

2004 MAR 15 PM 4:28

FILED
TWIN FALLS CO., 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	)	SPECIAL MASTER'S REPORT AND
	)	RECOMMENDATION; FINDINGS OF
Case No. 39576	)	FACT AND CONCLUSIONS OF LAW
	)	
	)	WATER RIGHT NOS.: 37-15032,
	)	37-18897, 37-18902, 37-20044,
	)	37-20045, and 37-20207
	)	(6 FORMER PWR 107)

I. PROCEDURAL BACKGROUND

Claims were filed by the United States Bureau of Land Management for the above listed water rights. The United States originally claimed these rights under both state law and as a federal reservation. The state-based portion of each right was investigated by the Idaho Department of Water Resources ("IDWR") and reported in a *Director's Report*. IDWR did not investigate the federal reservation theory because those are based on federal law. I.C. § 42-1411A.

Objections were filed by Pickett Ranch & Sheep Co., Joe Tugaw, Jared Bedke, Bruce Bedke, Scott Bedke, Karl Bedke, Joyce Livestock Company, Jerry Hoagland, Michael Poulton, Gary Poulton, Western Stockgrowers Association and the State of Idaho. Those *Objections* were withdrawn on August 29, 2002. *Notice of Withdrawal of Objection* (August 29, 2002); *Stipulation to Resolve Objections* (March 11, 2003); *Revised Exhibits A and B Part 1 for Stipulation to Resolve Objections filed on March 11, 2003*. (April 11, 2003) An evidentiary hearing was held on April 23, 2003. The United States Bureau of Land Management withdrew the federal basis for these claims and opted to pursue these rights solely under the state basis. *Motion to Withdraw the Federal Law Reserved Right Basis for the Claim and to Proceed Under the State Law Beneficial Use Basis for the Claim*. (June 13, 2003)

The United States BLM submitted an *Affidavit of Floyd P. Dewitt in Support of Basin 37 BLM PWR 107 Water Rights Claims*, an *Amended Affidavit of Floyd P. Dewitt in Support of Basin 37 BLM PWR 107 Water Right Claims*, an *Affidavit of Lisa A. Jaro* and an *Amended Affidavit of Lisa A. Jaro*. *Standard Forms 5* were filed on February 9, 2004 and February 17, 2004.

II. STANDARD OF REVIEW

The United States claimed the priority date for these rights as January 1, 1879. That priority claim was investigated by IDWR and recommended in the *Director's Report*. Both the United States and IDWR agreed to later priorities in *Standard Form 5* settlement agreement. Recommendations in *Director's Reports* have *prima facie* weight as set forth in I.C. § 42-1411(4)-(5). Where the *Director's Report* draws a conclusion as to an element of a water right, the *prima facie* weight afforded the *Director's Report* confers a presumption that sufficient proof has been made to prevail on the issue, absent competent evidence to the contrary. If rebutted, the presumption disappears, and the party with the benefit of the presumption retains the burden of persuasion on the issue. *State v. Hagerman Water Right Owners*, 130 Idaho 736, 947 P.2d 409, 418 (1997).

III. FINDINGS OF FACT ON ELEMENTS

A. Ownership of the Water Right

These water rights were claimed by the United States Bureau of Land Management. IDWR investigated the ownership element of these rights. The *Director's Report* concluded that the owner of these water rights is the U.S. B.L.M. There are no objections to ownership. There is "substantial evidence" that the United States is the owner of these rights.

B. Priority Date

These water rights were claimed by the United States with early priority dates. IDWR investigated, and the *Director's Report* concluded that the priority date for these rights is January 1, 1879. The *Standard Forms 5* for each of these rights lists priority dates later than 1879. Both the claimant and IDWR signed the *Standard Forms 5*. Therefore, there is "substantial evidence" that the priority date for these rights is the later date contained in the *Standard Forms 5*.

C. Source

The claims assert various sources for these water rights. IDWR investigated the source element for each right. The *Director's Report* concluded that the sources for these rights were as claimed. No objections were filed to the source element. There is "substantial evidence" that the

sources are as contained in the *Director's Report*.

