

2004 MAR 11 PM  
DISTRICT OF THE 34

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

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.



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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<br>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 |

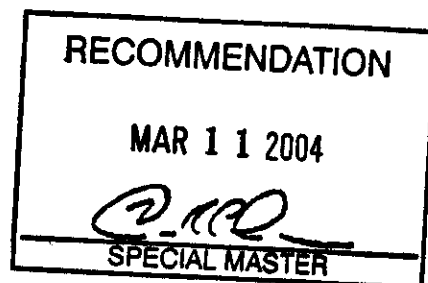
|               |                  |          |                   |
|---------------|------------------|----------|-------------------|
| PLACE OF USE: | Irrigation       |          | Within Gem County |
|               | T09N R01E S03    | SWSE 5.0 | SESE 5.0          |
|               | 10.0 Acres 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.

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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 65-22859

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

BETTY LUE SCHMELZER  
5315 MONTGOMERY 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<br>PERIOD OF USE: | PURPOSE OF USE | PERIOD OF USE  | QUANTITY |
|-------------------------------|----------------|----------------|----------|
|                               | Irrigation     | 04-01 TO 11-01 | 0.02 CFS |

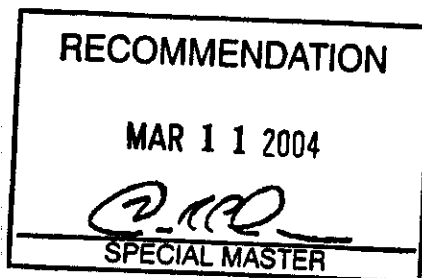
PLACE OF USE: Irrigation Within Gem County  
T09N R01E S10 SENE 2.0  
2.0 Acres Total

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

Basin 65 General Provisions No. 3, the Separate Streams  
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.

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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 65-22860

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 |

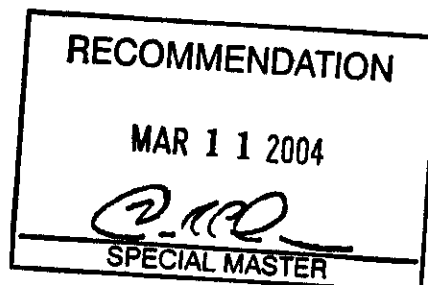
| PLACE OF USE: | Irrigation       |           | Within Gem County |
|---------------|------------------|-----------|-------------------|
|               | T09N R01E S03    | NWSE 1.0  | SWSE 5.0          |
|               |                  | SESE 22.0 |                   |
|               | S10              | 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).



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.

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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

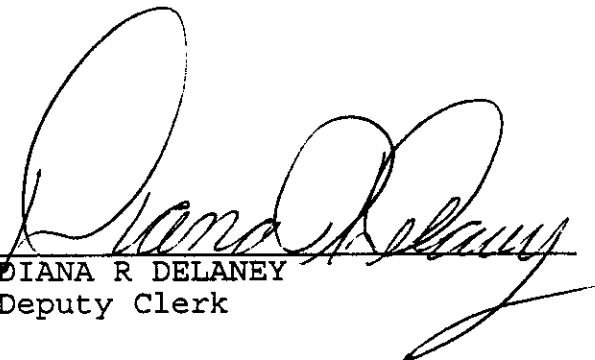
Water Right(s): 65-02897  
65-03099 65-22859 65-22860

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

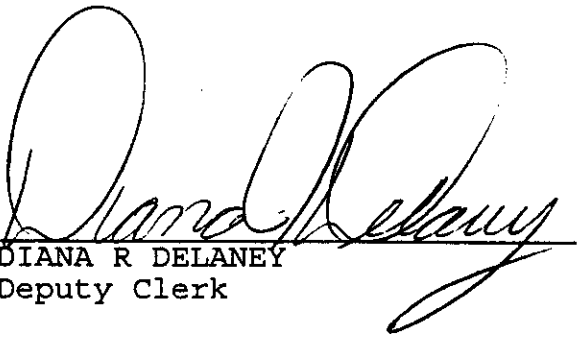
JACK E HORTON  
19501 JACKKNIFE  
OLA, ID 83657

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