

2004 MAR 11 PM
DISTRICT OF THE 34

In Re SRBA	)	SPECIAL MASTER'S REPORT
	)	
Case No. 39576	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW
	)	
	)	FOR WATER RIGHTS 65-02897, 65-
	)	03099, 65-22859, 65-22860

An objection was filed to the two rights on January 17, 2002, by the United States Department of Justice, Department of Interior, Bureau of Reclamation, concerning the recommended “separate streams” general provision. *Standard Form 5/ Stipulated Elements of Water Rights* were filed for each right on January 23, 2004, removing the objections to other provisions necessary for the administration of the water rights. On February 2, 2004, *Notices of Completed Administrative Proceedings* and *Amended Director’s Report* were filed by IDWR, splitting 65-02897 into two rights: 65-22859 and 65-22860. No objections were filed to the *Amended Director’s Report*.

II. CONCLUSIONS OF LAW

Therefore, based on the file and record herein and pursuant to the *Notice of Completed Administrative Proceedings* and *Standard Form 5*, IT IS RECOMMENDED that water right 65-02897 be **disallowed with prejudice** and 65-03099, 65-22859 and 65-22860 be **decreed** with the elements as set forth in the attached *Recommendation for Partial Decree Pursuant to I.R.C.P. 54(b)*.

DATED: March 10, 2004.



THOMAS R CUSHMAN
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 65-03099

NAME AND ADDRESS: WESTERN RANCH EQUITIES LLC
20 WALDEN CT
YORK, PA 17404

SOURCE: UNNAMED STREAM TRIBUTARY: SQUAW CREEK

QUANTITY: 0.20 CFS
1.20 AFY

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

THIS RIGHT WHEN COMBINED WITH RIGHT NOS. 65-22859 & 65-22860
SHALL PROVIDE NO MORE THAN .02 CFS PER ACRE.

PRIORITY DATE: 04/01/1891

POINT OF DIVERSION: T09N R01E S03 NWSE Within Gem County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 11-01	0.20 CFS
	Domestic	01-01 TO 12-31	0.04 CFS
			1.20 AFY

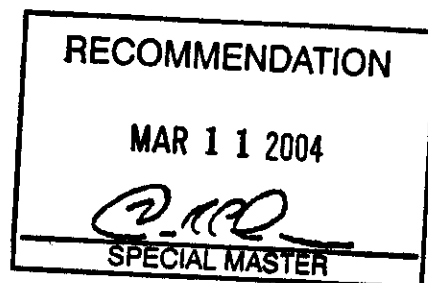
PLACE OF USE:	Irrigation		Within Gem County
	T09N R01E S03	SWSE 5.0	SESE 5.0
	10.0 Acres Total		
	Domestic		Within Gem County
	T09N R01E S03	SWSE	

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

Basin 65 General Provisions No. 3, the Separate Streams
General Provision, does not apply to appropriations of water
after October 18, 1977.

This water right shall be administered as being from a
separate source pursuant to Basin 65 General Provision No. 3.
If the holder of this right seeks to change the right pursuant
to Idaho Code Section 42-222 or successor statute, nothing in
this general provision shall preclude any other person or entity
from demonstrating that such change in use would cause injury to
its water right or from receiving any relief provided by law in
the event of injury.

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

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 65-22859

NAME AND ADDRESS: ELVIN C SCHMELZER
HC 78 BOX 3839
OLA, ID 83657

BETTY LUE SCHMELZER
5315 MONTGOUR RD
EMMETT, ID 83617

SOURCE: SQUAW CREEK TRIBUTARY: PAYETTE RIVER

QUANTITY: 0.02 CFS

THIS RIGHT WHEN COMBINED WITH RIGHT NO. 65-3099 SHALL PROVIDE
NO MORE THAN .02 CFS PER ACRE.

PRIORITY DATE: 05/09/1967

POINT OF DIVERSION: T09N R01E S03 SWSE Within Gem County
SESE
S10 SWNE
NENE

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 11-01	0.02 CFS

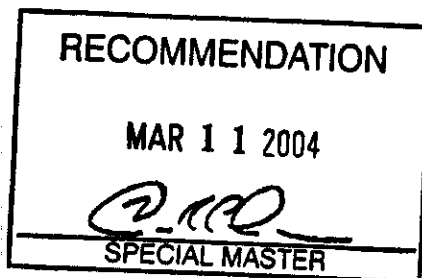
PLACE OF USE: Irrigation Within Gem County
T09N R01E S10 SENE 2.0
2.0 Acres Total

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

Basin 65 General Provisions No. 3, the Separate Streams
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ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).



