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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

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
Case No. 39576	)	
	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW
	)	
	)	FOR WATER RIGHTS 34-02315,
	)	34-02358A, 34-02417A, 34-02419A,
	)	34-02429B, 34-02472A and 34-12419

I. INTRODUCTION/PROCEDURAL BACKGROUND

A notice of claim was filed for each of the water rights listed above. The Director of the State of Idaho Department of Water Resources (IDWR) examined the water system for Reporting Area 1 (Basin 34) and investigated these water rights.

The *Director's Report for Reporting Area 34 (Director's Report)* recommended these water rights to the claimant **Juel Aikele**. The Big Lost River Water Users Association (The Association) filed Objections to the *Director's Report* for each water right. Both claimant and objector participated at trial and presented evidence.

II. STANDARD OF REVIEW

A. DIRECTOR'S REPORT

The trial of these subcases focused on objections to changes in these water rights. The Association objected to changes in place of use, changes from supplemental right to primary right,¹ changes in allowing combined use of the rights, and changes allowing expansion in acreage.

¹ It is common for farmers to have two rights on the same land. Often a well is drilled as a supplemental groundwater right which is available when the surface water right is not. The surface water right is usually the primary right, and the groundwater right is supplemental because it is secondary to an existing surface water right.

B. PRIMA FACIE WEIGHT

The *Director's Report* has *prima facie* weight as set forth in I.C. § 42-1411(4)-(5). The term *prima facie* evidence is an alternative label for a rebuttable presumption. *State v. Hagerman Water Right Owners*, 130 Idaho 736, 947 P.2d 409, 418 (1997); *State v. Hebner*, 108 Idaho 196, 97 P.2d 1210 (Ct. App. 1985). Thus, giving evidence *prima facie* status confers a presumption that sufficient proof has been made to prevail on an issue absent competent evidence to the contrary. *Prima facie* proof does not shift the burden of persuasion on an issue. *Reddy v. Johnson*, 77 Idaho 412, 293 P.2d 945 (1956); D. Craig Lewis, IDAHO TRIAL HANDBOOK §§ 1.4-12.7 (1995). When 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).

The *Director's Report* as *prima facie* evidence draws a conclusion as to a particular element of a water right. A presumption exists until the objector presents "substantial evidence" that the element is other than as recommended. If the objector presents such evidence, the presumption disappears. Nevertheless, the facts upon which the presumption is based are to be weighed with all other facts that may be relevant. *Id.* at 419.

C. AMNESTY STATUTES

1. Issues Raised by The Association

The Association objected to changes to various water right recommendations in the *Director's Report* asserting the changes were analyzed improperly under the Amnesty Statutes, I.C. §§ 42-1425, 1426 & 1427. First, The Association urged the court to reject changes in place of use for rights which were transferred to an area known as Era Flat. The Association claimed that allowing rights to be used at this new place injured existing rights.

Second, The Association asked the court to reject changes in use allowing groundwater rights originally supplemental to surface water rights to be used as primary rights. The Association argued that the *Director's Report* improperly analyzed this change from supplemental to primary pursuant to I.C. § 42-1425 which does not allow expansions of rights.

Third, The Association urged the court to reject changes allowing multiple water rights owned by a single water user to be used together on a combined place of use. The Association argued that these changes injured existing water rights.

Finally, The Association asked the court to reject expansions in acreage which were recommended in the *Director's Report*. IDWR analyzed these expansions pursuant to I.C. § 42-1426 which allows for expansions. The Association, however, argues these expansions should not be endorsed because they improperly injure existing water rights.

2. Standards Under the Amnesty Statutes

The amnesty statutes, I.C. §§ 42-1425, 42-1426, and 42-1427, have been thoroughly analyzed by the Idaho Supreme Court in *In re SRBA Case No. 39576, Fremont-Madison Irrigation District v. Idaho Groundwater Appropriators*, 129 Idaho 454, 457, 926 P 2d 1301, 1304 (1996). The amnesty statutes were tailored to protect status quo water uses by water users who had failed to follow the statutory procedure for development or change to water uses. *Id.*

a. Accomplished Transfers Under I.C. § 42-1425

I.C. § 42-1425 is entitled "accomplished transfers" and addresses changes in place of use, purpose of use, points of diversion, nature of use or period of use of existing water rights. Section 1425 provides for transfers of existing water rights for any change made prior to the date of commencement of the SRBA, regardless of compliance with I.C. §§ 42-108 and 42-222. *Id.* at 129 Idaho 458.

Two limitations exist for an accomplished transfer under this section: (1) there must be no injury to other water rights existing on the date of the change; and (2) the transfer cannot constitute an "enlargement" of the original right. *Id.* The Idaho Supreme Court defined the term enlargement in this context to include such events as "an increase in the number of acres irrigated, an increase in the rate of diversion or duration of diversion." *Id.* Enlargements are not allowed under I.C. § 42-1425. However, a water user may seek an enlargement under I.C. § 42-1426 subject to the limitations included in that section.²

The party aggrieved by the director's recommendation, whether that was the party claiming the accomplished transfer or the party claiming injury, has the burden of proof under I.C. § 42-1425.

