

OCT 09 1998

1998 OCT -7 AM 9:37

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
Case No. 39576	)	
	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW
	)	
	)	FOR WATER RIGHT 34-10585

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 the notices of claim. The *Director's Report for Reporting Area 34 (Director's Report)* contained a recommendation for the elements of this water right.

A Motion to File an Amended Notice of Claim filed by claimants Wiley and Carolyn Smith was granted. An *Amended Director's Report* for this water right was filed on August 20, 1998. No objections were filed to the *Amended Director's Report*, and the time for filing such Objections has expired.

The record on file for this subcase includes the *Amended Director's Report* to which there was no objection. The *Director's Report* has *prima facie* weight. The *Amended Director's Report* recommended a modified season of use to comply with recent court decisions. IDWR originally modified season of use to "the irrigation season" to comply with Judge Hurlbutt's ruling on season of use. *Memorandum Decision and Order Re: Basin-Wide Issue 5* (Apr. 26, 1996) at 13-16. The latest *Amended Director's Report* recommended specific dates to comply with the Idaho Supreme Court's decision in *A & B Irrigation v. Idaho Conservation*, ___ Idaho ___, 958 P.2d 568 (1997) (Holding that season of use for irrigation rights should include specific dates). Judge Hurlbutt recently interpreted the Supreme Court decision on season of use, indicating it requires

a season of use which can be fairly and consistently administered. Judge Hurlbutt noted that where older decreed rights are recommended with a significantly shorter irrigation season than newer licensed rights, that might not comply with the Supreme Court holding. Judge Hurlbutt stated that regardless of whether a right is licensed, decreed, or permitted, the irrigation season should be fair and consistent.

The irrigation season recommended for this right appears to comply with the Supreme Court ruling.⁶ Before this right is decreed, however, the SRBA District Court should note that this water right was recommended before IDWR had finalized recommendations for the irrigation season throughout Basin 34.

Therefore, IT IS RECOMMENDED that this water right be decreed with the elements as set forth in the *Partial Decree Pursuant to I.R.C.P. 54(b) for Water Right 34-10585*. IT IS FURTHER RECOMMENDED that the District Court review this right for consistency with the remaining recommendations on season of use in Basin 34 once those are made.

DATED: OCT - 7 1998



BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

⁶ The season of use recommended here is:

IRRIGATION: 04-01 TO 11-15.

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 34-10585

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

NAME AND ADDRESS: CAROLYN SMITH
WILEY F. SMITH
STAR ROUTE
MACKAY, ID 83251

SOURCE: ROCK CREEK TRIBUTARY: SINKS

QUANTITY: 3.20 CFS

PRIORITY DATE: 05/01/1951

POINT OF DIVERSION: T10N R22E S34 SWSE Within Custer County

PURPOSE AND PERIOD OF USE: PURPOSE OF USE PERIOD OF USE QUANTITY
Irrigation 04-01 TO 11-15 3.20 CFS

PLACE OF USE:	Irrigation		Within Custer County
	T09N R22E S05	SWNW 26.0	NESW 17.0
		NWSW 39.0	SWSW 32.0
		SESW 30.0	
	S06	SESW 32.0	SWSE 23.0
		SESE 12.0	
	S07	NENE 9.0	NWNE 21.0
		SWNE 24.0	SENE 34.0
		NENW 27.0	NESE 39.0
		NWSE 15.0	SWSE 3.0
		SESE 28.0	
	S08	NENW 16.0	NWNW 31.0
		SWNW 27.0	NWSW 26.0
		SWSW 8.0	
	519.0 Acres Total		

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO
THE IRRIGATION OF A COMBINED TOTAL OF 519 ACRES IN A SINGLE
IRRIGATION SEASON. COMBINED RIGHTS: 34-00834, 34-00835,
34-00836, 34-00839, 34-02303, AND 34-04039.

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

RIGHTS DIVERTED FROM ROCK CREEK HAVE HISTORICALLY BEEN
ADMINISTERED INDEPENDENTLY FROM THE BIG LOST RIVER AND ITS
OTHER TRIBUTARIES.

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.

RECOMMENDATION

OCT - 7 1998

SPECIAL MASTER

Daniel C. Hurlbutt, JR.
Presiding Judge
Snake River Basin Adjudication

SRBA PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 34-10585

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): 34-00834
34-00835 34-00836 34-00839
34-02303 34-04039 34-10585

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 October 07, 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
NATURAL RESOURCES
DEP AG OFFICE OF ATTY GEN
STATEHOUSE MAIL
BOISE, ID 83720-0010
Phone: 208-334-2400

CERTIFICATE OF MAILING

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10/07/98