

DISTRIBUTION - SRBA
PLANT - CALIFORNIA

In Re SRBA	)	SPECIAL MASTER'S REPORT
	)	
Case No. 39576	)	FINDINGS OF FACT; CONCLUSIONS
	)	OF LAW
	)	
_____	)	For Water Right 34-10030

A notice of claim was filed for this water right pursuant to I.C. § 42-1409 (1990). The Director of the State of Idaho Department of Water Resources (IDWR) examined the water system for Reporting Area 1 and investigated and abstracted the notices of claim for Reporting Area 1 (Basin 34), which includes portions of Custer, Butte, Bonneville and Jefferson counties, State of Idaho. The *Director's Report for Reporting Area 34 (Director's Report)* contained a recommendation or abstract for the elements of this water right.

SPECIAL MASTER'S REPORT
4/8/97

On April 24, 1995, United Water of Idaho (United Water) and the City of Rexburg filed a *Motion to Intervene* seeking to participate. The court granted the motion. *Order Granting Motion to Participate* (June 8, 1995). Neither United Water nor the City of Rexburg filed an objection and neither objected to entry of a *Special Master's Report and Recommendation* consistent with the *Standard Form 5*. United Water and City of Rexburg participated in briefing several issues.

A. UNCHANGED ELEMENTS

Several elements of the water right as stipulated to in the *Standard Form 5* remain **unchanged** from the original *Director's Report*. Specifically, **element 1**, claimant's name and address, **element 2**, source; **element 4**, priority date; **element 5**, point of diversion; **element 6**, purpose of use; and **element 7**, period of year remain **unchanged** from the original *Director's Report*.

Element 6, purpose of use, municipal, is unchanged, but deserves further analysis. Participants United Water and City of Rexburg briefed the issue of what is meant by municipal as a purpose of use. City of Rexburg and United Water persuasively argued that when used to describe a purpose of use "municipal" means a right used by a municipality for the benefit of its inhabitants. A "municipal" right may be used for numerous purposes which benefit the city's inhabitants. The court finds this definition of "municipal" persuasive and adopts it here. Thus "municipal" water rights encompass a broad range of uses to which such water rights are used for the benefit of the municipality's inhabitants.¹

B. CHANGED ELEMENTS

The remaining elements of this water right as stipulated to in the *Standard Form 5* differ from the original *Director's Report*.

Element 3, quantity. The quantity of water agreed to in the *Standard Form 5* is 2.12 cfs, the same quantity recommended in the *Director's Report*. The quantity element, however, erroneously included a diversion volume of 250 AFY. The 250 AFY was the annual volume of consumptive use and should not appear under quantity.

¹ "Municipal" is defined in I.C. § 42-202B (1996). However, the 1996 statutes did not alter pre-1996 rights held by municipalities. I.C. § 42-202(11); STATEMENT OF PURPOSE, S.B. 1535 (Idaho 1996); Meyer, Christopher H., MUNICIPAL WATER RIGHTS IN IDAHO: THE GROWING COMMUNITIES DOCTRINE AND ITS RECENT CODIFICATION, *Idaho Water Law News*, Vol. 4, No. 1 Spring/Summer 1996, p. 5-6.

The parties briefed the issue of whether quantity should be decreed differently for municipal uses. Specifically, briefing addressed whether a municipal water right should be quantified to allow a city to grow over time. Sometimes the issue has been framed as whether municipal water right holders can obtain a water right for future uses for which the water is not currently used. The question was briefed by United Water and City of Rexburg. Idaho courts and federal courts applying Idaho law have recognized special circumstances may apply for municipal rights. *City of Pocatello v. Murray*, 206 F. 72, 80 (D. Idaho 1913), *aff'd Murray v. City of Pocatello*, 214 F. 214 (9th Cir. 1914); *Beus v. City of Soda Springs*, 62 Idaho 1, 107 P.2d 151 (1940); *Village of Peck v. Denison*, 92 Idaho 747, 450 P.2d 310 (1969).² Upon further reflection, the court declines to decide the issue here. The water right at issue involves a quantified amount. There has been no objection to this right on the basis it has not been put to current beneficial use. Thus, the question is not ripe for decision.

