

2004 OCT 29 PM 2 39

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 NOS.: 74-12432 AND |
|                | ) | 74-14831                       |
|                | ) | (FORMER PWR 107)               |

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**I. PROCEDURAL BACKGROUND**

Claims were filed by the United States Bureau of Land Management for the above listed water rights. The United States originally claimed these rights under both state law and as a federal reservation. The state-based portion of each right was investigated by the Idaho Department of Water Resources ("IDWR") and reported in a *Director's Report*. IDWR did not investigate the federal reservation theory because those are based on federal law. I.C. § 42-1411A.

*Objections* were filed by the State of Idaho on February 23, 1999. The State of Idaho filed a *Status Report on State's Objections in Basin 74 and 75* in which it withdrew its *Objections* on December 16, 2003. An evidentiary hearing was held on January 28, 2004. The United States Bureau of Land Management withdrew the federal basis for these claims and opted to pursue these rights solely under the state basis. The United States Bureau of Land Management submitted an *Affidavit of Alan R. Bittner*. (74-11014 *et.al.*)(August 29, 2003)(hereafter *Bittner*)

**II. STANDARD OF REVIEW**

The United States claimed these rights under both federal and state law. The United States elected to go forward with these rights under the state basis. The state-law claims were

investigated by IDWR and recommended in *Director's Reports*. 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 an element of a water right, 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).

### III. FINDINGS OF FACT ON ELEMENTS

#### A. Ownership of the Water Right

These water rights were claimed by the United States Bureau of Land Management. IDWR investigated the ownership element of these rights. The *Director's Report* concluded that the owner of these water rights is the United States B.L.M. There are no objections to ownership. Therefore, the United States is the owner of these rights.

#### B. Priority Date

These water rights were claimed by the United States with early priority dates for the state basis. IDWR investigated, and the *Director's Report* concluded that the priority date for these rights was 1/01/1876 for 74-12432 and 8/16/1908 for 74-14831. However, the *Affidavit of Alan R. Bittner* shows that the predecessor owners of these rights received U.S. patents on later dates. A United States Stock Raising Homestead Entry Patent was issued for 74-12432 on 10/20/1930. A United States Homestead Entry Patent was issued for 74-14831 on 1/07/1918. The United States subsequently acquired these water rights. Thus, the conclusion contained in the *Director's Report* for the earlier priorities was rebutted by the *Affidavit of Alan R. Bittner*. Therefore, the priority dates for these rights are 10/20/1930 for 74-12432 and 1/07/1918 for 74-14831.

#### C. Source

The claims assert various sources for these water rights. IDWR investigated the source element for each right. The *Director's Report* concluded that the sources for these rights were as claimed. No objections were filed to the source element. Therefore, the sources for these rights are those recommended in the *Director's Report*.

#### D. Quantity

The quantity claimed for these water rights is 13,000 gallons or less per day. The *Director's Report* for these rights recommended a flow rate of .02 cfs with a volume limitation of

13,000 gallons per day. Therefore, the quantity recommended in the *Director's Report* is confirmed.

#### **E. Point of Diversion**

Each claim asserted a point of diversion that was expressed with a legal description. In addition, IDWR investigated the point of diversion element for each right under the state basis and submitted a *Director's Report*. The *Director's Report* for these rights concluded that the points of diversion were as claimed. Therefore, the points of diversion recommended in the *Director's Reports* are confirmed.

#### **F. Purpose of Use**

The claimed purpose of use for each of these rights is "stockwater." The United States asserted that there is sufficient water at these sites for consumptive use by livestock. *Bittner* at 4, ¶ 7. In addition, IDWR investigated these rights and concluded that purpose of use is "stockwater." Therefore, the purpose of use is "stockwater."

#### **G. Period of Use**

The claimed period of use for each of these stockwater rights is January first to December 31st of each year. IDWR investigated the period of use element and submitted a *Director's Report* that concluded that period of use was year round. The period of use for each water right is year round.

#### **H. Place of Use**

Each claim asserted a place of use that was described by a legal description. In addition, IDWR investigated these rights under the state basis. The *Director's Report* for these rights concluded that the places of use were as claimed. Therefore, the place of use for each water right recommended in the *Director's Reports* is confirmed.

### **IV. CONCLUSION**

Therefore, based on the files for these subcases and the record contained therein, IT IS RECOMMENDED that these water rights be decreed with the elements set forth in the attached *Special Master's Recommendations for Partial Decree*.

DATED: October 29, 2004

  
BRIGETTE BILYEU  
Special Master  
Snake River Basin Adjudication

DISTRICT COURT-SRBA  
TWIN FALLS CO., IDAHO  
FILED \_\_\_\_\_

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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 )  
\_\_\_\_\_ )

NOTICE OF ISSUANCE OF  
SPECIAL MASTER'S  
RECOMMENDATION

Water Right(s): 74-12432  
74-14831

On October 29, 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 October 29, 2004.

  
JANET CONNELL  
Deputy Clerk

DISTRICT COURT-SRBA  
TWIN FALLS CO., IDAHO  
FILED \_\_\_\_\_

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
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In Re SRBA )

Case No. 39576 )  
\_\_\_\_\_ )

CERTIFICATE OF MAILING

Water Right(s): 74-12432  
74-14831

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 29, 2004, with sufficient first-class postage prepaid to the following:

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

USDI BLM

Represented by:  
US DEPARTMENT OF JUSTICE  
ENVIRONMENT & NATL' RESOURCES  
550 WEST FORT STREET, MSC 033  
BOISE, ID 83724

  
JANET CONNELL  
Deputy Clerk

CERTIFICATE OF MAILING

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10/29/04

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

DISTRICT COURT - SRBA  
TWIN FALLS CO., IDAHO  
FILED \_\_\_\_\_

In Re SRBA )  
 )  
Case No. 39576 )  
\_\_\_\_\_ )

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

Water Right 74-12432

2004 OCT 29 PM 2 39

NAME AND ADDRESS: USDI BLM  
IDAHO STATE OFFICE  
1387 S VINNELL WAY  
BOISE, ID 83709-1657

SOURCE: SPRING TRIBUTARY: FLUME CREEK

QUANTITY: 0.02 CFS

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

PRIORITY DATE: 10/20/1930

POINT OF DIVERSION: T19N R25E S09 SENESW Within Lemhi County

| PURPOSE AND<br>PERIOD OF USE: | PURPOSE OF USE | PERIOD OF USE  | QUANTITY |
|-------------------------------|----------------|----------------|----------|
|                               | Stockwater     | 01-01 TO 12-31 | 0.02 CFS |

PLACE OF USE: Stockwater Within Lemhi County  
T19N R25E S09 NESW

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.

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