²

I.C. § 42-1425(2) provides for remand to the Director "for future hearing to determine whether the change injured a water right existing on the date of the change or constituted an enlargement of the original right." All parties, including The Association, waived the remand provision of the section.

b. **Enlargements Under I.C. § 42-1426**

A water user may seek an enlargement in the SRBA under I.C. § 42-1426. Unlike proceedings under I.C. § 42-1425, this section allows the enlargement of existing water rights under certain conditions. I.C. § 42-1426(2) allows an enlargement only if it does not injure water rights existing on the date of enlargement of use. *Id.* at 460. Section 42-1426 provides that if injury to a water right later in time cannot be mitigated, "then a new right for the enlarged use shall be advanced to a date one (1) day later than the priority date for the junior water right injured by the enlargement." *Id.*

Only those enlargements which do not increase the rate of diversion, do not injure other water rights existing on the date of enlargement, and which fully mitigate any potential injury to junior water rights existing as of the date of enactment of the amnesty statutes are permitted. *Id.* The Idaho Supreme Court reserved the issue of what conditions directly related to the injury could be imposed to adequately mitigate injury to junior water rights existing on the date of enactment of the statute. *Id.* at 461. However, the Court recognized that some injury from an enlargement is identified if the enlargement takes priority over a validly established water right held by a junior appropriator. *Id.* The same reasoning applies in the event injury is alleged to a senior appropriator. Injury from an enlargement occurs if the enlargement takes priority over a senior water right.

The Supreme Court determined that if there are no mitigation provisions that assure there will be no injury to the junior appropriator, the new right for the enlarged use must be advanced to a date one day later than the priority date for the junior water right injured by the enlargement. *Id.* at 461. The reasoning applies equally when analyzing injury to a **senior appropriator**. If no mitigation provisions assure there will be no injury to the senior appropriator, the new right for the enlarged use must be junior in priority to the senior right.

Under Idaho Code § 42-1426, a person who has filed a claim in the SRBA does not have to petition IDWR to oppose an enlargement. The Director will determine whether the enlargement should be allowed. The determination may disallow the enlargement or allow the enlargement subject to conditions that will mitigate any injury. If mitigation is not possible, the enlarged right may be advanced to a date one day later than the junior water right that would otherwise be injured. *Id.*, 129 Idaho at 462. "Either party who asserts injury, whether that be the

applicant for an enlargement or the person who claims injury by the enlargement, has the burden of establishing the claim in the general adjudication.” *Id.*

III. FINDINGS OF FACT

These water rights owned by Juel Aikele are used for irrigation in the Big Lost River Basin. (Exhibit 1; the *Director's Report*; Exhibit A, an illustrative map showing the place of use.) The recommendations for these water rights as set forth in the *Director's Report* represents the best efforts of IDWR to determine each element. (Testimony of Carter Fritschle.)

Some rights were transferred to new places of use. Some rights changed from supplemental to primary. Some rights were allowed to be used in combination with other rights on a combined place of use retaining the original acreage limitation. And some rights have been used on expanded acreage. The Association urged the court to disallow these changes alleging existing water rights were injured by the changes.

A. INTERCONNECTION BETWEEN GROUNDWATER AND SURFACE WATER IN THE BIG LOST RIVER BASIN.

There is a connection between surface water and groundwater sources in the Big Lost River Basin. (Testimony of Carter Fritschle.) IDWR has studied the interconnection between surface water and groundwater in the vicinity of the places of use for these water rights and has determined that there is a hydrological line above which the relationship between groundwater and surface water is different than below the line. This line is referred to as the “A-Line.” Wells drilled north of the A-Line interfere with vicinity surface water rights, and wells drilled south of the A-Line do not interfere with the surface water rights in the area. The actual location of the A-Line varies with climatic and other conditions. (Testimony of Carter Fritschle.)

The Association objected to several of these water rights which have points of diversion north of the A-Line. The Association did not object, however, to rights owned by Dexter Douglas, Crater Farms, Leon Folkman, Doug Schureman, Jay Jensen, or Steven Aikele which are diverted north of the A-Line. (Testimony of Kurt Acor; Testimony of Lawrence Babcock.)

B. DEVELOPMENT AND IMPACT OF IRRIGATION WELLS

Prior to 1960, few irrigation wells had been drilled in the Big Lost River Valley. During the 1970s and 1980s wide-scale development of irrigation wells occurred in the Big Lost River Valley.

Most of the new wells were drilled to supplement surface water irrigation rights. (Testimony of Lawrence Babcock.) The increased number of wells had a cumulative effect of lowering the water table. (Testimony of Juel Aikele; Testimony of Lawrence Babcock; Exhibit 2.)

The Association's expert witness testified that when the groundwater table declines and loses contact with the surface plate and matrix soils, these soils dry out and crack. Consequently, water applied to the surface goes through the soil faster than if the groundwater is in contact with the base. As a result, the amount of water usually sufficient to irrigate cannot go as far down the field as when the water table is higher. When the water table is in contact with the surface soil, a stream of water which would normally be sufficient to irrigate a field does not reach the end of the field. (Testimony of Larry Reynolds.)

C. THE DROUGHT OF THE LATE 1980S TO EARLY 1990S

During the late 1980s to early 1990s, the Big Lost River Valley experienced a significant, lengthy drought which caused surface water sources to dry up. (Testimony of Gerald Stewart; Testimony of Larman Anderson; Testimony of Charles Huggins; Testimony of James Braswell; Testimony of Lewis Rothwell; Testimony of Lawrence Babcock.) Several senior water users received less than their full amount of water. At the same time, groundwater rights with junior priorities continued to be used for irrigation pumping. (Testimony of Gerald Stewart; Testimony of Charles Huggins; Testimony of Lawrence Babcock; Testimony of Ray Boyack.) Consequently, several senior water users lost crops (Testimony of Larman Anderson; Testimony of Lawrence Babcock), lucrative agricultural contracts (Testimony of Gerald Stewart), or trees and willows which protected livestock. (Testimony of Lewis Rothwell; Testimony of Larman Anderson; Exhibits 5, 47, 48, 49, 50, and 51.)

