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DEPARTMENT OF
WATER RESOURCES

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

2004 JUL 30 PM 2 44

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 NO.: 33-2091
_____	)	

I. FINDINGS OF FACT

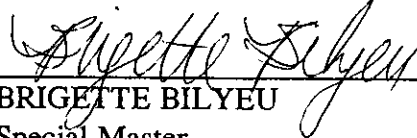
A notice of claim was filed for this water right pursuant to I.C. § 42-1409. The Director of the State of Idaho Department of Water Resources examined the water system for this reporting area. The *Director's Report* contained a recommendation for the elements of this water right.

Objections were filed by The United States Bureau of Land Management and Sagewillow Inc. *Responses* were filed by Mays Land & Livestock and Blaine County Canal Company. A *Notice of Completed Administrative Proceeding* was filed on July 12, 2004. The NCAP resolved the objections and responses previously filed. There are no unresolved objections or responses remaining in this subcase.

II. CONCLUSIONS OF LAW

Based on the file and record herein, IT IS RECOMMENDED that this water right be decreed with the elements set forth in the attached *Special Master's Recommendation for Partial Decree*.

DATED: July 30, 2004.



BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
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SOURCE: GROUND WATER

QUANTITY: 0.99 CFS
255.50 AFY

PRIORITY DATE: 01/22/1960

PURPOSE AND			
PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 10-15	0.99 CFS
			255.50 AFY

SRBA PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 33-02091 File Number: 00071

PLACE OF USE (continued)

R28E S05 LOT 3	(NENW)27.0	LOT 4	(NWNW)33.0
	SNNW 17.0		SENN 31.0
	NESW 38.0		SESW 30.0
	SWSE 12.0		
S06 LOT 2	(NWNE)31.0		SWNE 32.0
	SENE 26.0	LOT 3	(NENW)31.0
LOT 4	(NWNW)31.0	LOT 5	(SNNW)32.0
	SENN 32.0		NESW 37.0
LOT 6	(NWSW)34.0	LOT 7	(SWSW)31.0
	SESW 35.0		NWSE 36.0
	SWSE 34.0		
S07	NENE 40.0		NWNE 40.0
	SWNE 34.0		SENE 32.0
	NENW 40.0	LOT 1	(NWNW)39.0
LOT 2	(SNNW)24.0		SENN 35.0
S08	NWNE 19.0		SWNE 25.0
	NWNW 31.0		SNNW 32.0
	NWSE 32.0		SWSE 21.0
T08N R28E S31	NESW 18.0	LOT 3	(NWSW)24.0
LOT 4	(SWSW)34.0		SESW 25.0
S32	SWSW 39.0		SESW 18.0
1816.0 Acres Total			

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 1816 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED RIGHT NOS.: 33-2057, 33-2083, 33-2086, 33-2091 AND 33-7018.

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 2089.8 ACRES IN A SINGLE IRRIGATION SEASON. THE 2089.8 ACRES ARE COMPRISED OF 1816 ACRES IRRIGATED BY GROUND WATER AND 648.8 ACRES IRRIGATED BY SURFACE WATER SOURCES THAT OVERLAP 375 OF THE GROUND WATER ACRES. COMBINED RIGHT NOS.: 33-69, 33-70, 33-71, 33-72, 33-73, 33-74, 33-76, 33-78, 33-79, 33-80, 33-81, 33-82, 33-2057, 33-2083, 33-2086, 33-2091 AND 33-7018.

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 3019.8 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED RIGHT NOS.: 33-69, 33-70, 33-71, 33-72, 33-73, 33-74, 33-76, 33-78, 33-79, 33-80, 33-81, 33-82, 33-2057, 33-2083, 33-2086, 33-2091, 33-2133 AND 33-7018.

