

SRBA
 TWIN FALLS, 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

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OCT - 8 2002

Department of Water Resources

**SPECIAL MASTER'S REPORT AND
RECOMMENDATION; FINDINGS OF
FACT AND CONCLUSIONS OF LAW**

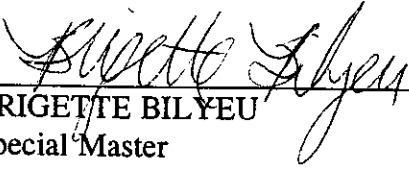
FOR WATER RIGHT 31-11440**I. FINDINGS OF FACT**

A notice of claim was filed by Larry Singleton for this water right. 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 David, James and Margaret Hagenbarth on September 7, 2001. The *Objection* was resolved on September 27, 2002 with the filing of a *Standard Form 5*. All parties to the subcase and IDWR are signatories to the *Standard Form*. The *Standard Form 5* refers to a *Water Rights Settlement and Subordination Agreement* between Claimant and Objectors that was filed in Clark County. The *Water Rights Settlement and Subordination Agreement* further defines the priority date for this water right, and is therefore referred to in the *Special Master's Recommendation for Partial Decree*. The *Water Right Settlement and Subordination Agreement* is attached hereto as Exhibit A.

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. Therefore, based on the file and record herein, IT IS RECOMMENDED that this water right be decreed with the elements set forth in the *Special Master's Recommendation for Partial Decree* attached hereto as Exhibit B.

DATED: October 4, 2002

 BRIGETTE BILYEU

Special Master

Snake River Basin Adjudication

When Recorded Return to:
John M. Marshall
Givens Purley LLP
277 N. 6th Street, Suite 200
P.O. Box 2720
Boise, ID 83701-2720

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WATER RIGHTS SETTLEMENT AND SUBORDINATION AGREEMENT

THIS WATER RIGHTS SETTLEMENT AND SUBORDINATION AGREEMENT ("Agreement") is entered into effective the ____ day of _____, 2002 by and between James P. Hagenbarth, David J. Hagenbarth, and Margaret Hagenbarth ("Hagenbarth") and Larry D. Singleton and Robina Singleton ("Singleton").

RECITALS

a. Hagenbarth either claims or holds water right nos. 31-2274, 31-2275, 31-10245, and 31-10740 (collectively the "Hagenbarth Rights") in the Snake River Basin Adjudication ("SRBA"). The Hagenbarth Rights are stockwater and irrigation water rights from Dry Creek in Clark County, Idaho, for irrigation and stockwater use at the place of use owned by Hagenbarth described in Exhibit A hereto.

b. Singleton has claimed water right 31-11440 in the SRBA for stockwater use from Dry Creek in Clark County, Idaho, on a place of use owned by Singleton and described in Exhibit B hereto.

c. Hagenbarth filed an objection in the SRBA to the Idaho Department of Water Resources recommendation for water right 31-11440. Hagenbarth and Singleton have entered into this Agreement to settle the objection and allow a decree in the SRBA for water right 31-11440 on conditions stated herein.

NOW THEREFORE, in consideration of the above recitals and the warranties, covenants, agreements, terms and conditions set forth below, Hagenbarth and Singleton agree as follows:

1. The parties each represent and warrant to the other that they have the respective legal power, right and authority to enter into this Agreement and to perform the obligations hereunder.

WATER RIGHTS SETTLEMENT AND SUBORDINATION AGREEMENT - 1

C:\dof\577\Water - wright\2002-09-09 Subordination Agreement WRAT.doc

EXHIBIT
A

2. The right to divert water under water right 31-11440 shall be, and is hereby, subordinated to the Hagenbarth Rights, however they may be decreed by the court in the SRBA. Additional details of subordination are as follows:

- a. the priority for the water right 31-11440 may not be asserted or relied upon, and shall be ineffective, against the priority of any of the Hagenbarth Rights for any purpose, including the purpose of effecting a delivery call or curtailment or other administration to deliver water to supply any diversion under water right 31-11440; and
- b. no delivery call to serve any diversion under right 31-11440 shall be made, honored, or enforced if it would cause or require, either directly or indirectly, curtailment of, or mitigation from, any of the Hagenbarth Water Rights;
- c. this subordination also shall apply to any use to which any such subordinated portion of the water right 31-11440 may be transferred or changed.
- d. this subordination shall be effective at all times that Dry Creek water ceases to flow beyond a point where Dry Creek's course currently passes under the road in the S½SE of Section 3, Township 12 North, Range 39 East, said road being commonly known as the "A2" County Road and shown on the map attached hereto as Exhibit C.
- e. this subordination does not limit Singleton's ability or right to divert water pursuant to water right 31-11440, with its associated priority date, if water is available at the point of diversion for this right regardless of the effect such diversion has on the Hagenbarth Rights.

3. The recitals, terms, conditions and covenants contained herein shall run with the land described in Exhibit A and Exhibit B hereto, and shall run with the Hagenbarth Rights and water right 31-11440 and shall be binding upon any person claiming, having or acquiring any right, title or interest in the Hagenbarth Rights, water right 31-11440, the land described in Exhibit A and Exhibit B attached hereto, or in any lot, parcel, portion or subdivision thereof, and upon their successors and assigns.

4. The partial decree for water right 31-11440 shall include a remark in the section entitled "Other Provisions Necessary for Definition or Administration of this Water Right" as follows:

This water right is subject to the terms and conditions of a subordination agreement recorded on _____ as Instrument No. _____ in the records of Clark County, Idaho.

5. In consideration of this Agreement and the covenants, conditions and terms set forth herein, Hagenbarth agrees to withdraw their objection in the SRBA to the recommendation for water right 31-11440.

6. This Agreement is binding upon and enforceable by the parties hereto and their respective successors and assigns.

7. Neither party's failure to assert, or to seek enforcement of, any of the covenants, terms or conditions of this Agreement shall constitute a waiver by such party of the breach or default of any such covenant, term or condition unless otherwise expressly agreed to by such non-asserting party in writing.

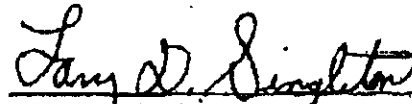
8. If either party commences litigation for the enforcement, interpretation or rescission of this Agreement, the prevailing party shall be entitled to its reasonable attorney fees and costs.

IN WITNESS WHEREOF, this Agreement has been executed by the parties, in the State of Idaho, as of the effective date set forth above.

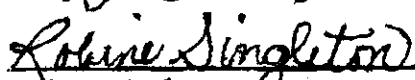
HAGENBARTH

SINGLETON

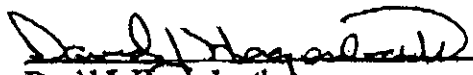

James F. Hagenbarth


Larry D. Singleton


David J. Hagenbarth


Robine Singleton


James F. Hagenbarth
Co-Personal Representative for the Estate
of Margaret Hagenbarth


David J. Hagenbarth
Co-Personal Representative for the Estate
of Margaret Hagenbarth

State of Montana)
) ss.
County of)

On this 16th day of September in the year of 2002, before me, a Notary Public in and for said State, personally appeared James F. Hagenbarth, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

Patricia L. Rawland
Notary Public for Montana
Residing at Dillon, Montana
My Commission expires 11/1/04

On this 16th day of September, in the year of 2002, before me, a Notary Public in and for said State, personally appeared David J. Hagenbarth, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

Patricia L. Rawland
Notary Public for Montana
Residing at Dillon, Montana
My Commission expires 11/1/04

On this 16th day of September, in the year of 2002, before me, a Notary Public in and for said State, personally appeared James F. Hagenbarth and David J. Hagenbarth as personal representatives of the Estate of Margaret Hagenbarth, known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Patricia L. Rawland
Notary Public for Montana
Residing at Dillon, Montana
My Commission expires 11/1/04

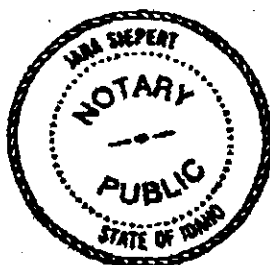
09/18/2002 03:24 4856836

DONEY LAW FIRM

PAGE 05

State of Idaho)
County of Madison) ss.

