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Department of Water Resources

2002 SEP -3 AM 9: 25

DISTRICT COURT-SEDA
TWIN FALLS, IDAHO

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

Subcase 43-04236

(C Bar Cattle Company)

2nd SPECIAL MASTER REPORT

Findings of Fact

On July 1, 1985, John A. Pierce filed a *Claim to a Water Right* claiming .0155 cfs (?) from Mortenson Spring for livestock use from April 1 to December 1 with a priority date of July 15, 1967, based on beneficial use. On March 2, 1998, the Director of IDWR filed his *Director's Report, Domestic & Stock, Reporting Area 7 (IDWR Basin 43)* recommending the claim be disallowed: "Recommended as right no. 43-07276."¹

Former-Presiding Judge Barry Wood entered a *Partial Decree of Disallowed Water Rights* on July 21, 1998, disallowing claim 43-04236. Purchaser C Bar Cattle Company filed an *Objection* on November 10, 1998, objecting to multiple elements and stating the claim needs to be split between the C Bar Cattle and the United States (BLM and Forest Service). The *Motion* was deemed to be a motion to set aside a partial decree and referred to Special Master Terrence A. Dolan.

On November 3, 2000, C Bar Cattle filed a *Motion to File Amended Notice of Claim* so that "IDWR will be better able to recommend the claim and the Special Master will be better able to recommend whether the pending motion to set aside the *Partial Decree* should be granted." *Order Setting Deadlines*, dated April 12, 1999. In its *Amended Claim*, C Bar Cattle seeks .16 cfs from Mortenson Spring for year 'round stockwater use with a priority date of April 15, 1967. During a hearing on February 15, 2001, counsel for C Bar Cattle advised that he will further amend its claim to include additional places of use (troughs) inadvertently omitted from the *Amended Claim*.

¹ On June 26, 2000, a *Partial Decree* was entered in subcase 43-07276 adjudicating to the United States of America, Department of Agriculture, Forest Service, .02 cfs from Mortenson Spring for stockwater from March 1 to December 29 with a priority date of September 25, 1986.

On March 12, 2001, the Special Master entered a *Special Master Report and Recommendation* recommending the *Partial Decree* be set aside. On May 7, 2001, Presiding Judge Roger Burdick entered an *Order Setting Aside Partial Decree and Remanding Subcase to Special Master*. The Special Master entered an *Order Granting Motion to File Amended Notice of Claim* on November 7, 2001, and IDWR filed its *Amended Director's Report, Subcase No. 43-4236* on January 17, 2002. The Director now recommended claim 43-04236 to C Bar Cattle Company, P. O. Box 2256, Malta, Idaho 83342, for .16 cfs from Mortenson Spring for year-round stockwater use in Cassia County with a priority date of April 15, 1967.

The United States of America, Department of Agriculture, Forest Service filed an *Objection* on February 5, 2002, objecting to quantity. On August 7, 2002, C Bar Cattle Company, the United States and IDWR filed an *Amended Claim Standard Form 5* agreeing to .04 cfs and the addition of a remark: "This is the same source as 43-07276. During times of insufficient water to satisfy both claims, each is entitled to one-half ($\frac{1}{2}$) the flow of the spring."

Conclusions of Law

C Bar Cattle Company is entitled to a partial decree adjudicating a water right under claim 43-04236 as described in the *Amended Claim Standard Form 5* and the attached *Special Master Recommendation for Partial Decree for Water Right 43-04236*.

DATED September 3, 2002.



TERRENCE A. DOLAN
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 43-04236

2002 SEP -3 AM 9:25
DISTRICT COURT-SRBA
TWIN FALLS, IDAHO
FILED

NAME AND ADDRESS: C BAR CATTLE COMPANY
PO BOX 2256
MALTA, ID 83342

SOURCE: MORTENSON SPRING TRIBUTARY: MEADOW CREEK

QUANTITY: 0.04 CFS

PRIORITY DATE: 07/15/1967

POINT OF DIVERSION: T14S R28E S24 SESWN Within Cassia County

PURPOSE AND

PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Stockwater	01-01 TO 12-31	0.04 CFS

PLACE OF USE:	Stockwater		Within Cassia County
	T14S R29E S08	NENW	NESW
		SESW	
	S17	SENE	
	S18	NWNE	SENW
	S20	SWNW	SESE

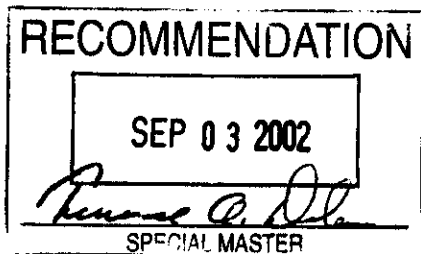
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.
THIS IS THE SAME SOURCE AS 43-07276. DURING TIMES OF INSUFFICIENT
WATER TO SATISFY BOTH CLAIMS, EACH IS ENTITLED TO ONE-HALF (1/2)
THE FLOW OF THE SPRING.

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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TWIN FALLS, IDAHO

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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NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

Water Right(s): 43-04236

On September 03, 2002, Special Master TERRENCE A. DOLAN 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 03, 2002.


LETTIE MESSICK
Deputy Clerk

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TWIN FALLS, 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

Case No. 39576

CERTIFICATE OF MAILING

Water Right(s): 43-04236

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

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

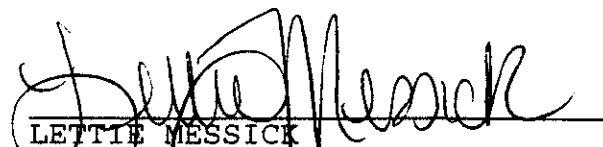
UNITES STATES OF AMERICA
Represented by:
DAVID NEGRI
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATURAL RESOURCE
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

C BAR CATTLE COMPANY
Represented by:
ROGER D LING
PO BOX 396
RUPERT, ID 83350
Phone: 208-436-4717

CERTIFICATE OF MAILING

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09/03/02

C BAR CATTLE COMPANY
PO BOX 2256
MALTA, ID 83342



LETTIE MESSICK
Deputy Clerk