RIGHTS 33-69, 33-70, 33-71, 33-72, 33-73, 33-74, 33-76, 33-78, 33-79, 33-80, 33-81 AND 33-82 OVERLAP 268 ACRES WITHIN THE 1483 ACRES AUTHORIZED UNDER RIGHTS 33-2057 AND 33-2083; AND OVERLAP 382 ACRES WITHIN THE 1436.1 ACRE PLACE OF USE DESCRIBED UNDER RIGHT 33-2133.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 73.0 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

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

CONTINUED DIVERSION OF WATER UNDER THE RESUMED PORTIONS OF RIGHTS 33-2057 AND 33-2083 (301 ACRES), AND RIGHT 33-2091 (73 ACRES) ARE DEEMED MITIGATED BY, AND THEREFORE ARE EXPRESSLY CONTINGENT UPON CONTINUED DIVERSION OF WINTER WATER USE UNDER RIGHT 33-2133 TO THE EXTENT WATER IS AVAILABLE FOR DIVERSION UNDER THAT WATER RIGHT.

THE RIGHT HOLDER SHALL MAKE FULL BENEFICIAL USE OF ALL SURFACE WATER RIGHTS AVAILABLE TO THE RIGHT HOLDER FOR IRRIGATION OF THE LANDS AUTHORIZED TO BE IRRIGATED UNDER THIS RIGHT. THE RIGHT HOLDER SHALL LIMIT THE DIVERSION OF GROUND WATER UNDER THIS RIGHT TO THOSE TIMES WHEN THE SURFACE WATER SUPPLY IS NOT AVAILABLE OR THE SURFACE WATER SUPPLY IS NOT REASONABLY SUFFICIENT TO IRRIGATE THE PLACE OF USE AUTHORIZED UNDER THIS RIGHT.

THE REMAINDER OF THIS RIGHT, IN THE AMOUNT OF 3.37 CFS AND 247.0 ACRES, WAS FORFEITED FOR NON-USE FROM 1969 TO 1989.

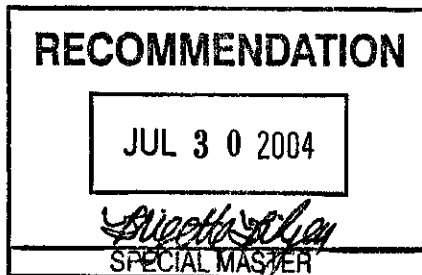
OTHER PROVISIONS (continued)

PRIOR TO DIVERSION OF WATER UNDER TRANSFER NOS. 4221 THRU 4227, THE RIGHT HOLDER SHALL PROVIDE A MEANS OF MEASUREMENT AND LOCKABLE CONTROLLING WORKS FOR THE AUTHORIZED POINT OF INJECTION INTO LITTLE LOST RIVER AND AT THE POINTS OF REDIVERSION FROM LITTLE LOST RIVER AND BIG SPRING CREEK. THE MEANS OF MEASUREMENT AND CONTROLLING WORKS MUST BE SUITABLE FOR CONTROL OF THE DIVERSIONS AND ACCEPTABLE TO THE WATERMASTER.

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

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

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

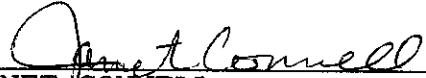
Water Right(s): 33-02091

On July 30, 2004, 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 July 30, 2004.



JANET CONNELL
Deputy Clerk

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TWIN FALLS CO., IDAHO
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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)

CERTIFICATE OF MAILING

Case No. 39576)

Water Right(s): 33-02091

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 July 30, 2004, with sufficient first-class postage prepaid to the following:

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

SAGEWILLOW INC
SAGEWILLOW INC C/O KENT FOSTER
Represented by:
KENT W FOSTER
PO BOX 50130
IDAHO FALLS, ID 83405
Phone: 208-523-0620

BLAINE COUNTY CANAL COMPANY
MAYS LAND AND LIVESTOCK INC
Represented by:
MICHAEL C. CREAMER
PO BOX 2720
BOISE, ID 83701-2720
Phone: 208-388-1200

CERTIFICATE OF MAILING


JANET CONNELL
Deputy Clerk

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07/30/04