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Department of Water Resources

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IDHO

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

) AMENDED SPECIAL MASTER'S
) REPORT AND RECOMMENDATION

) FINDINGS OF FACT AND
) CONCLUSIONS OF LAW

) For Water Rights 34-00600 and 34-00606

I. INTRODUCTION

This *Amended Special Master's Report and Recommendation* amends only the legal description for the place of use, adding quarter-quarter sections for the land in section 13. Additional information regarding quarter-quarter designations was provided by IDWR to assist the court in specifying the legal description. See *IDWR'S Post Special Master's Recommendation Report Regarding Legal Description of Lands Depicted as Irrigated on Exhibit 12* (Feb. 26, 1998).

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 (Basin 34) and investigated these water rights. The *Director's Report for Reporting Area 34 (Director's Report)* recommended these water rights be disallowed, concluding they had been abandoned or forfeited.

An Objection was filed by claimants Matea McCray Partners, asserting these rights were not abandoned or forfeited. Doug and Shane Rosenkrance, James Lambert, and Carroll Palmer moved to participate in these subcases to assert abandonment and forfeiture. The motion was granted and the Rosenkrances, Lambert, and Palmer were permitted to participate. A *Motion for Summary Judgment* was filed by Matea McCray Partners. A hearing on the *Motion* was held

October 31, 1997. The court denied the *Motion for Summary Judgment* holding that genuine issues of material fact remained on the issues of abandonment and forfeiture.

A trial was held November 12 and 13, 1997, and continued on December 9, 10, and 12, 1997. Carroll Palmer did not participate at trial; the remaining parties presented evidence.

II. STANDARD OF REVIEW

A. DIRECTOR'S REPORT

The trial of these water rights focused on the issues of abandonment and forfeiture. IDWR was called as a witness. A senior water resource agent testified regarding his field investigation.

B. PRIMA FACIE WEIGHT

The *Director's Report* has *prima facie* weight as set forth in I.C. §§ 42-1411(4)-(5). The term *prima facie* evidence is an alternative label for a rebuttable presumption. *State v. Hagerman Water Right Owners*, ___ Idaho ___, 947 P.2d 409, 418 (1997); *State v. Hebner*, 108 Idaho 196, 97 P.2d 1210 (Ct. App. 1985). Thus, giving evidence *prima facie* status confers a presumption that sufficient proof has been made to prevail on an issue absent competent evidence to the contrary. *Prima facie* proof does not shift the burden of persuasion on an issue. *Reddy v. Johnston*, 77 Idaho 402, 293 P.2d 945 (1956); D. Craig Lewis, IDAHO TRIAL HANDBOOK §§ 1.4 - 12.7 (1995). When 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*, ___ Idaho ___, 947 P.2d 409, 418 (1997).

The *prima facie* status given the *Director's Report* in I.C. §§ 42-1411(4)-(5) constitutes a rebuttable evidentiary presumption. I.R.E. 301; *State v. Hagerman Water Right Owners*, ___ Idaho ___, 947 P.2d 409, 418 (1997). When an evidentiary presumption arises it shifts only the burden of production. When rebutted, the presumption disappears and the party with the benefit of the presumption retains the burden of persuasion on the issue. *Id.* A presumption relieves the party in whose favor the presumption operates from having to adduce further evidence of the presumed fact until the opponent introduces substantial evidence of the nonexistence of the fact. *Id.* at 419. The *Director's Report* as *prima facie* evidence and the facts contained therein are presumed to be correct until such time as a water claimant produces sufficient evidence to rebut that presumption. Where the *Director's Report* concludes that a right has been abandoned or

forfeited, a presumption exists until the claimant of the water right presents "substantial evidence" that the right has not been forfeited. If the claimant of the right presents such evidence, the presumption of forfeiture disappears. Nevertheless, the facts upon which the presumption is based are to be weighed with all other facts that may be relevant. *Id.*