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John M. Melanson
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 65-22860

NAME AND ADDRESS: WESTERN RANCH EQUITIES LLC
20 WALDEN CT
YORK, PA 17404

SOURCE: SQUAW CREEK TRIBUTARY: PAYETTE RIVER

QUANTITY: 0.81 CFS

THIS RIGHT WHEN COMBINED WITH RIGHT NO. 65-3099 SHALL PROVIDE
NO MORE THAN .02 CFS PER ACRE.

PRIORITY DATE: 05/09/1967

POINT OF DIVERSION: T09N R01E S03 SWSE Within Gem County
SESE
S10 SWNE
NENE

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 11-01	0.81 CFS

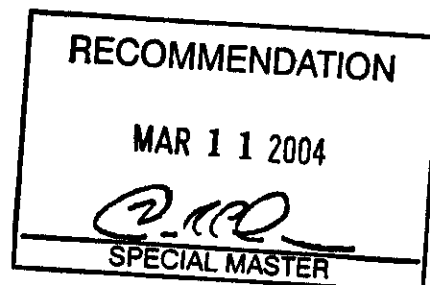
PLACE OF USE:	Irrigation		Within Gem County
	T09N R01E S03	NWSE 1.0	SWSE 5.0
		SESE 22.0	
	S10	NENE 29.0	NWNE 6.0
		SWNE 2.0	
	S11	NWNW 16.0	
	81.0 Acres Total		

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

Basin 65 General Provisions No. 3, the Separate Streams General Provision, does not apply to appropriations of water after October 18, 1977.

This water right shall be administered as being from a separate source pursuant to Basin 65 General Provision No. 3. If the holder of this right seeks to change the right pursuant to Idaho Code Section 42-222 or successor statute, nothing in this general provision shall preclude any other person or entity from demonstrating that such change in use would cause injury to its water right or from receiving any relief provided by law in the event of injury.

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

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED _____

2004 MAR 11 PM 4 34

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

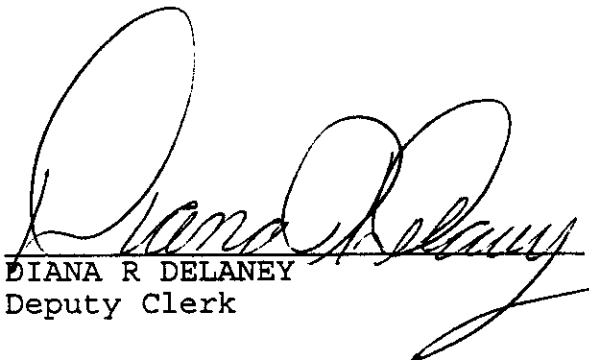
Water Right(s): 65-02897
65-03099 65-22859 65-22860

On March 11, 2004, Special Master JOHN M MELANSON
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 March 11, 2004.


DIANA R DELANEY
Deputy Clerk

DISTRICT COURT-S.
TWIN FALLS CO., IDA.
FILED

2004 MAR 11 PM 4 34

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): 65-02897
65-03099 65-22859 65-22860

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 March 11, 2004, 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:
DAVID W GEHLERT
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATRUAL RESOURCE
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

ELVIN C SCHMELZER
HC 78 BOX 3839
OLA, ID 83657

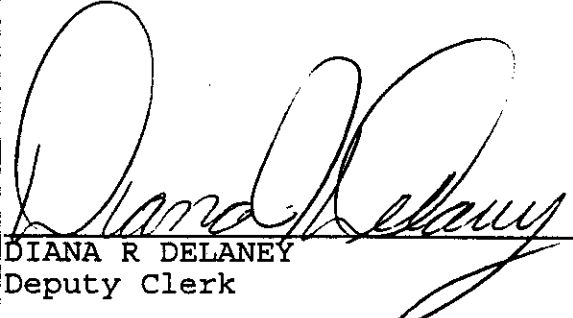
JACK E HORTON
19501 JACKKNIFE
OLA, ID 83657

CERTIFICATE OF MAILING

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03/11/04

WESTERN RANCH EQUITIES LLC
20 WALDEN CT
YORK, PA 17404

BETTY LUE SCHMELZER
5315 MONTOUR RD
EMMETT, ID 83617



DIANA R DELANEY
Deputy Clerk