Earlier droughts in the 1930s and 1960s in the Big Lost River Valley also caused surface water sources to dry up. (Testimony of Herman Aikele; Testimony of Lewis Rothwell; Testimony of Lawrence Babcock.) Surface water sources were not as dry during these previous droughts as they were in the drought of the 1980s to 1990s. (Testimony of Lewis Rothwell.)

The water table in the Big Lost River Valley dropped during these drought years. (Testimony of Larry Reynolds.) Many domestic wells had to be deepened during the drought of the 1980s and 1990s. (Testimony of Larman Anderson; Testimony of Ray Boyack; Testimony of Glen Guthrie; Testimony of Larry Reynolds.) Between 1989 and 1994, the water table was lower in the

Big Lost River Valley, and as a result, about 400 new wells had to be drilled below the Moore Diversion. (Testimony of Glen Guthrie; Exhibit 3.)

D. CHANGES TO WATER RIGHTS

The Association objected to multiple changes to the water rights including changes in place of use, changes from supplemental to primary, changes allowing combined usage, and increases in acreage.

1. Transfer of Place of Use to Era Flat

In the late 1970s to early 1980s, some water rights diverted from irrigation wells located north of the A-Line were transferred to lands in an area known as Era Flat. The transfer of multiple rights to Era Flat sometimes caused insufficient water pressure through the remaining system. The insufficient water pressure in turn resulted in problems getting the remaining water rights to the headgates. (Testimony of Lawrence Babcock.)

2. Changes From Supplemental to Primary

As irrigation wells were developed in the Big Lost River Valley, many farmers drilled wells to use on the same land on which they had surface rights. The wells provided a reliable supply of water to supplement those surface rights which were only available intermittently. These irrigation wells were supplemental to the earlier surface water rights on the same land. (Testimony of Carter Fritschle.)

Some water users transferred primary rights to a new place of use and changed the use of the supplemental rights to primary rights. The change from supplemental to primary use is an enlargement. IDWR recognized this change as an enlargement and adopted a policy of mitigation to prevent injury to existing rights. (Testimony of Carter Fritschle; Exhibit 7.) IDWR advanced the priority date of the supplemental rights to the date of the change to prevent injury. (Testimony of Carter Fritschle.)

3. Changes Allowing Combined Use

The *Director's Report* recommended that several water rights be allowed for use on a combined place of use. These recommendations allowed such combined use where all rights were owned by a single water user and retained the original acreage limitation. (Testimony of Carter Fritschle.)

4. Expansions in Acreage

Several subcases involved recommendations in the *Director's Report* allowing an increase or expansion in acreage. These recommendations allowed the expansion in acreage, but involved no increase in volume or diversion rate. IDWR correctly analyzed these expansions pursuant to I.C. § 42-1426 and considered the issue of injury to other water rights. (Testimony of Carter Fritschle.)

IV. CONCLUSIONS OF LAW

A. INJURY

The Association argues that the changes recommended for these water rights in the *Director's Report* constitute injury to existing water rights. The facts upon which The Association relies are: (1) surface water and groundwater rights in Basin 34 are interconnected; (2) there was significant development of groundwater during the 1970s and 1980s which lowered the water table; (3) a significant number of water rights were transferred to Era Flat, leaving less water in the remaining system to deliver; (4) a number of water rights were used in combination on a combined place of use; (5) a significant number of water rights changed from supplemental to primary, resulting in enlargements of those rights; (6) a number of water rights were expanded to additional acreage; (7) senior water users did not receive their water rights during the drought of the 1980s and early 1990s; and (8) during the drought, senior water users suffered crop loss, the loss of agricultural contracts, and loss of trees and willows which provided protection for livestock.

Where groundwater and surface water are significantly interconnected, the two resources should be treated as one supply and managed as a single integrated system. Douglas L. Grant, *THE COMPLEXITIES OF MANAGING HYDROLOGICALLY CONNECTED SURFACE WATER AND GROUNDWATER UNDER THE APPROPRIATION DOCTRINE*, 22 Land and Water Law Review 63 (1987). The significant interconnection between groundwater and surface water has been recognized in the SRBA and is law of the case. *In re SRBA, Musser v. Higginson*, 125 Idaho 392, 871 P.2d 809 (1994). Groundwater and surface water in the Big Lost River Valley are interconnected.

Under the appropriation doctrine, priority in time gives priority in right. Priority affects the exercise of existing rights and is an important protection for senior water users. "The exercise of existing rights is curtailed in inverse order of priority if drought or seasonal fluctuation makes the

supply insufficient for all, that is, junior appropriators are shut off completely to supply fully those with more senior priorities.” Douglas L. Grant, THE COMPLEXITIES OF MANAGING HYDROLOGICALLY CONNECTED SURFACE WATER AND GROUNDWATER UNDER THE APPROPRIATION DOCTRINE, 22 Land and Water Law Review 63, 65 (1987); *Beecher v. Cassia Creek Irrigation Co.*, 66 Idaho 1, 9, 154 P.2d 507, 510 (1944).

The operation of the prior appropriation doctrine in a conjunctive management system is critical to the subcases before the court. Senior rights are protected during shortages, such as the drought in the Big Lost River Valley, because junior rights are shut off to supply senior rights. Compliance with the prior appropriation doctrine protects seniors from injury by junior users, because their first-in-time priority is first in right during a drought.

This court holds that use of water by a junior appropriator does not become adverse to or injure a senior appropriator *until* it results in a deprivation of his allotted amount. See, *State Ex Rel. Cary v. Cochran*, 138 Neb.163, 292 N.W. 239 (1940).

The proper application of the prior appropriation doctrine should protect the senior water rights in the Big Lost River Valley. Consequently, the injury alleged by The Association is not the kind of injury which should defeat the changes in use which occurred, since senior users could enforce the prior appropriation doctrine.

