

2005 OCT 7 AM 11 54

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; FINDINGS OF
FACT AND CONCLUSIONS OF LAW**

FOR WATER RIGHT: 29-13407

I. FINDINGS OF FACT

A notice of claim was filed for this water right pursuant to I.C. § 42-1409. 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 Marsh Valley Development Inc. on November 13, 2003. A Mandatory Settlement Conference was held on November 10, 2004. Claimants Brett & Nathan Casperson failed to attend the Mandatory Settlement Conference. A *Portneuf River Settlement Agreement Basin 29: Portneuf River* (hereafter *Portneuf River Agreement*) was filed on April 22, 2005. Claimants Brett & Nathan Casperson did not sign the Agreement. A *Motion to Enforce Settlement Agreement* was filed by Marsh Valley Development Inc., Portneuf Marsh Valley Canal Co., McCammon Ditch Co., Portneuf Irrigating Co., and Lava Irrigation Co. on April 25, 2005. A hearing was held on May 18, 2005. The court granted the *Motion to Enforce Settlement. Order on Motion to Enforce Settlement.* (May 26, 2005). A *Motion to Reconsider* was heard on June 22, 2005. The court denied the *Motion to Reconsider. Order on Motion to Reconsider.* (July 12,

2005) Mr. Casperson filed a *Motion for Permissive Review* on July 26, 2005. A hearing was held on September 7, 2005. The court denied the *Motion. Order on Motion for Permissive Review*. (September 15, 2005)

This *Special Master's Report and Recommendation* recommends this water right with the elements and administrative provisions set forth in the *Portneuf River Agreement* (April 22, 2005) for the reasons explained in the *Order on Motion to Enforce Settlement* and *Order on Motion to Reconsider*.

II. CONCLUSIONS OF LAW

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

DATED: October 7, 2005.



BRIGETTE BILYEU
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

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

2005 OCT 7 AM 11 54

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 29-13407

NAME AND ADDRESS: BRETT CASPERSON
NANCY CASPERSON
8893 E MAUGHAN RD
LAVA HOT SPRINGS, ID 83246

SOURCE: DEMPSEY CREEK TRIBUTARY: PORTNEUF RIVER

QUANTITY: 1.20 CFS

PRIORITY DATE: 08/07/1932

POINT OF DIVERSION: T09S R38E S33 SENWNW Within Bannock County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	1.20 CFS
	Stockwater	04-01 TO 10-31	0.04 CFS

PLACE OF USE: Irrigation Within Bannock County
T09S R38E S30
NWNE 2.7 SWNE 37.0
SENE 33.0 NESE 33.0
NWSE 39.0 SWSE 18.0
SESE 17.0
179.7 Acres Total

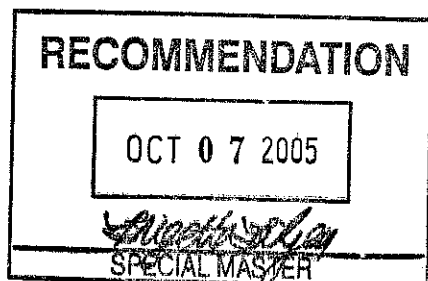
Stockwater Within Bannock County
T09S R38E S30
SWNE
NESE
SWSE

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO
THE IRRIGATION OF A COMBINED TOTAL OF 179.7 ACRES IN A SINGLE
IRRIGATION SEASON. COMBINED RIGHT NOS.: 29-10831, 29-10833,
29-13406, 29-13407.

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

THE OPERATION AND ADMINISTRATION OF THIS WATER RIGHT IS
SUBJECT TO THE TERMS AND CONDITIONS OF THE PORTNEUF RIVER
SETTLEMENT AGREEMENT, BASIN 29: PORTNEUF RIVER FILED WITH THE
SRBA DISTRICT COURT APRIL 22, 2005.

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 OCT 7 AM 11 54

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): 29-13407

On October 07, 2005, 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 07, 2005.



JANET CONNELL
Deputy Clerk

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

2005 OCT 7 AM 11 55

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): 29-13407

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 07, 2005, with sufficient first-class postage prepaid to the following:

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

MCCAMMON DITCH COMPANY
Represented by:
JAMES A. SPINNER
PO BOX 6009
POCATELLO, ID 83205
Phone: 208-232-4471

LAVA IRRIGATION COMPANY
Represented by:
JERRY R. RIGBY
25 N 2ND E
PO BOX 250
REXBURG, ID 83440-0250
Phone: 208-356-3633

CERTIFICATE OF MAILING

PAGE 1
10/07/05

MARSH VALLEY DEVELOPMENT INC
PORTNEUF MARSH VALLEY CANAL CO

Represented by:

RANDALL C BUDGE
201 E CENTER, STE A2
PO BOX 1391
POCATELLO, ID 83204-1391
Phone: 208-232-6101

PORTNEUF IRRIGATING COMPANY

Represented by:

RANDOLPH CALVIN STONE
PO BOX 910
BURLEY, ID 83318
Phone: 208-878-8382

BRETT CASPERSON
NANCY CASPERSON
8893 E MAUGHAN RD
LAVA HOT SPRINGS, ID 83246
Phone: 208-776-5428


JANET CONNELL
Deputy Clerk