The Idaho Supreme Court has not ruled that the filing of a *Director's Report* alters the standard of proof required to prove forfeiture or abandonment. Thus, the standard remains "clear and convincing." If the claimant produces substantial evidence which rebuts the *Director's Report* conclusion, the court must then weigh the evidence to determine whether abandonment or forfeiture has been shown by "clear and convincing" evidence.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. FINDINGS OF FACT

Water rights 34-00600 and 34-00606 are appurtenant to land now owned by the claimant Matea McCray Partners (hereafter "the property"). The source of these rights is Alder Creek, which runs through the middle of the property. Alder Creek is tributary to the Big Lost River.

Gerald "Doug" Storer owned and farmed the property from 1973 to 1984. Initially, Storer irrigated the property out of Alder Creek. In 1976, Storer plowed in the ditches on the eastern portion of the property, drilled a well, and purchased a sprinkler irrigation system. From 1976 on, Storer ceased using Alder Creek water on the eastern portion of the property and used groundwater from the well.¹ (Testimony of Gerald Storer; Exhibit 12.) Storer last irrigated the property in 1984.

In 1985, the Farm Home Administration (FmHA)² repossessed the property. The property was leased to Harold Bell in 1985 and was irrigated that year. (Stipulation of parties.) Between 1985 and the present, the ditch on the south portion of the property was partially obscured from view by sagebrush; however, large portions of the ditch were visible.

In 1986 and 1987, Randy Pehrson and Don Palmer rented the property. Neither Pehrson nor Palmer irrigated the land during those two years. (Testimony of Randy Pehrson, Testimony

¹ There was no dispute that the western portion of the property was irrigated from Alder Creek through and including 1985.

² The Farm Home Administration is now officially known as Farm Services.

of Thomas George Palmer.) The property was not irrigated in 1988. (Testimony of Randy Pehrson; Testimony of Carter Fritschle.)

In 1989 and 1990, Richard Reynolds leased the property. The property was not irrigated in 1989. In 1990, Reynolds' father, Eldon Reynolds, irrigated a portion of the property from Alder Creek for a few weeks. (Testimony of Richard Reynolds; Testimony of Dale Smith.) Reynolds could not irrigate all of the property because it was not properly set up for efficient gravity irrigation, and Reynolds did not use the sprinkler equipment. (Testimony of Richard Reynolds; Testimony of Dale Smith.) Although Gerald Storer estimated that the condition of the property allowed only a few acres to be gravity irrigated, between 20 and 30 acres were gravity irrigated in 1990. (Testimony of Gerald Storer, Testimony of Dale Smith.) The ditch could hold 25 inches of water. (Testimony of Gerald Storer.) The irrigation on the property was terminated in 1990 when Alder Creek water was diverted to Doug Rosenkrance's property. (Testimony of Richard Reynolds.)

Senior water agent Carter Fritschle investigated the water rights in August of 1990 on behalf of IDWR. At the time of the field investigation, ditches were in bad shape in some places, and the property was barely indented where ditches had previously been located. Some hand lines were bent and looked as if they had been out of use for some time. Fritschle looked for signs of water use such as erosion or erosion patterns. Fritschle saw no such erosion patterns during his 1990 investigation. (Testimony of Carter Fritschle.)

In 1991 and 1992, Shane Rosenkrance leased the property, but did not irrigate the land. During those years, Alder Creek water was used on Shane's land because he had an Alder Creek right with a later priority date. (Testimony of Shane Rosenkrance.) In 1992, the SRBA district court entered its *Memorandum Decision and Order Granting Idaho Department of Water Resources' Motion for Interim Administration* (Dec. 18, 1992) (*Order on Interim Administration*).

