

DEPARTMENT OF
WATER RESOURCES

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

2005 MAY 20 PM 4 09

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 ON MOTION
TO SET ASIDE PARTIAL DECREE**

WATER RIGHT: 23-10165

I. PROCEDURAL BACKGROUND

The SRBA District Court issued a *Final Order Disallowing Water Right Claims* for water right 23-10165 on October 25, 2004. A *Motion for Relief from Partial Decree* was filed by William T. Holden on January 14, 2005. Presiding Judge John Melanson issued an *Order of Reference Appointing Special Master Brigitte Bilyeu* on January 14, 2005. A hearing on the *Motion for Relief from Partial Decree* was held on March 2, 2005.

II. FINDINGS OF FACT

At the hearing, counsel for Mr. Holden explained that the claimant failed to timely object to the *Director's Report* disallowing this water claim because of family difficulties in resolving the estate of Mr. Holden's father who previously owned the water right. In addition, the *Affidavit of William T. Holden* states that this claim relates to a pond system constructed in 1947. The ponds have been used since 1947. There was no opposition to the *Motion for Relief from Partial Decree*. A *Motion for Late Objection* was filed on January 14, 2005. The *Motion for Late Objection* was granted. *Order on Motion to File Late Objection and Setting Subcase Deadlines* (March 4, 2005) The late *Objection* was filed by Mr. Holden. No responses were

filed. IDWR and the claimant concurred on the elements of this right with a *Standard Form 5* filed on April 1, 2005.

III. CONCLUSIONS AND RECOMMENDATIONS

Therefore, based on the file and record herein, IT IS RECOMMENDED that the *Motion for Relief from Partial Decree* be **granted**, and that this water right be **decreed** with the elements set forth in the attached *Special Master's Recommendation for Amended Partial Decree*. The recommended elements are consistent with the *Standard Form 5* signed by the claimants and IDWR.

Dated: May 20, 2005.


BRIGETTE BILYEU,
Special Master
Snake River Basin Adjudication

1ST DISTRICT COURT - SRBA
FALLS
TWIN FALLS CO., IDAHO
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RECOMMENDATION

MAY 20 2005

Deborah L. Lay
SPECIAL MASTER

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WATER RESOURCES

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) SUBCASE: 23-10165

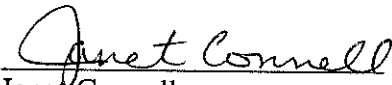
) NOTICE OF ISSUANCE OF
) SPECIAL MASTER'S
) RECOMMENDATION

On May 20, 2005, Special Master BRIGETTE BILYEU issued a *SPECIAL MASTER'S REPORT AND RECOMMENDATION ON MOTION TO SET ASIDE PARTIAL DECREE* 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 Report and Recommendation on Motion to Set Aside partial Decree* shall constitute a waiver of the right to challenge it before the Presiding Judge.

DATED May 20, 2005.


Janet Connell
Deputy Clerk

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MAY 23 2005
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SUBCASE: 23-10165

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT AND RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on May 20, 2005, with sufficient first-class postage prepaid to the following:

William T Holden

Represented by:

Kent W Foster

PO Box 50130

Idaho Falls, Idaho 83405

Director of IDWR

P O Box 83720

Boise, Idaho 83720-0098


JANET CONNELL
Deputy Clerk