

2004 SEP 23 PM 3 14

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.: 29-07402

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.

An *Objection* was filed by the United States Bureau of Land Management on November 13, 2003. An *Objection* was filed by Wayne and Patricia Avery on December 2, 2003. A *Standard Form 5/Amended Claim* was filed on April 19, 2004.

The USDA Forest Service filed an *Objection* to the *Standard Form 5/Amended Claim* on May 28, 2004, stating that the point of diversion was on Forest Service land. A hearing was held on September 8, 2004. At the hearing, the USDA Forest Service stated that Wayne and Patricia Avery had applied for a conditional use permit and that would resolve its *Objection*. A *Notice by the United States of Withdrawal of Objections* was filed on September 13, 2004. There are no unresolved objections remaining.

II. CONCLUSIONS OF LAW

Therefore, 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: September 23, 2004.



BRIGETTE BILYEU, Special Master
Snake River Basin Adjudication

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

2004 SEP 23 PM 3 14

In Re SRBA)
Case No. 39576)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 29-07402

NAME AND ADDRESS: PATRICIA AVERY
WAYNE AVERY
8888 SUNNYSIDE RD
LAVA HOT SPRINGS, ID 83246

SOURCE: SPRINGS TRIBUTARY: SINKS
UNNAMED STREAM TRIBUTARY: SINKS

QUANTITY: 0.03 CFS
1.40 AFY

USE OF THIS RIGHT WITH RIGHT NO. 29-2261 FOR DOMESTIC
PURPOSES IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 0.03
CFS AND TO A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 1.2 AF.

PRIORITY DATE: 05/24/1977

POINT OF DIVERSION: T09S R38E S08 SWNWSW Within Bannock County
S18 NENENE

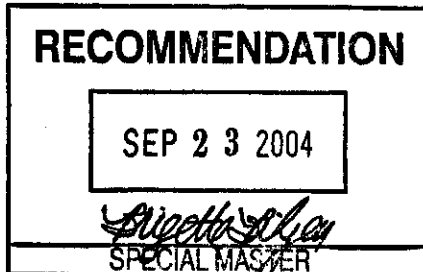
PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Stockwater	01-01 TO 12-31	0.02 CFS
			0.02 AFY
	Domestic	01-01 TO 12-31	0.03 CFS
			1.20 AFY

DOMESTIC USE OF THIS RIGHT AND RIGHT NO. 29-2261 IS LIMITED
TO 2 HOMES.

PLACE OF USE:	Stockwater		Within Bannock County
	T09S R38E S17	NESW	
	Domestic		Within Bannock County
	T09S R38E S17	NESW	

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.

John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

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

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In Re SRBA)
Case No. 39576)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

Water Right(s): 29-07402

On September 23, 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 September 23, 2004.



JANET CONNELL
Deputy Clerk

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

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STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)

Case No. 39576)
_____)

CERTIFICATE OF MAILING

Water Right(s): 29-07402

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 September 23, 2004, with sufficient first-class postage prepaid to the following:

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

PATRICIA AVERY
WAYNE & PATRICIA AVERY
WAYNE AVERY
8888 SUNNYSIDE RD
LAVA HOT SPRINGS, ID 83246
Phone: 208-776-5628


JANET CONNELL
Deputy Clerk

CERTIFICATE OF MAILING

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