The property was sold by the United States through an advertisement and bid process. The property was advertised without water rights in 1995. (Exhibit 4; Exhibit 2.) Shane Rosenkrance made an unsuccessful bid on the property. During the process, Rosenkrance proposed to irrigate the property. The McCrays purchased the property in 1995. FmHA transferred the property with a quitclaim deed. (Testimony of Bardell Faux; Exhibit 18.)

Although water was evident on the property in 1995, the land was not irrigated. The 1995 growing season had some naturally occurring floods which watered the property producing approximately 200 tons of hay. (Testimony of Charles Huggins; Testimony of Matea McCray.)

B. ABANDONMENT

Abandonment of a water right is a common law concept. Both nonuse and actual relinquishment with intent to abandon must be shown. *Gilbert v. Smith*, 97 Idaho 735, 552 P.2d 1220 (1976). The party seeking to show abandonment has the burden of proving all elements by clear and convincing evidence. *Id.* Intent to abandon a water right must be shown by clear, unequivocal and decisive acts. *Sears v. Berrymore*, 101 Idaho 843, 623 P.2d 455 (1981).

1. Advertisement of Property Not Abandonment

Rosenkrance and Lambert argue that both rights 34-00600 and 34-00606 were abandoned in their entirety when the United States advertised the property for sale without water rights. That argument is unpersuasive. The advertising for sale of the property by the United States indicating the land was to be sold without water rights does not, in this case, rise to the level of clear and convincing evidence, nor does it show intent to abandon by clear, unequivocal, and decisive acts. The advertisement of the property put potential bidders on notice that the water rights appurtenant to the property were in serious jeopardy. The advertisement also notified potential bidders that water rights were not guaranteed. However, the advertisement was not an unequivocal act of abandonment, especially since the United States had an active Objection to the *Director's Report*.

2. Filling Ditches, Drilling Wells, and Long-Time Nonuse Resulted in Abandonment of Water Right on Eastern Portion

A second issue of abandonment was raised at trial as to the surface water rights on the eastern portion of the property. In 1976, Gerald Storer filled in the ditches on the eastern portion, drilled a well, and purchased a sprinkler system for the eastern half of the property. From that time on, he irrigated the eastern portion only from the groundwater well and ceased using the surface water rights on that part of the property. A groundwater right was claimed in the SRBA for the property, but at the time of trial a partial decree had already issued concluding

the groundwater right was forfeited or abandoned.³ The court is persuaded by "clear and convincing" evidence that the surface water rights were abandoned on the eastern portion of the property.

C. FORFEITURE

Statutory forfeiture is based on the legislative declaration in I.C. § 42-222(2) that water rights may be lost if they are not applied to a beneficial use for five continuous years. *Jenkins v. State, Dept. of Water Resources*, 103 Idaho 384, 647 P.2d 1256 (1982). Forfeiture is disfavored under Idaho law, and the Idaho Supreme Court has consistently held that forfeiture must be proven by "clear and convincing" evidence. *Id.* at 389.

The court is persuaded by "clear and convincing" evidence that water rights 34-00600 and 34-00606 have been partially forfeited except for 25 acres which were irrigated in 1990. (Exhibit 12.) The property to which these rights were appurtenant was irrigated in 1985. The court finds the property was not irrigated in 1986, 1987, 1988, and 1989. The court finds the property was not irrigated in 1990 except for 25 acres.

The court is persuaded by "clear and convincing" evidence that these water rights were partially forfeited except for the use on 25 acres.⁴ IDWR conducted a thorough investigation during the 1990 irrigation season. Senior water agent Carter Fritschle observed ditches in bad shape and hand lines bent and disconnected from the rest of the sprinkler system. Fritschle saw no signs of water usage in recent years despite looking for signs of water use such as erosion patterns. Several residents in the area observed the place of use during the five-year period from 1986 through 1990 and observed no signs of irrigation.