During the Big Lost River Valley drought of the 1980s and 1990s, however, senior water users failed to receive their rights. Apparently water rights in the Big Lost River Valley were not managed conjunctively or were not managed according to the prior appropriation doctrine. The problems in water delivery of which The Association complains occurred prior to the Idaho Supreme Court decision in *In re SRBA, Musser v. Higginson*, 125 Idaho 392, 871 P.2d 809 (1994). The *Musser* decision clarified the requirement to administer and deliver water in accordance with the Constitution of the State of Idaho and the doctrine of prior appropriation. *Id.*

The court finds the injury of which The Association complained did not result from allowing changes to these water rights. Instead, the harm occurred as a result of noncompliance with the prior appropriation doctrine. Under the doctrine of prior appropriation, these senior rights are superior in times of shortage to the rights to which The Association objected. The court presumes that the junior rights could be shut off in times of drought. Therefore, it follows that no injury has occurred.

B. RIGHTS TRANSFERRED TO ERA FLAT

The Association objected to many rights for which the accomplished transfer was changing the place of use from the original decreed land to land out on Era Flat. I.C. § 42-1425 permits such accomplished transfers as long as no other "water rights existing on the date of the change were injured" or such transfers resulted in an "enlargement of the original right." I.C. § 42-1425(2). For those water rights which involved a change in place of use, The Association must show that the change resulted in injury to water rights existing at the time of the change. There is insufficient evidence to show these changes in place of use to Era Flat resulted in injury of existing rights.

C. SUPPLEMENTAL RIGHTS WHICH CHANGED TO PRIMARY RIGHTS

As irrigation wells were drilled in the Big Lost River Valley, it became common for farmers to have a supplemental groundwater right which supplemented surface water rights. The surface right was the primary right, and the groundwater right was supplemental because it was secondary to an existing surface water right.

Later, some water users transferred the primary water right to a new place of use and changed the supplemental right to a primary right. IDWR recognized this change as an expansion. However, IDWR referred to I.C. § 42-1425 in its recommendation for these changes from supplemental to primary.

IDWR recommended changing several rights from supplemental to primary. IDWR has determined that a change from supplemental to primary is an enlargement.

When primary rights are taken off the land leaving the supplemental rights as the only source of water for that land, an enlargement in the number of acres occurs and that may cause injury to other appropriators if the priority date is not advanced to the date the primary rights are transferred off the land.

(Testimony of Carter Fritschle, Exhibit 7.)

The *Director's Reports* recommended changes from supplemental to primary and referred to I.C. § 42-1425 which does not allow for enlargements. However, IDWR conducted the necessary analysis under I.C. § 42-1426 which does provide for enlargements. Although the *Director's Report* erroneously refers to I.C. § 42-1425, it appears that IDWR actually conducted its analysis under I.C. § 42-1426. IDWR understood the change involved an expansion and advanced the priority date of all such rights to the date of change from supplemental to primary.

IDWR's analysis is strikingly similar to the analysis advanced for expansions in *In re SRBA Case No. 39576, Fremont-Madison Irrigation Dist. v. Idaho Ground Water Appropriators*, 129 Idaho 454, 926 P.2d 1301 (1996). The Supreme Court analyzed advancing priority dates in enlargements under I.C. § 42-1426.

It is difficult, if not impossible, to perceive of a situation in which an enlargement would not injure an appropriator who had an established right if the enlargement receives priority.

Id. (emphasis added). The Court explained the need to mitigate potential injury by advancing the priority date of such enlargements.

The issue of mitigation cannot be decided in a vacuum. but it is clear that if there are no mitigation provisions that will assure that there will be no injury to the junior appropriator, the new right for the enlarged use must be advanced to a date one day later than the priority date for the junior water right injured by the enlargement. The provision for advancement of the priority date is adequate protection to junior appropriators.

Id. (emphasis added).

The analysis conducted by IDWR recognizing that an expansion occurred, together with the advancement of priority recommended, convinces the court that IDWR conducted a proper analysis of these rights under I.C. § 42-1426. The Association has the burden of proving that existing rights were injured by the change from supplemental to primary in light of the advancement of priority. The court finds there was insufficient evidence to show that the change from supplemental to primary caused injury to senior rights since the priority was advanced.

D. CHANGE ALLOWING COMBINED USE

The Association objected to many rights for which the accomplished change in use is allowing a claimant to use multiple water rights on his entire place of use, while retaining the original acreage limitation. For example, if Farmer Jones owns water right A limited to 60 acres and water right B limited to 50 acres, IDWR recommended an accomplished change so right A is limited to 60 acres within the total of 110 acres (60 + 50), and right B is limited to 50 acres within the total of 110 acres (60 + 50).

IDWR adopted a policy allowing this simple combination of rights unless "other water rights existing on the date of the change were injured" or such a change resulted in "an enlargement of the original right." I.C. § 42-1425(2).

I.C. § 42-1425 permits changes such as the combined use as long as the changes do not constitute an enlargement of the water right or otherwise injure water rights existing on the date of the change. IDWR recommended allowing these rights to be used in combination with other rights on a combined place of use, but retained the original acreage limitation. Because the acreage limitation did not change, there was no expansion in allowing the combined use. The Association has the burden of showing that the change resulted in injury to water rights existing at the time of the change. The court finds further that there was no showing of injury as a result of the combined use.