D. Quantity

The quantity claimed for these water rights is 13,000 gallons or less per day. The *Affidavit of Floyd P. Dewitt in Support of Basin 37 BLM PWR 107 Water Right Claims* states, "Based upon the field verification and my review of the field investigation documents, there is sufficient water at this site for consumptive use by livestock." *Affidavit of Floyd P. Dewitt in Support of Basin 37 BLM PWR 107 Water Right Claims*, p.7, ¶ 7.; *Amended Affidavit of Floyd P. Dewitt in Support of Basin 37 BLM PWR 107 Water Right Claims*, p.7, ¶ 7.; *Affidavit of Lisa A. Jaro*, p.7, ¶ 7.

In addition, IDWR investigated the quantity element for each right and submitted a *Director's Report* with specific quantities determined for each water right. There is "substantial evidence" of the quantity for each right.

E. Point of Diversion

Each claim asserted a point of diversion that was expressed with a legal description. In addition, IDWR investigated the point of diversion element for each right under the state basis and submitted a *Director's Report*. The *Director's Report* for these rights concluded that the points of diversion were as claimed. There is "substantial evidence" of the points of diversion for each right.

F. Purpose of Use

The claimed purpose of use for each of these rights is "stockwater." The United States asserted that "Based upon the field verification and my review of the field investigation documents, there is sufficient water at this site for consumptive use by livestock." *Affidavit of Floyd P. Dewitt in Support of Basin 37 BLM PWR 107 Water Right Claims*, p.7, ¶ 7.; *Amended Affidavit of Floyd P. Dewitt in Support of Basin 37 BLM PWR 107 Water Right Claims*, p.7, ¶ 7.; *Affidavit of Lisa A. Jaro*, p.7, ¶ 07. In addition, IDWR investigated these rights and concluded that purpose of use is "stockwater." There is "substantial evidence" that the purpose of use is "stockwater."

G. Period of Use

The claimed period of use for each of these stockwater rights is January first to December 31st of each year. IDWR investigated the period of use element and submitted a *Director's Report* that concluded that period of use was year round. There is "substantial evidence" of the period of use for each water right.

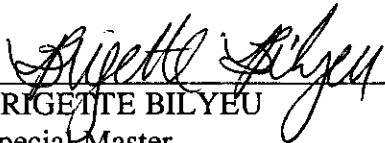
H. Place of Use

Each claim asserted a place of use that was described by a legal description. In addition, IDWR investigated these rights under the state basis. The *Director's Report* for these rights concluded that the places of use were as claimed. There is "substantial evidence" of the place of use for each water right.

IV. CONCLUSION

Therefore, based on the files for these subcases and the record contained therein, IT IS RECOMMENDED that these water rights be **decreed** with the elements set forth in the attached *Special Master's Recommendations for Partial Decree*.

DATED: March 15, 2004



BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

2004 MAR 15 PM 4:28

100-443886-100

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Mar-15-2004

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 37-18897

2004 MAR 15 PM 4:28

FILED
TWIN FALLS, IDAHO

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

SOURCE: SPRING TRIBUTARY: LAVA CREEK

QUANTITY: 0.02 CFS

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

PRIORITY DATE: 03/20/1917

POINT OF DIVERSION: T01S R17E S29 SWSESW Within Camas County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Stockwater	01-01 TO 12-31	0.02 CFS

PLACE OF USE: Stockwater Within Camas County
T01S R17E S29 SESW

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

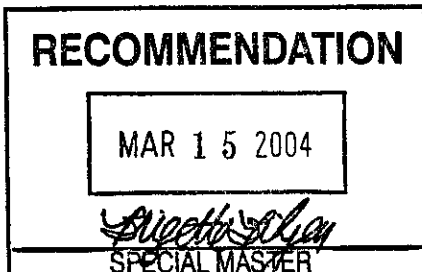
THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

THE OPERATION, USE, AND ADMINISTRATION OF THIS WATER
RIGHT IS ALSO SUBJECT TO THE TERMS AND CONDITIONS OF THE
STIPULATION AND JOINT MOTION FOR ORDER APPROVING STIPULATION
ENTERED INTO ON AUGUST 29, 2002 BETWEEN THE UNITED STATES OF
AMERICA AND WESTERN STOCKGROWERS ASSOCIATION ET AL.,
FILED IN THE OFFICE OF THE CAMAS COUNTY RECORDER AND RECORDED
ON NOVEMBER 19, 2002 AS INSTRUMENT NO: 075707; THE PROVISIONS OF
SUCH STIPULATION TO APPLY FULLY TO 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