McCray argues that Shane Rosenkrance used these water rights in 1991 and 1992. Any use by Rosenkrance was beyond the statutory period of forfeiture and could, at most, provide evidence of resumption. However, Rosenkrance testified that he rented the property in 1991 and 1992 but did not use the appurtenant water rights. In 1991 and 1992, he used his own rights to Alder Creek water on his property and not water rights 34-00600 and 34-00606. The court is

³ Water right 34-07135.

⁴ The court held above that the surface water rights were abandoned on the eastern portion of the property. However, even if these rights were not "abandoned" on the eastern portion of the property, the court finds these rights were forfeited except for 25 acres on the western portion of the property in Section 13.

persuaded that Rosenkrance used his own Alder Creek water rights in 1991 and 1992 and not water rights 34-00600 and 34-00606.

McCray argues that there was no partial forfeiture of these water rights on the land in the eastern portion of the property. McCray's theory is that the drilling of the well on the eastern portion of the property was merely a change in point of diversion. McCray cites *Joyce v. Rubin*, 23 Idaho 296, 306, 130 P. 793, 797 (1913) for the proposition that a change in point of diversion is not a forfeiture.

[U]nder the law [there is] a right to change [the] point of diversion so long as it did not injure any other water user. Under the provisions of sec. 3247, Rev. Codes, a person entitled to the use of water may change the point of diversion if others are not injured by such change, and if a change is made without proper application to the state engineer, as claimed in this case, that would not forfeit the right to the use of such water.

Id. at 306-307. The filling in of ditches, drilling of a well, and placing a sprinkler irrigation system on the eastern portion of the property was not merely a change in point of diversion. McCray's predecessor changed the source from Alder Creek to groundwater. The court finds clear and convincing evidence that the rights from Alder Creek were partially forfeited or abandoned on the eastern portion of the property. Even if the change from Alder Creek to groundwater was a change in point of diversion, partial forfeiture occurred. There is clear and convincing evidence that no irrigation of any kind took place on the eastern portion of the property for a period of more than five years. A claim was filed in the SRBA for a groundwater right. A partial decree disallowing that right was entered by the court prior to this trial.⁵

D. RESUMPTION

There are certain defenses to forfeiture which have been recognized by the Idaho Supreme Court, including resumption. *Jenkins v. State, Dept. of Water Resources*, 103 Idaho 384, 389 647 P.2d 1256 (1982). Resumption is an affirmative defense to a claim of forfeiture, and therefore, the asserting party has the burden of proving resumption.

McCray asserted use of these rights was resumed in 1991 and 1992 by Shane Rosenkrance. Rosenkrance rented the property in 1991 and 1992, but did not use the appurtenant water rights.

⁵

Water right 34-07135.

The court concludes that Rosenkrance used his own Alder Creek rights in 1991 and 1992 and did not use water rights 34-00600 and 34-00606.

In this case, the court does not reach the issue of injury since the court finds insufficient evidence of resumption. The use of water in 1990 was not a resumption, since it occurred prior to the end of the five-year period of alleged nonuse. The court was not persuaded by the evidence that any use occurred after 1990 which revives these water rights beyond the 25 acres. Although much of the property was wet in 1995, and 200 tons of hay were grown that year, there was no diversion and irrigation. The land produced hay because of natural precipitation and flood water.

F. UNCHANGED ELEMENTS

The *Director's Report* recommended the irrigation portion of these rights as forfeited or abandoned and reported no elements for the irrigation purpose of use for these rights. The *Director's Report* recommended these water rights with a stock water purpose of use. There were no objections to the recommendation for stock water for these rights.

G. CHANGED ELEMENTS

This Special Master recommends these water rights with the following elements:

Water Right 34-00600

NAME & ADDRESS: MATEA McCRAY PARTNERS
1097 DICKSON
IDAHO FALLS, ID 83402

SOURCE: ALDER CREEK **TRIBUTARY:** BIG LOST RIVER

QUANTITY: 0.52 CFS

THE IRRIGATION USE OF THIS RIGHT WHEN USED IN COMBINATION
WITH RIGHT 34-00606 IS LIMITED TO A COMBINED DIVERSION RATE
OF .50 CFS.