Element 8, place of use was changed from Municipal to Place of Use is Lands within the City Limits of Arco. No specific legal description of the place of use was reported under this element in the original *Director's Report*.

1. LEGAL DESCRIPTION FOR MUNICIPAL WATER RIGHTS

At hearing April 5, 1995, the court asked whether a specific legal description was required for the place of use element for a municipality or whether a more general description such as "lands within the city limits" was sufficient. United Water and City of Rexburg briefed the issue. They argued the requirement for inclusion of a "description, by legal subdivisions," in I.C. § 42-219(2) applies only to irrigation rights and is not intended to require such a description of municipal rights. I.C. § 42-219 provides for issuance of licenses. This section of the code distinguishes between required descriptions for irrigation rights and those for municipalities. The statute sets forth in relevant part:

²

Author Christopher H. Meyer draws a similarity between case law in Idaho and that of other courts such as Colorado which has recognized a "Great and Growing Community Doctrine." *City and County of Denver v. Sheriff*, 96 P.2d 836, 841 (Colo. 1939). Meyer uses the phrase "Growing Communities Doctrine" to emphasize that it may apply to all growing communities, not just large cities. Meyer, Christopher H., MUNICIPAL WATER RIGHTS IN IDAHO: THE GROWING COMMUNITIES DOCTRINE AND ITS RECENT CODIFICATION, *Idaho Water Law News*, Vol. 4, No. 1 Spring/Summer 1996, p. 4, n. 25. The Idaho Supreme Court has not yet adopted the phrase "Growing Communities Doctrine."

If such use is for irrigation, such license shall give a description, by legal subdivisions, of the land which is irrigated by such water. If the use is for municipal purposes, the license shall describe the service area and shall state the planning horizon for that portion of the right, if any, and to be used for reasonably anticipated future needs.

I.C. § 42-219(2) (1996) (emphasis added).

Idaho Code § 42-1411 which sets forth the requirements of the *Director's Reports* requires a "legal description" but does not appear to require that such legal description be by subdivisions.

I.C. § 42-1411(2)(h) The description "lands within the city limits of Arco" is sufficient.

2. TIME REFERENCE

City of Rexburg and United Water also argued that municipalities should not be restricted to the city limits as they existed on a particular date such as the date of claim, recommendation or decree. This court finds the argument persuasive. Reference to the city limits should allow changes that occur over time. A place of use description "city limits" should not fix the place of use to the city boundaries at the time of a recommendation or decree. Such an interpretation would require municipalities to pursue a formal change in place of use every time the city limits changed or annexation occurred. The better rule is to recognize flexibility in the legal description of place of use for municipal water rights. This flexibility is still limited by the expansion statute I.C. § 42-1426. Although the city limits may change, no increase in the rate of diversion would properly occur without compliance with the expansion statutes.

3. DELIVERY OUTSIDE THE CITY LIMITS

Finally, the court asked whether the place of use for a municipal water right may extend beyond the city limits. Upon further reflection, the court agrees the question need not be answered here. There is nothing in the record for this water right indicating the City of Arco is claiming a place of use beyond its city limits. Thus, the court declines to decide the issue at this time.

Element 9, annual volume of consumptive use. The *Director's Report* recommended an annual consumptive use volume. However, since the *Standard Form 5* was executed, the legislature amended I.C. §§ 42-1409, 1411, 1412 and 1425 removing the requirement that annual volume of consumptive use be determined as an element of a water right. Therefore, water right 34-00780C should not be decreed with an annual volume of consumptive use.

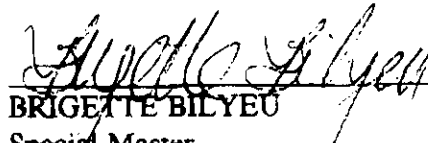
II. CONCLUSIONS OF LAW

Under *SRBA Administrative Order 1*, a Special Master is required to make a recommendation to the Presiding Judge as to whether and how a water right should be decreed. The record on file for this subcase, including the *Standard Form 5*, establishes that water right 34-10030 be decreed with the elements as agreed to in the *Standard Form 5* and as set forth in the Findings of Fact listed above.

