

2003 JUL 16 AM 10: 27

RECEIVED

JUL 17 2003

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED 7c

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	)	SPECIAL MASTER'S REPORT AND
	)	RECOMMENDATION; FINDINGS OF
Case No. 39576	)	FACT AND CONCLUSIONS OF LAW
	)	
	)	FOR WATER RIGHTS: 74-07207

I. FINDINGS OF FACT

A notice of claim was filed for this water right 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 for the elements of this water right.

The United States Bureau of Land Management filed an *Objection* on April 6, 1999. A *Notice of Completed Administrative Proceeding* was filed on July 3, 2003. The NCAP resolved the objection filed by the BLM. The United States Bureau of Land Management filed a *Motion to Dismiss Objection* on July 8, 2003. There are no unresolved objections remaining in this subcase.

However, the *Amended Recommendation* of the Idaho Department of Water Resources attached to the *Notice of Completed Administrative Proceedings* contains language that was not included in the original *Director's Report* or in the original license for 74-07207. Additional paragraphs were added to the quantity element and the other provisions element.

A. Quantity

The additional language added to the quantity elements states:

This right, when considered with all other rights common to the same grazing allotment, is limited to the quantity of water beneficially used by the number of stock within the allotment.

Presumably this language was added by IDWR to the *Amended License* to put water users on notice that overlapping water rights issued for the same cattle are not added together. Thus, IDWR seeks to notify water users that where two water rights apply to the same use, the water users may not double their use. Although that correctly explains the way in which overlapping

water rights are used, this Special Master does not recommend including the proposed language. The language seeks to limit all rights used in the "same grazing allotment" without naming or describing the allotment. The language seeks to limit quantity to "all other rights" common to the unnamed allotment, without listing, naming, or otherwise identifying which water rights are part of the limitation. Such language is vague and ambiguous. Therefore, it should not be included in a court decree.

B. Other Provisions

The *Amended License* also added a paragraph to the "other provisions necessary for definition or administration of this water right" element. The additional language proposed for the "other provisions" element states:

Use of water under this water right will be regulated by the watermaster of state water district no 74-B.

Presumably this language was added to the *Amended License* by IDWR to put water users on notice that this water right would be administered by the Idaho Department of Water Resources. All state-based water rights in Idaho come under the authority of the executive branch for purposes of administration. The Idaho Department of Water Resources is the department within the executive branch that administers water rights in this state. It is unnecessary to restate that obvious authority in every water right decree. It is furthermore unnecessary to explain that the authority to administer water rights is carried out by the local watermaster. Therefore, this Special Master does not recommend including the proposed language.

II. CONCLUSIONS OF LAW

Therefore, based on the file and record herein, IT IS RECOMMENDED that this water right be decreed with the elements set forth in the attached *Special Master's Recommendation for Partial Decree*. The *Special Master's Recommendation for Partial Decree* has deleted the paragraphs added to the quantity and other provisions elements. It should be noted, however, that IDWR may certainly retain these paragraphs in its explanatory material section since that section does not appear on the *Partial Decree*.

DATED: July 15, 2003.


BRIGETTE BILYEU, 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)
Case No. 39576)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 74-07207

2003 JUL 16 AM 10:42
DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

NAME AND ADDRESS: USDI BLM
IDAHO STATE OFFICE
1387 S VINNELL WAY
BOISE, ID 83709-1657

SOURCE: UNNAMED STREAM TRIBUTARY: LEMHI RIVER

QUANTITY: 0.02 CFS
1.00 AFY

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

PRIORITY DATE: 08/10/1983

POINT OF DIVERSION: T21N R23E S07 LOT 2 (SWNW) Within Lemhi County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Wildlife Storage	01-01 TO 12-31	1.00 AFY
	Stockwater Storage	05-01 TO 08-31	1.00 AFY
	Diversion to Storage	01-01 TO 12-31	0.02 CFS
			1.00 AFY

PLACE OF USE:	Stockwater Storage	Within Lemhi County
	T21N R23E S07 LOT 2 (SWNW)	
	Wildlife Storage	Within Lemhi County
	T21N R23E S07 LOT 2 (SWNW)	
	Diversion to Storage	Within Lemhi County
	T21N R23E S07 LOT 2 (SWNW)	

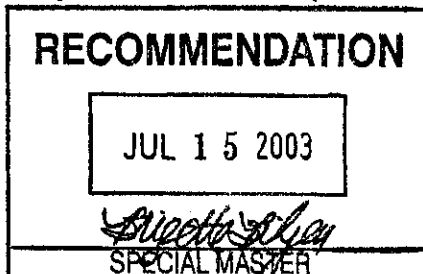
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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.



Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

2003 JUL 16 AM 10:42

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)
)
Case No. 39576)
)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

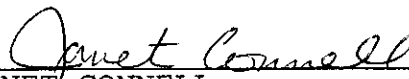
Water Right(s): 74-07207

On July 16, 2003, Special Master BRIGETTE BILYEU 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 July 16, 2003.



JANET CONNELL
Deputy Clerk

2003 JUL 16 AM 10:42

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)
)
Case No. 39576)
_____)

CERTIFICATE OF MAILING

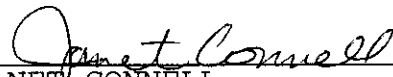
Water Right(s): 74-07207

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 July 16, 2003, with sufficient first-class postage prepaid to the following:

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

USDI BLM
Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724



JANET CONNELL
Deputy Clerk

CERTIFICATE OF MAILING

PAGE 1
07/16/03