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

PRIORITY DATE: 09/30/1882

POINT OF DIVERSION:

IRRIGATION T06N R24E S14 SWSE Within CUSTER COUNTY

STOCKWATER T06N R24E S13 SWSENW (INSTREAM BEGINNING POINT)
R25E S07 LOT 03 (NWNWSW) (INSTREAM ENDING POINT)

**PURPOSE AND
PERIOD OF USE:**

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	Irrigation Season	0.50 CFS
STOCKWATER	Irrigation Season	<u>0.02 CFS</u>
	Total Quantity	0.52 CFS

PLACE OF USE:

IRRIGATION Within CUSTER COUNTY
T06N R24E S13 NWNE 9 SWNE 9 SENE 7
(25.0 ACRES)

STOCKWATER Within CUSTER COUNTY
T06N R24E S12 SESE
S13 NWNE SWNE SENW
R25E S07 Lot 03 (NWSW)

THE IRRIGATION USE OF THIS RIGHT WHEN USED IN COMBINATION WITH RIGHT 34-00606 IS LIMITED TO A TOTAL OF 25 ACRES WITH THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

Water Right 34-00606

NAME & ADDRESS: MATEA McCRAY PARTNERS
1097 DICKSON
IDAHO FALLS, ID 83402

SOURCE: ALDER CREEK **TRIBUTARY:** BIG LOST RIVER

QUANTITY: 0.52 CFS

THE IRRIGATION USE OF THIS RIGHT WHEN USED IN COMBINATION WITH RIGHT 34-00600 IS LIMITED TO A COMBINED DIVERSION RATE OF .50 CFS.

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

PRIORITY DATE: 09/30/1882

POINT OF DIVERSION:

IRRIGATION T06N R24E S14 SWSE Within CUSTER COUNTY

STOCKWATER T06N R24E S13 SWSNW (INSTREAM BEGINNING POINT)
R25E S07 Lot 03 (NWNWSW) (INSTREAM ENDING POINT)

**PURPOSE AND
PERIOD OF USE:**

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	Irrigation Season	0.50 CFS
STOCKWATER	Irrigation Season	<u>0.02 CFS</u>
	Total Quantity	0.52 CFS

PLACE OF USE:

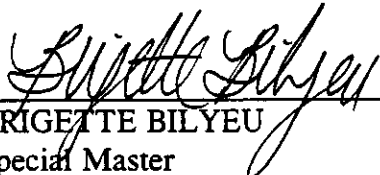
IRRIGATION
T06N R24E S13 NWNE 9 SWNE 9 SENE 7
(25.0 ACRES)

STOCKWATER
T06N R24E S12 SESE
S13 NWNE SWNE SENW
R25E S07 Lot 03 (NWSW)

THE IRRIGATION USE OF THIS RIGHT WHEN USED IN COMBINATION WITH RIGHT 34-00600 IS LIMITED TO A TOTAL OF 25 ACRES WITH THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

Therefore, based on the file and record herein, IT IS RECOMMENDED that water rights 34-00600 and 34-00606 be decreed as set forth in the attached *Partial Decrees Pursuant to I.R.C.P. 54(b)*.

DATED:



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	)	PARTIAL DECREE PURSUANT TO
	)	I.R.C.P. 54(b) FOR
Case No. 39576	)	Water Right 34-00606
	)	

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100-388610-10, 10190

NAME & ADDRESS: MATEA MC CRAY PARTNERS
1097 DICKSON
IDAHO FALLS ID 83402

SOURCE: ALDER CREEK TRIBUTARY: BIG LOST RIVER

QUANTITY: 0.52 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE SHALL NOT EXCEED 13,000 GALLONS PER DAY.
THE IRRIGATION USE OF THIS RIGHT WHEN USED IN COMBINATION WITH RIGHT 34-00400 IS LIMITED TO A COMBINED DIVERSION RATE OF 0.50 CFS.

