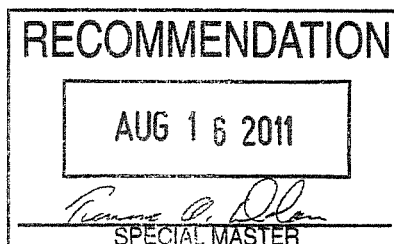
Lime Point is located in T31N, R05W, S10, NENE, Lot 1 within Nez Perce County at River Mile 172.
This water right shall not be administered or enforced against any water rights diverting from the waters of the Snake River or surface or ground water tributary to the Snake River upstream from Johnson Bar (River Mile 229.9), and any water rights diverting waters of the Salmon River or surface or ground water tributary to the Salmon River.

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.

Eric J. Wildman
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)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 03-00007

NAME AND ADDRESS: STATE OF IDAHO
IDAHO WATER RESOURCE BOARD
322 E FRONT ST
PO BOX 83720
BOISE, ID 83720-0098

SOURCE: SNAKE RIVER TRIBUTARY: COLUMBIA RIVER

QUANTITY: 5000.00 CFS

PRIORITY DATE: 07/01/1978

POINT OF DIVERSION: T24N R02W S03 LOT 3 (NENW) Within Idaho County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Minimum Stream Flow	01-01 TO 12-31	5000.00 CFS

PLACE OF USE:
Satisfaction of flow for this right is determined at the
Johnson Bar Gaging Station, described below.

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

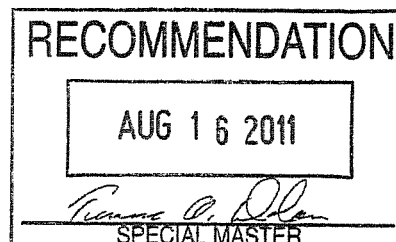
The Johnson Bar Gaging Station is located in Oregon across the
Snake River from T2N, R02W, S03, NENW, Lot 3 within Idaho
County near river mile 230.
This water right shall not be administered or enforced against
any water rights diverting from the waters of the Snake River
or surface or ground water tributary to the Snake River upstream
from Hells Canyon Dam, River Mile 247.5).

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).

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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.

Eric J. Wildman
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)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 03-00006

NAME AND ADDRESS: STATE OF IDAHO
IDAHO WATER RESOURCE BOARD
322 E FRONT ST
PO BOX 83720
BOISE, ID 83720-0098

SOURCE: SNAKE RIVER TRIBUTARY: COLUMBIA RIVER

QUANTITY: 4750.00 CFS

PRIORITY DATE: 12/29/1976

POINT OF DIVERSION: T11N R05W S31 LOT 2 (NWSE) Within Washington County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Minimum Stream Flow	01-01 TO 12-31	4750.00 CFS

PLACE OF USE:
Satisfaction of flow for this right is determined at the Weiser
Gaging Station, described below.

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

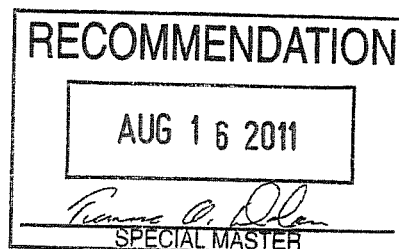
The Weiser Gaging Station is located at T11N, R05W, S31, NWSE,
Lot 2, within Washington County.
This water right shall not be administered or enforced against
any water rights diverting from the waters of the Snake River
or surface or ground water tributary to the Snake River upstream
from the Murphy Gage (T01S, R01W, S35, NWSE, Boise Meridian, on
the right bank approximately 4.2 miles downstream from Swan Falls
Power Plant).

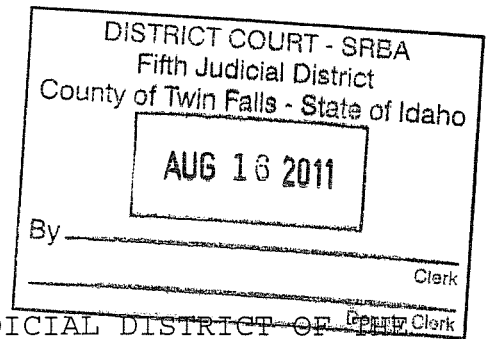
THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

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.

Eric J. Wildman
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)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

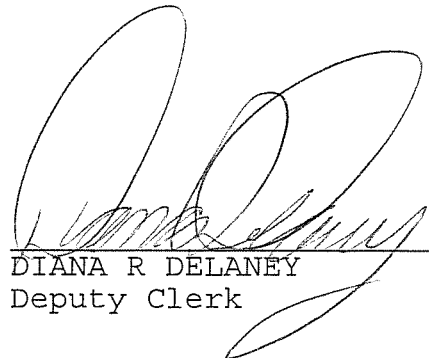
Water Right(s): 03-00006
03-00007 03-00008

On August 16, 2011, Special Master TERRENCE A. DOLAN 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 August 16, 2011.



DIANA R DELANEY
Deputy Clerk