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 37-18902

2004 MAR 15 PM 4:28

FILED
TWIN FALLS, IDAHO
MAR 15 2004

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

SOURCE: SPRING TRIBUTARY: LAVA CREEK

QUANTITY: 0.02 CFS

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

PRIORITY DATE: 03/20/1917

POINT OF DIVERSION: T01S R17E S32 NENENE Within Camas County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Stockwater	01-01 TO 12-31	0.02 CFS

PLACE OF USE: Stockwater Within Camas County
T01S R17E S32 NENE

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

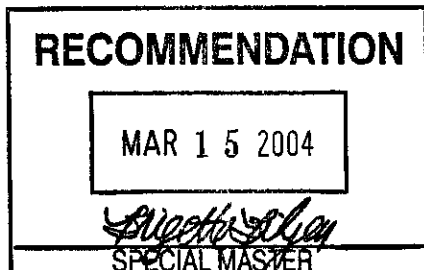
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THE OPERATION, USE, AND ADMINISTRATION OF THIS WATER
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John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

In Re SRBA

Case No. 39576

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FBI - NEW YORK
TO DIRECTOR, FBI
FROM SAC, NEWARK (100-100000)
RE NEWARK TELETYPE TO BUREAU, MARCH 14, 1968.
BUREAU FILED

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Mar-15-2004

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 37-20045

2004 MAR 15 PM 4:28

DISTRICT COURT
TWIN FALLS, IDAHO
FILED

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

SOURCE: SPRING TRIBUTARY: SLAUGHTERHOUSE CREEK

QUANTITY: 0.02 CFS

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

PRIORITY DATE: 01/04/1922

POINT OF DIVERSION: T02N R19E S17 SWNWSW Within Blaine County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Stockwater	01-01 TO 12-31	0.02 CFS

PLACE OF USE: Stockwater Within Blaine County
T02N R19E S17 NWSW

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

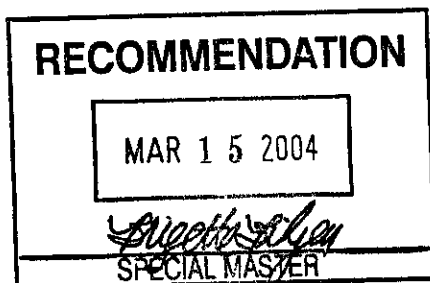
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Presiding Judge of the
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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
)
Case No. 39576)
_____)

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

Water Right 37-20207

2004 MAR 15 PM 4:28

FILED
TWIN FALLS CO., IDAHO

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

SOURCE: CHICKEN SPRING TRIBUTARY: LAVA CREEK

QUANTITY: 0.02 CFS

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

PRIORITY DATE: 08/24/1918

POINT OF DIVERSION: T02S R16E S15 NENENW Within Camas County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Stockwater	01-01 TO 12-31	0.02 CFS

PLACE OF USE: Stockwater Within Camas County
T02S R16E S15 NENW

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

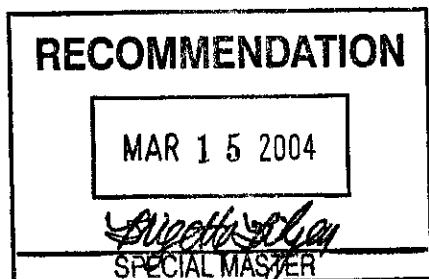
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John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

DATE _____

In Re SRBA)
)
Case No. 39576)
)
)

Water Right(s): 37-15032
37-18897 37-18902 37-20044
37-20045 37-20207

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2004 MAR 15 PM 4:28

DISTRICT COURT
TWIN FALLS, 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)

CERTIFICATE OF MAILING

Case No. 39576)
_____)

Water Right(s): 37-15032

37-18897 37-18902 37-20044
37-20045 37-20207

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 15, 2004, with sufficient first-class postage prepaid to the following:

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

FLYING TRIANGLE INC
GARY POULTON
JOE TUGAW
KARL U (BUD) BEDKE
MICHAEL POULTON
PICKETT RANCH & SHEEP CO
SCOTT BEDKE
WESTERN STOCKGROWERS ASSN

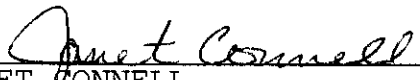
Represented by:
NORMAN M. SEMANKO
ATTORNEY AT LAW
205 N 10TH ST, STE 530
BOISE, ID 83702
Phone: 208-344-6690

CERTIFICATE OF MAILING

PAGE 1
03/15/04

USDI BLM

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



JANET CONNELL
Deputy Clerk