

2002 NOV 14 PM 3: 27
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	)	
	)	
Case No. 39576	)	SPECIAL MASTER'S REPORT AND
	)	RECOMMENDATION; FINDINGS OF
	)	FACT AND CONCLUSIONS OF LAW
	)	
	)	FOR WATER RIGHT 37-13547

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. This claim was based only on state law, and asserted a priority date of June 1, 1887. The *Director's Report* contained a recommendation for the elements of this water right.

An *Objection* was filed by the USDA Forest Service and Pickett Ranch & Sheep Co., Joe Tugaw, Jared Bedke, Bruce Bedke, Joyce Livestock Company, Jerry Hoagland, Scott Bedke, Karl Bedke, Michael Poulton, Gary Poulton and Western Stockgrowers Association (hereafter "Second Objectors") on September 10, 1999. A *Stipulation and Joint Motion for Order Approving Stipulation* was filed on August 29, 2002. The "Second Objectors" filed a *Notice of Withdrawal of Objections* on August 29, 2002. The USDA Forest Service filed a *Notice of Withdrawal of Objection* on October 30, 2002. There are no unresolved objections remaining in this subcase.

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 June 1, 1887. 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. The facts contained in the *Director's Report* are presumed to be correct until a party rebuts that presumption. *State v. Hagerman Water Right Owners*, 130 Idaho 736, 746 (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: November 14, 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

2002 NOV 14 PM 3:27

In Re SRBA)
PARTIAL DECREE PURSUANT TO
Case No. 39576)
I.R.C.P. 54(b) FOR
Water Right 37-13547

FILED
TWIN FALLS, IDAHO

NAME AND ADDRESS: USDA FOREST SERVICE
550 W FORT ST, MSC 033
BOISE, ID 83724

SOURCE: LITTLE WOOD RIVER TRIBUTARY: MALAD RIVER

QUANTITY: 0.02 CFS

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

PRIORITY DATE: 06/01/1887

POINT OF DIVERSION: T04N R20E S12 NWSW (Instream Ending Point) Within Blaine County
T05N R21E S19 SWNE (Instream Beginning Point)

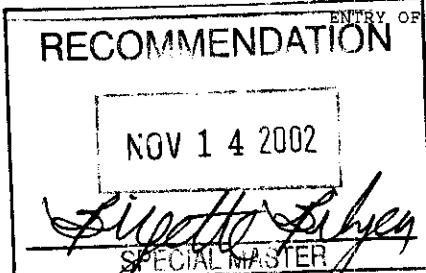
PURPOSE AND
PERIOD OF USE: PURPOSE OF USE PERIOD OF USE QUANTITY
Stockwater 06-01 TO 09-30 0.02 CFS

PLACE OF USE: Stockwater Within Blaine County
T04N R20E S01 SWNE SENE
NESE SWSE
SESE
S11 SENE
S12 NWNE SWNE
NENW SWNW
SENW NESW
NWSW
T05N R20E S24 SESE
S25 NENE SENE
NESE SESE
S36 NENE NWNE
SENE NENW
NWNW SWNW
NESE SESE
R21E S19 SWNE NESW
SWSW SESW
NWSE
S30 NWNW
S31 SWNW NWSW

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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FILED
TWIN FALLS CO., IDAHO
11-15-02

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): 37-13547

On November 14, 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 November 14, 2002.



JANET CONNELL
Deputy Clerk

2002 NOV 14 PM 3:28

FILED
TWIN FALLS CO. IDAHO
Jc

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)
_____)

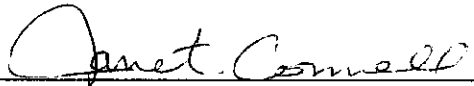
Water Right(s): 37-13547

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 November 14, 2002, with sufficient first-class postage prepaid to the following:

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

USDA FOREST SERVICE
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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