

2002 MAY -3 PM 4: 33

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED. 9

**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 33-10925

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 January 1, 1879.

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. No responsive pleading was filed to this objection. The "Objectors" filed a *Notice of Withdrawal of Objections* on February 25, 2002. There are no unresolved objections remaining in this subcase.

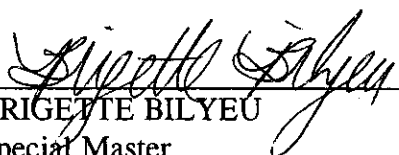
II. CONCLUSIONS OF LAW

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 January 1, 1879. 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 *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 33-10925

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

SOURCE: SPRING TRIBUTARY: SINKS

QUANTITY: 0.01 CFS

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

PRIORITY DATE: 01/01/1879

POINT OF DIVERSION: T11N R24E S11 NESENE Within Custer County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Stockwater	01-01 TO 12-31	0.01 CFS

PLACE OF USE: Stockwater Within Custer County
T11N R24E S11 SENE

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

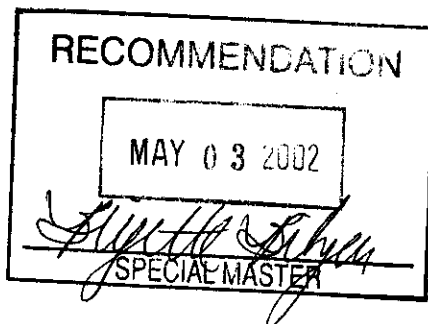
THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

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

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): 33-10925

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

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

In Re SRBA)
)
Case No. 39576)
)

Water Right(s) : 33-10925

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:

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