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Department of Water Resources

DISTRICT COURT-SRBA
TWIN FALLS CO., 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	)	AMENDED SPECIAL MASTER'S
	)	REPORT AND RECOMMENDATION;
Case No. 39576	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW
	)	
	)	FOR WATER RIGHT 33-07095

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. This claim was based only on state law, and asserted a priority date of October 9, 1962.

An Objection was filed by Pickett Ranch & Sheep Co., Scott Bedke, Karl Bedke, Bruce Bedke, Jared Bedke, Joe Tugaw, Gary Poulton, Michael Poulton, Flying Triangle Inc., Willis D. & Betty DeVeney, Luther Gardner, Jerry Hoagland, Joyce Livestock Company, Western Stockgrowers Association, Eugene Mathews, Shoulders 3 Ranches, Inc. and A L Cattle Inc. (hereafter "Objectors") on April 3, 2000. An *Objection* was filed by the United States Bureau of Land Management on April 7, 2000. No responsive pleadings were filed to these *Objections*. The United States Bureau of Land Management filed a *Motion to Dismiss Objection* on November 8, 2001. The Motion was granted on November 15, 2001. The "Objectors" filed a *Notice of Withdrawal of Objections* on February 25, 2002. There are no unresolved objections remaining in this subcase.

II. CONCLUSIONS OF LAW

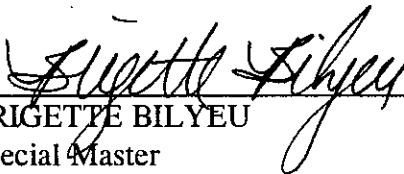
Under *SRBA Administrative Order 1*, a Special Master is required to make a recommendation to the Presiding Judge as to whether and how a water right should be decreed.

The record on file for this water right includes the *Director's Report* to which there are no remaining objections.

The United States claimed this right under state law. There is no assertion that this right is based on a federal reservation. The United States claimed the priority date as October 9, 1962. That priority claim was investigated by IDWR and recommended in the *Director's Report*. 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 priority date, 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).

Based on the file and record herein, IT IS RECOMMENDED that this water right be decreed with the elements set forth in the attached *Amended Special Master's Recommendation for Partial Decree*.¹

DATED: June 19, 2002.



BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

¹ This *Amended Special Master's Recommendation for Partial Decree* corrects a clerical error contained in the place of use incorrectly identifying T08N R27E S01 SWNW for Stockwater. The correct place of use is T08N R27E S01 SWNE.

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 33-07095

2002 JUN 20 AM 9:04
DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED *[Signature]*

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

SOURCE: FOWLER SPRING TRIBUTARY: BIG SPRING CREEK

QUANTITY: 0.03 CFS
0.90 AFY

PRIORITY DATE: 03/31/1981

POINT OF DIVERSION: T09N R28E S32 NESESE Within Butte County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Wildlife	05-01 TO 11-15	0.01 CFS
			0.90 AFY
	Stockwater	05-01 TO 11-15	0.02 CFS
			0.90 AFY

PLACE OF USE:	Stockwater		Within Butte County
	T08N R27E S01	SWNE	SENE
	R28E S06	SWNE	SWSE
	S18	NWNW	
	Wildlife		Within Butte County
	T08N R27E S01	SWNE	SENE
	R28E S06	SWNE	SWSE
	S18	NWNW	

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

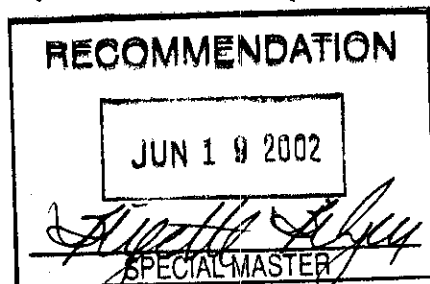
THE QUANTITY OF WATER DECREE FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

THIS RIGHT IS SUBJECT TO REGULATION BY THE WATERMASTER OF
WATER DISTRICT 33.

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.



Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

2002 JUN 20 AM 9:17

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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

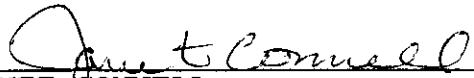
Water Right(s): 33-07095

On June 20, 2002, 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 June 20, 2002.


JANET CONNELL
Deputy Clerk

2002 JUN 20 AM 9:17

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED *cf*

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): 33-07095

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 June 20, 2002, with sufficient first-class postage prepaid to the following:

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

USDI BLM

Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724
Phone: 208-387-0835



JANET CONNELL
Deputy Clerk

CERTIFICATE OF MAILING

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