

**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 	)))))))	SUBCASE 61-11877 DECISION and REPORT
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I. APPEARANCES

Paul V. Batruel appeared in person, pro se.

Additionally, Candace McHugh, Esq., Idaho Department of Water Resources, was present.

II. PROCEDURAL BACKGROUND

This matter came before the Special Master for Trial of the claimed water right on June 20, 2003. The claim for this subcase was originated as a *Motion to File Late Notice of Claim* on July 12, 1999. Judge Wood granted that request on September 12, 1999. The matter was referred to this special master and an *Order Setting Deadlines* was issued on November 8, 2000. The Department of Water Resources (IDWR) submitted a *Director's Report* on December 28, 2000, disallowing the claim. The claimant's Objection was filed on January 24, 2001.

At the trial witnesses were called and testified and Exhibits A through F, K and L were admitted into evidence, without objection. The special master took judicial notice of Exhibits: G, H I and J, as well as the *Director's Report* and a Report dated September 14, 2001, from IDWR prepared at the special master's request pursuant to Rule 706, IRE.

III. STANDARD OF REVIEW

At the trial of a subcase in the SRBA the Director's Report becomes part of the record of the trial and constitutes prima facie evidence of the nature and extent of the claimed right. I.C. section 42-14111(4). When a party objects to the Director's Report the presumption created by

statute imposes upon the objector the burden of going forward with evidence to rebut or meet this presumption. *State vs. Hagerman Water Right Owners, Inc.* 130 Idaho 736, 746, 947 P.2d 409, 419 (1997). Where, as in this case, the claim has been reported disallowed, the claimant/objector has the burden to prove each and every element of a claimed water right. I.C. Section 42-1411(5), *McCray vs. Rosenkrance*, 135 Idaho 509, 20 P.3rd 693 (2001). In this subcase IDWR decided from its view of the well site, that the well had never been completed. This conclusion was based upon the observation that there was no pump, nor electricity at the wellhead. IDWR did not make a determination that the well if used in the past had been abandoned or forfeited. However, neither the Director's Report nor the 706 Report contain sufficient evidence to have reached that conclusion, in any event. *Gilbert vs. Smith*, 97 Idaho 735, 552 P.2d 1220 (1976).

IV. DECISION

While it is undisputed that at the time IDWR conducted its field examination of this site, that the well was not operating nor was there an electrical pump attached, these facts alone are insufficient to reach the conclusion of the Director's Report. After reviewing the entire record of the trial, this special master finds that the claimant/objector has met his burden concerning this claimed right. On July 1, 1954, the subject well was developed, as claimed. There was not a pump or electricity because the well was artesian and produced water naturally, without artificial assistance. (i.e. an electrically driven pump). The special master is satisfied that the pump was used with the elements of the water right for several years. In 1992 the flow became erratic and unreliable and stopped flowing completely by January 1993. From the evidence presented, it seems that the water level in the nearby aquifer has dropped in the last dozen years or so. The most likely cause of this is that other users are mining the aquifer water with new large volume pumping wells. (Although drought might be contributing, as well). (Exhibit F and the testimony of the claimant).

The purpose of this adjudication is to determine the existence of claimed water rights, only. The solution to how the claimant may receive his water is beyond the scope and authority of this subcase and the adjudication. What this special master can decide is whether the claimant had a water right at the time the adjudication commenced in 1987. This special master finds that such a right exists for irrigation and stockwater. However, no home was ever built and therefore no water used for domestic purpose. On that issue this special master finds that the claimant has met his burden regarding irrigation and stockwater and is entitled to a partial decree as modified.

V. RECOMMENDATION

The special master recommends that this claim be decreed pursuant to the findings from trial, IT IS RECOMMENDED that the elements for water right 61-11877 be decreed as set forth in the *Attached Recommendation for Partial Decree pursuant to I.R.C.P. 54(b)*.

DATED: February 17, 2004.



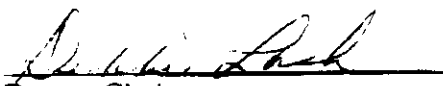
THOMAS R. CUSHMAN
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of DECISION and REPORT was mailed on February 17, 2004, with sufficient first-class postage prepaid to the following:

Director of IDWR
PO Box 83720
Boise, ID 83720-0098

Paul Batruel
Rt. 1, Box 426
Glenns Ferry, Id 83623



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. 19576

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 61-11877

2004 FEB 17 PM 2:35

DISTRICT COURT-SRBA
TWIN FALLS CO. IDAHO
FILED

NAME AND ADDRESS:

SATRUDEL DAIRY
MARY SATRUEL
PAUL SATRUEL
RT 1 BOX 426
GLENN'S FERRY, ID 83623-9756

QUANTITY:

0.09 CFS

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

PRIORITY DATE:

07/01/1954

POINT OF DIVERSION:

T056 R09E S13

NESE

Within Elmore County

PURPOSE AND

PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

Irrigation

04-01 TO 10-31

0.07 CFS

Stockwater

01-01 TO 12-31

0.02 CFS

PLACE OF USE:

Irrigation

T055 R10E S18

NWSE 7.0

Within Elmore County

7.0 Acres Total

Stockwater

Within Elmore County

Same as Irrigation

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

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