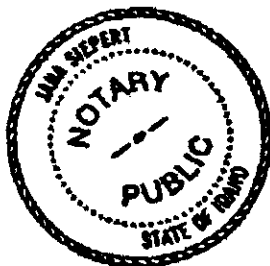
On this 10 day of September, in the year of 2002, before me, a Notary Public in and for said State, personally appeared Larry D. Singleton, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.



Dana Siepert
Notary Public for Idaho
Residing at Rexburg, ID
My Commission expires 3-15-2007

State of Idaho)
County of Madison) ss.

On this 10 day of September, in the year of 2002, before me, a Notary Public in and for said State, personally appeared Robine Singleton, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.



Dana Siepert
Notary Public for Idaho
Residing at Rexburg, ID
My Commission expires 3-15-2007

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

2002 OCT -4 PM 4:45

In Re SRBA

Case No. 39576

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

Water Right 31-11440

FILED
CLARK COUNTY, IDAHO

NAME AND ADDRESS: LARRY D SINGLETON
266 N 2400 E
ST ANTHONY, ID 83445

SOURCE: DRY CREEK TRIBUTARY: CAMAS CREEK

QUANTITY: 0.09 CFS

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

PRIORITY DATE: 06/21/1902

POINT OF DIVERSION: T13N R39E S26 NENENE (Rediversion) Within Clark County
R40E S19 SWSWSW (Injection)
SWSSEW

PURPOSE AND
PERIOD OF USE: PURPOSE OF USE PERIOD OF USE QUANTITY
Stockwater 05-01 TO 10-31 0.09 CFS

PLACE OF USE: Stockwater Within Clark County
T13N R39E S26 NWNE SWNE
SENE NENW

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

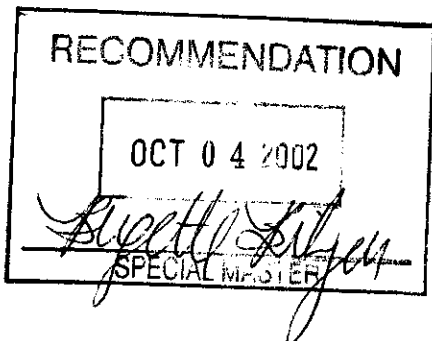
THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

THIS WATER RIGHT IS SUBJECT TO THE TERMS AND CONDITIONS OF A
SUBORDINATION AGREEMENT RECORDED ON SEPTEMBER 24, 2002, AS
INSTRUMENT NO. 049868 IN THE RECORDS OF CLARK COUNTY, IDAHO.

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

EXHIBIT
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SRBA
TWIN FALLS CO., IDAHO
CLERK

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): 31-11440

On October 04, 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 October 04, 2002.


JANET CONNELL
Deputy Clerk

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TWIN FALLS CO., IDAHO
MT-SRBA

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): 31-11440

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 October 04, 2002, with sufficient first-class postage prepaid to the following:

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

MARGARET HAGENBARTH
Represented by:
BLOOMQUIST, JOHN E.
DONEY, CROWLEY, BLOOMQUIST
108 S WASHINGTON
PO BOX 1418
DILLON, MT 59725
Phone: 406-683-8795

MARGARET HAGENBARTH
Represented by:
MICHAEL C. CREAMER
PO BOX 2720
BOISE, ID 83701-2720
Phone: 208-388-1200

CERTIFICATE OF MAILING

PAGE 1
10/04/02

LARRY D SINGLETON

Represented by:

RAY W. RIGBY

PO BOX 250

REXBURG, ID 83440-0250

Phone: 208-356-3633


JANEY CONNELL
Deputy Clerk