E. EXPANSION TO ADDITIONAL ACREAGE

IDWR recommended several rights with expanded acreage pursuant to I.C. § 42-1426. Expansions are allowed under this section subject to two limitations. The rate of diversion may not exceed the rate of diversion originally authorized and the enlargement may not injure existing water rights. None of the recommendations for expanded acreage involved an increase in the diversion rate. The Association has the burden of showing the expansion to additional acreage injured senior water rights. The court finds there was insufficient evidence to show that the increase in acreage resulted in injury to senior water rights which are fully protected by the prior appropriation doctrine.

F. WATER RIGHTS OF JUEL AIKELE

1. 34-02315

The *Director's Report* recommended one change to water right 34-02315. IDWR allowed this right to be used on a combined acreage but retained the original limitation of 272 acres.

Additional acreage was claimed for this right, but IDWR rejected the additional acreage. (Testimony of Carter Fritschle.) The *Director's Report* recommended this right under I.C. § 42-1425 for a change in use allowing the right to be used on the entire acreage. *Prima facie* weight attached to the *Director's Report*. The court finds insufficient evidence to rebut the *Director's Report*, and this right is recommended as set forth in the *Director's Report*.

2. 34-02358A

The *Director's Report* recommended one change to water right 34-02358A. IDWR allowed this right to be used on a combined acreage, but retained the original acreage limitation. (Testimony of Carter Fritschle.)

The *Director's Report* recommended this right under I.C. § 42-1425 for a change in use allowing the right to be used on the entire acreage. *Prima facie* weight attaches to the *Director's Report*. The court finds there is insufficient evidence to rebut the *Director's Report*, and this water right will be recommended as set forth in the *Director's Report*.

3. 34-02417A

The *Director's Report* recommended two changes to water right 34-02417A. IDWR allowed this right to be used on a combined acreage, but retained the original acreage limitation. IDWR also allowed a change in use from supplemental to primary. (Testimony of Carter Fritschle.)

The *Director's Report* indicates IDWR analyzed this change under I.C. § 42-1425. However, the testimony of Carter Fritschle indicates IDWR also analyzed this right under I.C. § 42-1426. (Exhibit 7; Testimony of Carter Fritschle.) The court holds IDWR conducted an I.C. § 42-1426 analysis by allowing the enlargement subject to conditions (advancing priority) that would mitigate injury. The court finds there is insufficient evidence to rebut the *Director's Report*, and this water right is recommended as set forth in the *Director's Report*.

4. 34-02419A

The *Director's Report* recommended one change to water right 34-02419A. IDWR allowed this right to be changed from supplemental to primary by advancing the priority to the date the change occurred. (Testimony of Carter Fritschle.)

The *Director's Report* indicates IDWR analyzed this change under I.C. § 42-1425. However, the testimony of Carter Fritschle indicates IDWR also analyzed this right under I.C. § 42-1426. (Exhibit 7; Testimony of Carter Fritschle.) The court holds IDWR conducted an I.C. § 42-1426 analysis by allowing the enlargement subject to conditions (advancing priority) that would mitigate injury. The court finds there is insufficient

evidence to rebut the *Director's Report*, and this water right is recommended as set forth in the *Director's Report*.

5. 34-02429B

The *Director's Report* recommended one change to water right 34-02429B. IDWR allowed this right to be used on a combined acreage, but retained the original acreage limitation. A transfer of a portion of this right was previously approved in 1984. (Testimony of Carter Fritschle.)

Additional acreage was claimed for this right, but IDWR rejected the additional acreage. (Testimony of Carter Fritschle.) The *Director's Report* recommended this right under I.C. § 42-1425 for a change in use allowing the right to be used on the entire acreage. *Prima facie* weight attached to the *Director's Report*. The court finds insufficient evidence to rebut the *Director's Report*, and this right is recommended as set forth in the *Director's Report*.

6. 34-02472A

The *Director's Report* recommended one change to water right 34-02472A. IDWR allowed this right to be used on a combined acreage, but retained the original acreage limitation. (Testimony of Carter Fritschle.)

Additional acreage was claimed for this right, but IDWR rejected the additional acreage. (Testimony of Carter Fritschle.) The *Director's Report* recommended this right under I.C. § 42-1425 for a change in use allowing the right to be used on the entire acreage. *Prima facie* weight attached to the *Director's Report*. The court finds insufficient evidence to rebut the *Director's Report*, and this right is recommended as set forth in the *Director's Report*.

7. 34-12419

Water right 34-12419 is an enlargement of 34-02315. The *Director's Report* recommended the additional acres. (Testimony of Carter Fritschle.)

The Association argues that the expansion for this right is improper under I.C. § 42-1425. However, IDWR analyzed the additional acreage under I.C. § 42-1426 which does allow for expansion. (Exhibit 1.) The Association has the burden of establishing its claim

of injury resulting from the expansion. The court finds there is insufficient evidence to rebut the *Director's Report*, and this right is recommended as set forth in the *Director's Report*.

Therefore, based on the files and record herein, IT IS RECOMMENDED that water rights 34-02315, 34-02358A, 34-02417A, 34-02419A, 34-02429B, 34-02472A and 34-12419 be decreed as set forth in the attached *Partial Decrees Pursuant to I.R.C.P. 54(b)*.

DATED: FEB 12 1999


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

In Re SRBA)
Case No. 39576)

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

Water Right 34-02315

1999 FEB 12 PM 4:52

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO

NAME AND ADDRESS: JUEL AIKELE
ROUTE 1, BOX 63D
MOORE, ID 83255

SOURCE: GROUNDWATER

QUANTITY: 7.02 CFS

USE OF THIS RIGHT WITH RIGHTS 34-02358A, 34-02417A,
34-02419A, 34-02429B, 34-02472A, AND 34-12419 IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 26.31 CFS AND A TOTAL COMBINED
ANNUAL DIVERSION VOLUME OF 8753.5 AF.

