

2005 SEP 1 PM 3 42

**WATER RIGHT: 37-10273**

## PAGE 1

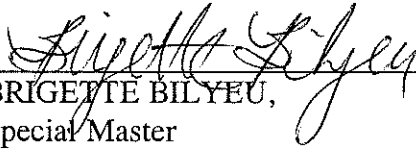
example, the federal version of this rule, F.R.P. 60(a) has allowed a court to resolve an ambiguity in its original order to more clearly reflect contemporaneous intent and ensure that the court's purpose is fully implemented. 12 Moore § 60.11[1][c], *See Burton v. Johnson*, 975 F.2d 690, 694 (10<sup>th</sup> Cir. 1992)

Here, the intent of the *Partial Decree* was to accurately describe the location of place of use and point of diversion. The intent of the SRBA District Court is to correctly identify this right in Blaine County. Therefore, it is appropriate that the SRBA District Court set aside the *Partial Decree* and enter an *Amended Partial Decree* correctly identifying the right in Blaine County.

### III. CONCLUSIONS AND RECOMMENDATIONS

Therefore, based on the file and record herein, IT IS RECOMMENDED that the *Motion to Set Aside 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*.

Dated: September 1, 2005.

  
BRIGETTE BILYEU,  
Special Master  
Snake River Basin Adjudication

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

In Re SRBA )  
Case No. 39576 )

PARTIAL DECREE PURSUANT TO  
I.R.C.P. 54(b) FOR  
Water Right 37-10273

2005 SEP 1 PM 3 42

NAME AND ADDRESS: JANE WARE  
STEPHEN WARE  
PO BOX 4621  
KETCHUM, ID 83340

SOURCE: GROUNDWATER

QUANTITY: 0.04 CFS

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

PRIORITY DATE: 06/01/1942

POINT OF DIVERSION: T01S R20E S20 NWNWNE Within Blaine County

| PURPOSE AND<br>PERIOD OF USE: | PURPOSE OF USE  | PERIOD OF USE  | QUANTITY |
|-------------------------------|-----------------|----------------|----------|
|                               | Domestic 1 HOME | 01-01 TO 12-31 | 0.04 CFS |

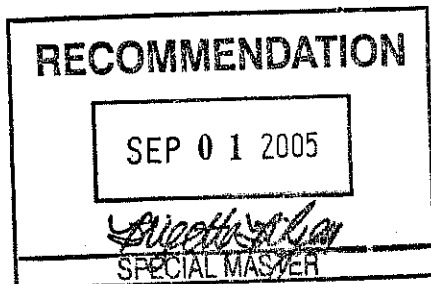
PLACE OF USE: Domestic Within Blaine County  
T01S R20E S20 NWNE

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

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

2005 SEP 1 PM 3 42

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

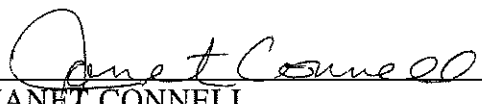
|                |   |                            |
|----------------|---|----------------------------|
| In Re SRBA     | ) | NOTICE OF ISSUANCE OF      |
|                | ) | SPECIAL MASTER'S           |
| Case No. 39576 | ) | RECOMMENDATION             |
|                | ) |                            |
| _____          | ) | Water Right (s) : 37-10273 |

On September 1, 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 28<sup>th</sup> 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 1, 2005.

  
\_\_\_\_\_  
JANET CONNELL  
Deputy Clerk

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

2005 SEP 1 PM 3 42

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

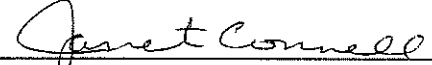
|                |   |                            |
|----------------|---|----------------------------|
| In Re SRBA     | ) | CERTIFICATE OF MAILING     |
|                | ) |                            |
| Case No. 39576 | ) |                            |
| _____          | ) | Water Right (s) : 37-10273 |

### CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT AND RECOMMENDATION ON MOTION TO SET ASIDE PARTIAL DECREE was mailed on September 1, 2005, with sufficient first-class postage prepaid to the following:

Director of IDWR  
PO Box 83720  
Boise, Idaho 83720-0098

Stephen and Jane Ware  
Represented by:  
James P. Speck  
Speck & Aanestad  
120 East Avenue  
PO Box 987  
Ketchum, Idaho 83340

  
\_\_\_\_\_  
Deputy Clerk