PRIORITY DATE: 09/30/1882

POINT OF DIVERSION: T06N R24E S13 SWSE Within CUSTER County
SWSNW (INSTREAM BEGINNING POINT)
R25E S07 LOT 3 (NWNWSW) (INSTREAM ENDING POINT)

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	IRRIGATION	Irrigation Season	0.5 CFS
	STOCKWATER	Irrigation Season	0.02 CFS

PLACE OF USE:	IRRIGATION	Within CUSTER County		
	TOWN R24E S13	NWNE 9	SWNE 9	SENE 7
	25 ACRES TOTAL			

THE IRRIGATION USE OF THIS RIGHT WHEN USED IN COMBINATION WITH RIGHT 34-00600 IS LIMITED TO A TOTAL OF 25 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

STOCKWATER Within CUSTER County
T06N R24E S12 SESE
 S13 NWNE SWNE SENW
R25E S07 Lot 3 (NWSW)

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

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

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.

DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 34-00606

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RECOMMENDATION

FEB 27 1998

SPECIAL MASTER

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SR8A)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
) Water Right 34-00600

1998 FEB 27 AM 10:03

NAME & ADDRESS: MATEA MC CRAY PARTNERS
1097 DICKSON
IDAHO FALLS ID 83402

SOURCE: ALDER CREEK TRIBUTARY: BIG LOST RIVER

QUANTITY: 0.52 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE
SHALL NOT EXCEED 13,000 GALLONS PER DAY.
THE IRRIGATION USE OF THIS RIGHT WHEN USED IN COMBINATION
WITH RIGHT 34-00600 IS LIMITED TO A COMBINED DIVERSION RATE OF
0.50 CFS.

PRIORITY DATE: 09/30/1982

POINT OF DIVERSION: T06N R24E S14 SWSE Within CUSTER County
S13 SWSEHW (INSTREAM BEGINNING POINT)
R25E S07 LOT 3 (NW1/4SW) (INSTREAM ENDING POINT)

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION		Irrigation Season	0.5 CFS
STOCKWATER		Irrigation Season	0.02 CFS

PLACE OF USE: IRRIGATION Within CUSTER County
T06N R24E S13 NWNE 9 SWNE 9 SENE 7
25 ACRES TOTAL

THE IRRIGATION USE OF THIS RIGHT WHEN USED IN COMBINATION
WITH RIGHT 34-00600 IS LIMITED TO A TOTAL OF 25 ACRES WITHIN THE
PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

STOCKWATER Within CUSTER County
T06N R24E S12 SESE
S13 NWNE SWNE SENE
R25E S07 Lot 3 (NW1/4SW)

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

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

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.

DANIEL G. MURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 34-00600

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RECOMMENDATION

FEB 27 1998

SPECIAL MASTER

1998 FEB 27 AM 10:03

SRBA
TWIN FALLS, 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)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

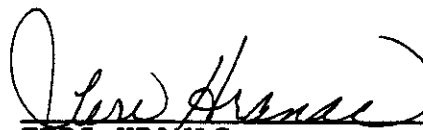
Water Right(s): 34-00600
34-00606

On February 27, 1998, Special Master BRIGETTE BILYEU 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 February 27, 1998.


TERI HRANAC
Deputy Clerk

1998 FEB 27 AM 12:07

FILED
FEB 27 1998
TWIN FALLS, 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): 34-00600
34-00606

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 February 27, 1998, with sufficient first-class postage prepaid to the following:

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

STATE OF IDAHO
Represented by:
CLIVE STRONG
OFFICE OF ATTORNEY GENERAL
STATE OF IDAHO
PO BOX 44449
BOISE, ID 83711-4449
Phone: 208-334-2400

CERTIFICATE OF MAILING

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