THIS RIGHT AND RIGHT 34-02358A ARE LIMITED TO A TOTAL
COMBINED DIVERSION RATE OF 12.03 CFS.

PRIORITY DATE: 01/07/1955

POINT OF DIVERSION: T04N R26E S17 NESWSW Within Butte County
SESWSW

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 10-15	7.02 CFS

PLACE OF USE:	Irrigation		Within Butte County
	T03N R25E S13	NENE 23.0	NWNE 33.0
		SWNE 37.0	SENE 37.0
		SENE 36.0	NESW 37.0
		SESW 19.0	NESE 39.0
		NWSE 40.0	SWSE 23.0
		SESE 6.0	NENW 33.0
	R26E S05	SWSW 16.7	
	S06	NENE 40.0	NWNE 40.0
		SWNE 40.0	SENE 40.0
		NENW 40.0	NWNW 39.0
		SWNW 39.0	SENE 40.0
		NESW 40.0	SESW 29.0
		NESE 37.0	NWSE 40.0
		SESE 26.0	NWSW 40.0
		SWSW 34.0	SWSE 38.0
	S07	NWNE 6.4	SWNE 19.0
		NWNW 4.0	SWNW 12.0
		SENE 2.6	
	T04N R26E S29	NWSW 34.0	SWSW 7.0
	S30	NESE 40.0	SESE 39.0
		SWNE 6.0	SENE 3.0
	S31	NESW 39.0	NWSW 39.0
		SESW 39.0	NENE 34.0
		NWNE 35.0	SWNE 39.0
		SENE 39.0	NENW 28.0
		NWNW 33.0	SWNW 39.0
		SENE 37.0	SWSW 39.0
		NESE 39.0	NWSE 39.0
		SWSE 39.0	SESE 39.0
	1750.7 Acres Total		

USE OF THIS RIGHT WITH RIGHTS 34-02358A, 34-02417A,
34-02419A, 34-02429B, 34-02472A, 34-12419, AND 34-10036 IS

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 34-02358A

1999 FEB 12 PM 4:51

DISTRICT CLERK
TWIN FALLS, IDAHO
FILED

NAME AND ADDRESS: JUEL AIKELE
ROUTE 1, BOX 63D
MOORE, ID 83255

SOURCE: GROUNDWATER

QUANTITY: 5.60 CFS

USE OF THIS RIGHT WITH RIGHTS 34-02315, 34-02417A,
34-02419A, 34-02429B, 34-02472A, AND 34-12419 IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 26.31 CFS AND A TOTAL COMBINED
ANNUAL DIVERSION VOLUME OF 8753.5 AF.

THIS RIGHT AND RIGHT 34-02315 ARE LIMITED TO A TOTAL COMBINED
DIVERSION RATE OF 12.03 CFS.

PRIORITY DATE: 02/01/1961

POINT OF DIVERSION: T04N R26E S17 NESWSW Within Butte County
SESWSW

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 10-15	5.60 CFS

PLACE OF USE:	Irrigation		Within Butte County
	T03N R25E S13	NENE 23.0	NWNE 33.0
		SWNE 37.0	SENE 37.0
		NENW 33.0	SENW 36.0
		NESW 37.0	SESW 19.0
		NESE 39.0	SWSE 23.0
		SESE 6.0	NWSE 40.0
	R26E S05	SWSW 16.7	
	S06	NENE 40.0	NWNE 40.0
		SWNE 40.0	SENE 40.0
		NENW 40.0	NWNW 39.0
		SWNW 39.0	SENW 40.0
		NESW 40.0	SESW 29.0
		NESE 37.0	NWSE 40.0
		SESE 26.0	NWSW 40.0
		SWSW 34.0	SWSE 38.0
	S07	NWNE 6.4	SWNE 19.0
		SWNW 12.0	SENW 2.6
		NWNW 4.0	
	T04N R26E S29	NWSW 34.0	SWSW 7.0
	S30	NESE 40.0	SESE 39.0
		SWNE 6.0	SENE 3.0
	S31	SWSW 39.0	NESW 39.0
		NWSW 39.0	SESW 39.0
		NENE 34.0	NWNE 35.0
		SWNE 39.0	SENE 39.0
		NENW 28.0	NWNW 33.0
		SWNW 39.0	SENW 37.0
		NESE 39.0	NWSE 39.0
		SESE 39.0	SWSE 39.0
	1750.7 Acres Total		

USE OF THIS RIGHT WITH RIGHTS 34-02315, 34-02417A, 34-02419A,
34-02429B, 34-02472A, 34-12419 AND 34-10036 IS LIMITED TO THE

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 34-02417A

1999 FEB 12 PM 4:51

DISTRICT COURT-SRBA
TWIN FALLS CO, IDAHO
FILED

NAME AND ADDRESS: JUEL AIKELE
ROUTE 1, BOX 63D
MOORE, ID 83255

SOURCE: GROUNDWATER

QUANTITY: 2.67 CFS

USE OF THIS RIGHT WITH RIGHTS 34-02315, 34-02358A,
34-02419A, 34-02429B, 34-02472A, AND 34-12419 IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 26.31 CFS AND A TOTAL COMBINED
ANNUAL DIVERSION VOLUME OF 8753.5 AF.