A *Preliminary Special Master's Report and Recommendation; Findings of Fact and Conclusions of Law* was issued for this water right on March 18, 1997. A Motion to Alter or Amend was filed and subsequently granted. *Order Granting Motion to Alter or Amend* (Apr. 8, 1997). The time for such motions has now expired.

Therefore, based on the file and record herein, IT IS RECOMMENDED that water right 34-10030 be **decreed** with the elements as set forth in the attached *Special Master's Recommendation for Partial Decree*.

DATED April 8, 1997


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

JUN 12 1996
DISTRICT COURT - SRBA
TWIN FALLS, IDAHO
SPECIAL MASTER'S RECOMMENDATION FOR
PARTIAL DECREE FOR
Water Right 34-10030

NAME & ADDRESS: CITY OF ARCO
PO BOX 196
ARCO ID 83213

SOURCE: GROUNDWATER

QUANTITY: 2.12 CFS

~~THE QUANTITY FOR NON-IRRIGATION USE IS LIMITED TO THE AMOUNT BENEFICIALLY~~
~~USED FOR: MUNICIPAL-USE, CITY OF ARCO-~~

PRIORITY DATE: 06/01/1962

POINT OF DIVERSION: TOWN R26E S36 SUSUNE Within BUTTE County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	MUNICIPAL	01-01 12-31	2.12 CFS

PLACE OF USE:

PLACE OF USE IS LANDS WITHIN CITY LIMITS OF ARCO.

CONSUMPTIVE USE: ~~250.0 APT~~ 36

DATED JUN 8 1996


BRIGETTE BILYES
Special Master
Snake River Basin Adjudication

PRELIMINARY SPECIAL MASTER'S RECOMMENDATION

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JUN-6-1996

P. 07

FAX NO. 12087362121

JAN-23-04 FRI 10:32 AM SRBA DIST COURT

103-177-1-1112-56
DIRECTOR OF IDWR
BOISE, IDAHO

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): 34-10030

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 April 08, 1997, with sufficient first-class postage prepaid to the following:

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

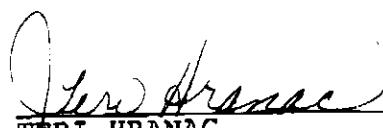
JOSEPHINE P. BEEMAN
BEEMAN & HOFSTETTER
608 WEST FRANKLIN STREET
BOISE, ID 83702-5509

CLIVE STRONG
DEP AG OFFICE OF ATTY GEN
STATEHOUSE MAIL
BOISE, ID 83720

JEFFREY C. FEREDAY
PO BOX 2720
BOISE, ID 83701

RYAN W. BOYER
525 PARK AVENUE STE 2C
IDAHO FALLS, ID 83402

CERTIFICATE OF MAILING



TERI HRANAC
Deputy Clerk

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04/08/97

NOTICE OF ISSUANCE OF

SPECIAL MASTER'S REPORT
AND RECOMMENDATION

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

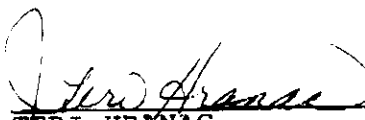
NOTICE OF ISSUANCE OF
SPECIAL MASTER'S REPORT
AND RECOMMENDATION

Water Right(s): 34-10030

On April 08, 1997, Special Master BRIGETTE BILYEU
issued a SPECIAL MASTER'S REPORT AND RECOMMENDATION for the above
subcase pursuant to SRBA Administrative Order 1 (AO1), Section 9.

Pursuant to SRBA Administrative Order 1, Section 14b, any party
to the adjudication may file a Notice of Challenge to a SPECIAL MASTER'S
REPORT AND RECOMMENDATION within 21 days following the date of
publication of the filing of the Special Master's report in the Docket
Sheet except parties to the subcase who failed to file a Motion to
Alter or Amend before the Special Master (AO1, Section 9f).
The Notice of Challenge shall appear on the Docket Sheet and shall be
served on parties to the subcase(s) covered by the challenged report
and the SRBA Court Reporter.

DATED April 08, 1997.


TERI HRANAC
Deputy Clerk

NOTICE OF ISSUANCE

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