

2002 MAY -3 PM 4:36

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	)	SPECIAL MASTER'S REPORT AND
	)	RECOMMENDATION; FINDINGS OF
Case No. 39576	)	FACT AND CONCLUSIONS OF LAW
	)	
	)	
	)	
	)	FOR WATER RIGHT 31-02363

I. FINDINGS OF FACT

A notice of claim was filed for this water right by the United States, USDI Fish and Wildlife Service. The Director of the State of Idaho Department of Water Resources examined the water system for this reporting area. This claim was based only on state law, and asserted a priority date of April 1, 1916. The *Director's Report* contained a recommendation for the elements of this water right.

An *Objection* was filed by the United States Fish and Wildlife Service on February 26, 2001. The *Objection* was resolved on March 19, 2002 with the filing of a *Standard Form 5*. All parties to the subcase and IDWR are signatories to the *Standard Form*. There are no unresolved objections remaining.

II. CONCLUSIONS OF LAW

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 April 1, 1916. 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). The *Director's Report* conclusion on priority was not challenged.

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: May 3, 2002.



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
Case No. 39576

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

Water Right 31-02363

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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
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NAME AND ADDRESS: UNITED STATES OF AMERICA ACTIN
USDI FISH AND WILDLIFE SERVICE
DIVISION OF ENGINEERING
911 N E 11TH AVE
PORTLAND, OR 97232-4181

SOURCE: GROUND WATER

QUANTITY: 39.00 CFS
7287.00 AFY

USE OF THIS RIGHT WITH RIGHT NO. 31-11232 IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 43.3 CFS.

PRIORITY DATE: 05/13/1957

POINT OF DIVERSION: T07N R36E S06 SENWSE Within Jefferson County
S08 SNNWNW
T08N R36E S32 SESENW

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
Wildlife		04-01 TO 10-31	39.00 CFS
			7287.00 AFY

PLACE OF USE:	Wildlife	Within Jefferson County
	T07N R35E S01 SWSE	LOT 07 (SESE)
	S12 LOT 01 (NENE)	NWNE
	LOT 02 (SENE)	
	S13 LOT 01 (NENE)	
	S24 LOT 01 (NENE)	LOT 04 (SESE)
	S25 LOT 02 (SENE)	LOT 03 (NESE)
	R36E S05 LOT 04 (NWNW)	SNNW
	SESW	
	S06 LOT 01 (NENE)	LOT 02 (NWNE)
	SWNE	SENE
	NESW	LOT 06 (NWSW)
	LOT 07 (SWSW)	SESW
	NESE	NWSE
	SWSE	SESE
	S07 NENE	NWNE
	SWNE	SENE
	NENW	LOT 01 (NWNW)
	LOT 02 (SNNW)	SENNW
	NESW	LOT 03 (NWSW)
	LOT 04 (SWSW)	SESW
	NESE	NWSE
	SWSE	SESE
	S08 NENE	NWNE
	SWNE	SENE
	NENW	NWNW
	SNNW	SENNW
	NESW	NWSW
	SWSW	SESW
	NESE	NWSE
	SWSE	SESE
	S09 NWNW	SNNW
	NWSW	SWSW

SRBA Partial Decree Pursuant to I.R.C.P. 54(b) (continued)

PLACE OF USE (continued)

	SESW	
S16	NWNW	SWNW
	NESW	NWSW
	SWSW	SESW
	NWSE	SWSE
S17	NENE	NWNE
	SWNE	SENE
	NENW	NWNW
	SWNW	SENW
	NESW	NWSW
	SWSW	SESW
	NESE	NWSE
	SWSE	SESE
S18	NENE	NWNE
	SWNE	SENE
	NENW	LOT 01 (NWNW)
LOT 02 (SWNW)		SENW
	NESW	LOT 03 (NWSW)
LOT 04 (SWSW)		SESW
	NESE	NWSE
	SWSE	SESE
S19	NENE	NWNE
	SWNE	SENE
	NENW	LOT 01 (NWNW)
LOT 02 (SWNW)		SENW
	NESW	LOT 03 (NWSW)
LOT 04 (SWSW)		SESW
	NESE	NWSE
	SWSE	SESE
S20	NENE	NWNE
	SWNE	SENE
	NENW	NWNW
	SWNW	SENW
	NESW	NWSW
	SWSW	SESW
	NWSE	
S21	NENW	NWNW
	SWNW	SENW
S29	NENW	NWNW
	SWNW	SENW
	NWSW	
S30	NENE	NWNE
	SWNE	SENE
	NENW	LOT 01 (NWNW)
LOT 02 (SWNW)		SENW
	NESW	LOT 03 (NWSW)
LOT 04 (SWSW)		SESW
	NESE	NWSE
	SWSE	SESE
T08N R36E S12	SWNW	SENW
	NESW	NWSW
	SWSW	SESW

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO 5231 ACRES WITHIN THE BOUNDARY OF THE CAMAS NATIONAL WILDLIFE REFUGE. COMBINED RIGHT NOS.: 31-00269, 31-00270, 31-00271, 31-00272, 31-00273, 31-00274, 31-00275, 31-00276, 31-00277, 31-00278, 31-00279, 31-00280, 31-00281, 31-00282, 31-00283, 31-00284, 31-02251, 31-02350, 31-02362, 31-02363, 31-07301, 31-11230, 31-11231 AND 31-11232.

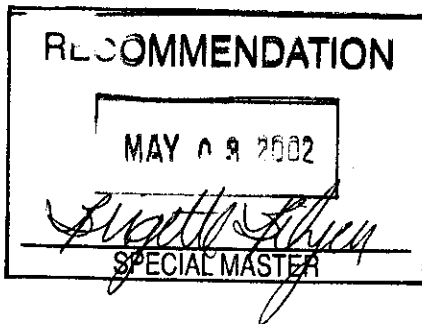
THIS RIGHT IS LIMITED TO 2082 ACRES WITHIN THE BOUNDARY OF THE PLACE OF USE DESCRIBED ABOVE.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF 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.



Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

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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

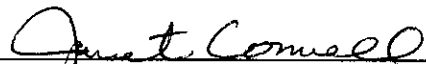
Water Right(s): 31-02363

On May 03, 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 May 03, 2002.



JANET CONNELL
Deputy Clerk

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
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CERTIFICATE OF MAILING

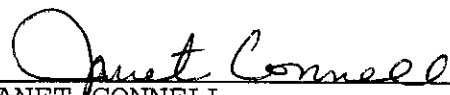
Water Right(s): 31-02363

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 May 03, 2002, with sufficient first-class postage prepaid to the following:

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

UNITED STATES OF AMERICA
UNITED STATES OF AMERICA ACTIN
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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