PRIORITY DATE: 05/01/1983

POINT OF DIVERSION: T04N R26E S08 NWNESW Within Butte County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 10-15	2.67 CFS

PLACE OF USE:	Irrigation	Within Butte County
T03N R25E S13	NENE 23.0 SWNE 37.0 NENW 33.0 NESW 37.0 NESE 39.0 SESE 6.0	NWNE 33.0 SENE 37.0 SENE 36.0 SESW 19.0 NWSE 40.0 SWSE 23.0
R26E S05 S06	SWSW 16.7 NWNE 40.0 SENE 40.0 NESW 40.0 SESE 26.0 NENE 40.0 SWNW 39.0 SWSE 38.0 NESE 37.0	SWNE 40.0 NENW 40.0 SESW 29.0 NWSW 40.0 NWNW 39.0 SWSW 34.0 SENE 40.0 SENE 2.6
S07	SWNE 19.0 SWNW 12.0	NWNW 4.0
T04N R26E S29 S30	NWSW 34.0 SWNE 6.0 NESE 40.0	SWSW 7.0 SENE 3.0 SESE 39.0
S31	NENW 28.0 SWNW 39.0 SWSW 39.0 NWSE 39.0 NESW 39.0 SESW 39.0 NWNE 35.0 SENE 39.0	NWNW 33.0 SENE 37.0 NESE 39.0 SESE 39.0 NWSW 39.0 NENE 34.0 SWNE 39.0 SWSE 39.0
1750.7 Acres Total		

USE OF THIS RIGHT WITH RIGHTS 34-02358A, 34-02315, 34-02419A,
34-02429B, 34-02472A, 34-12419, AND 34-10036 IS LIMITED TO THE
IRRIGATION OF 1750.7 ACRES IN A SINGLE IRRIGATION SEASON.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 133.8 ACRES WITHIN
THE PLACE OF USE DESCRIBED ABOVE.

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 34-02419A

1999 FEB 12 PM 4:51

DISTRICT COURT-SRBA
TWIN FALLS, IDAHO
FILED

NAME AND ADDRESS: JUEL AIKELE
ROUTE 1, BOX 63D
MOORE, ID 83255

SOURCE: GROUNDWATER

QUANTITY: 2.01 CFS

USE OF THIS RIGHT WITH RIGHTS 34-02315, 34-02358A, 34-02417A,
34-02429B, 34-02472A, AND 34-12419 IS LIMITED TO A TOTAL
COMBINED DIVERSION RATE OF 26.31 CFS AND A TOTAL COMBINED
ANNUAL DIVERSION VOLUME OF 8753.5 AF.

PRIORITY DATE: 05/01/1984

POINT OF DIVERSION: T04N R26E S20 NWNWNE Within Butte County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 10-15	2.01 CFS

PLACE OF USE:	Irrigation	Within Butte County	
	T03N R25E S13	NENW 33.0 SESW 19.0 NWSE 40.0 SESE 6.0 NENE 23.0 SWNE 37.0	NESW 37.0 NESE 39.0 SWSE 23.0 SENE 36.0 NWNE 33.0 SENE 37.0
	R26E S05	SWSW 16.7	
	S06	NWSW 40.0 SWSE 38.0 NWNE 40.0 SENE 40.0 NWNW 39.0 SENE 40.0 SESW 29.0 NWSE 40.0	SWSW 34.0 NENE 40.0 SWNE 40.0 NENW 40.0 SWNW 39.0 NESW 40.0 NESE 37.0 SESE 26.0
	S07	NWNW 4.0 SWNW 12.0 NWNE 6.4	SWNE 19.0 SENE 2.6
	T04N R26E S29	NWSW 34.0	SWSW 7.0
	S30	NESE 40.0 SWNE 6.0	SESE 39.0 SENE 3.0
	S31	SESW 39.0 NENW 28.0 NESE 39.0 SWNW 39.0 NESW 39.0 NENE 34.0 SWNE 39.0 SWSE 39.0	SENE 39.0 SWSW 39.0 NWSE 39.0 SENE 37.0 NWSW 39.0 NWNE 35.0 NWNW 33.0 SESE 39.0
	1750.7 Acres Total		

USE OF THIS RIGHT WITH RIGHTS 34-02358A, 34-02315, 34-02417A,
34-02429B, 34-02472A, 34-12419, AND 34-10036 IS LIMITED TO THE
IRRIGATION OF 1750.7 ACRES IN A SINGLE IRRIGATION SEASON.

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 34-02429B

1999 FEB 12 PM 4:51

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

NAME AND ADDRESS: JUEL AIKELE
ROUTE 1, BOX 63D
MOORE, ID 83255

SOURCE: GROUNDWATER

QUANTITY: 2.78 CFS

USE OF THIS RIGHT WITH RIGHTS 34-02358A, 34-02315, 34-02417A,
34-02419A, 34-02472A, AND 34-12419 IS LIMITED TO A TOTAL
COMBINED DIVERSION RATE OF 26.31 CFS AND A TOTAL COMBINED
ANNUAL DIVERSION VOLUME OF 8753.5 AF.

PRIORITY DATE: 06/22/1961

POINT OF DIVERSION: T04N R26E S20 NENWNW Within Butte County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 10-15	2.78 CFS

PLACE OF USE:	Irrigation	Within Butte County	
	T03N R25E S13	NENE 23.0 SWNE 37.0 NESW 37.0 SESE 6.0 SENW 36.0 NWSE 40.0	NWNE 33.0 SENE 37.0 SWSE 23.0 NESE 39.0 SESW 19.0 NENW 33.0
	R26E S05	SWSW 16.7	
	S06	SENE 40.0 NESE 37.0 NWSW 40.0 NENE 40.0 SWNE 40.0 SNNW 39.0 SESW 29.0 NESW 40.0	NENW 40.0 NWSE 40.0 SWSE 38.0 NWNE 40.0 NWNW 39.0 SENW 40.0 SWSW 34.0 SESE 26.0
	S07	NWNE 6.4 SNNW 12.0 SWNE 19.0	NWNW 4.0 SENW 2.6
	T04N R26E S29	NWSW 34.0	SWSW 7.0
	S30	NESE 40.0 SENE 3.0	SWNE 6.0 SESE 39.0
	S31	NESW 39.0 NWNE 35.0 SWSW 39.0 NWNW 33.0 NWSW 39.0 NESE 39.0 SWSE 39.0 SENE 39.0	SESW 39.0 SWNE 39.0 SESE 39.0 SNNW 39.0 SENW 37.0 NWSE 39.0 NENE 34.0 NENW 28.0
	1750.7 Acres Total		

USE OF THIS RIGHT WITH RIGHTS 34-02358A, 34-02315, 34-02417A,
34-02419A, 34-02472A, 34-12419, AND 34-10036 IS LIMITED TO THE
IRRIGATION OF 1750.7 ACRES IN A SINGLE IRRIGATION SEASON.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 121.8 ACRES WITHIN
THE PLACE OF USE DESCRIBED ABOVE.

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 34-02472A

1999 FEB 12 PM 4:51

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

NAME AND ADDRESS: JUEL AIKELE
ROUTE 1, BOX 63D
MOORE, ID 83255

SOURCE: GROUNDWATER

QUANTITY: 6.82 CFS

USE OF THIS RIGHT WITH RIGHTS 34-02315, 34-02358A, 34-02417A,
34-02419A, 34-02429B, AND 34-12419 IS LIMITED TO A TOTAL
COMBINED DIVERSION RATE OF 26.31 CFS AND A TOTAL COMBINED
ANNUAL DIVERSION VOLUME OF 8753.5 AF.

PRIORITY DATE: 12/29/1965

POINT OF DIVERSION: T04N R26E S17 NENESW Within Butte County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 10-15	6.82 CFS

PLACE OF USE:	Irrigation	Within Butte County
T03N R25E S13	SENE 36.0	NESW 37.0
	NWSE 40.0	SWSE 23.0
	SESE 6.0	NENE 23.0
	SWNE 37.0	SENE 37.0
	SESW 19.0	NESE 39.0
	NWNE 33.0	NENW 33.0
R26E S05	SWSW 16.7	
S06	NWSE 40.0	SESE 26.0
	NWSW 40.0	SWSE 38.0
	SWNW 39.0	NENE 40.0
	NWNE 40.0	SWNE 40.0
	SENE 40.0	SENE 40.0
	NESW 40.0	SESW 29.0
	NESE 37.0	NENW 40.0
	NWNW 39.0	SWSW 34.0
S07	NWNE 6.4	SWNE 19.0
	NWNW 4.0	SWNW 12.0
	SENE 2.6	
T04N R26E S29	NWSW 34.0	SWSW 7.0
S30	SWNE 6.0	SENE 3.0
	NESE 40.0	SESE 39.0
S31	NESW 39.0	NWNW 33.0
	NESE 39.0	SESE 39.0
	NWSW 39.0	NENE 34.0
	NWNE 35.0	SWNE 39.0
	SENE 39.0	NENW 28.0
	SENE 37.0	NWSE 39.0
	SWSE 39.0	SESW 39.0
	SWNW 39.0	SWSW 39.0
1750.7 Acres Total		

USE OF THIS RIGHT WITH RIGHTS 34-02358A, 34-02315, 34-02419A,
34-02429B, 34-02417A, 34-12419, AND 34-10036 IS LIMITED TO THE
IRRIGATION OF 1750.7 ACRES IN A SINGLE IRRIGATION SEASON.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 293 ACRES WITHIN
THE PLACE OF USE DESCRIBED ABOVE.

In Re SRBA)
)
Case No. 39576)
)

Water Right 34-12419

DISTRICT COURT-3RD A
TWIN FALLS CO IDAHO
FILED

QUANTITY: 9.31 CFS

THIS WATER RIGHT IS SUBORDINATE TO ALL WATER RIGHTS WITH A PRIORITY DATE EARLIER THAN APRIL 12, 1994, THAT ARE NOT DECREED AS ENLARGEMENTS PURSUANT TO SECTION 42-1426, IDAHO CODE. AS BETWEEN WATER RIGHTS DECREED AS ENLARGEMENTS PURSUANT TO SECTION 42-1426, IDAHO CODE, THE EARLIER PRIORITY RIGHT IS THE SUPERIOR RIGHT.

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 10-15	9.31 CFS

SRBA PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 34-12419

1999 FEB 12 PM 4: 51

DISTRICT COURT-SRBA
TWIN FALLS CO 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)
_____)

CERTIFICATE OF MAILING

Water Right(s): 34-02315
34-02358A 34-02417A 34-02419A
34-02429B 34-02472A 34-12419

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 February 12, 1999, with sufficient first-class postage prepaid to the following:

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

STATE OF IDAHO

Represented by:
CLIVE STRONG
NATURAL RESOURCES
DEP AG OFFICE OF ATTY GEN
STATEHOUSE MAIL
BOISE, ID 83720-0010
Phone: 208-334-2400

CERTIFICATE OF MAILING

PAGE 1
02/12/99

1999 FEB 12 PM 4: 47

DISTRICT COURT-SRBA
TWIN FALLS CO 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)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

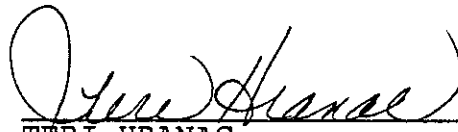
Water Right(s): 34-02315
34-02358A 34-02417A 34-02419A
34-02429B 34-02472A 34-12419

On February 12, 1999, Special Master BARRY WOOD issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s) pursuant to SRBA Administrative Order 1 (A01), 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 February 12, 1999.


TERI HRANAC
Deputy Clerk