

2006 FEB 10 PM 1 50

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
	)	
	)	FOR WATER RIGHT: 29-00053
	)	(Digital Boundary-Portneuf Marsh Valley
_____	)	Canal Co.)

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. The *Director's Report* described this water right by digital boundaries.

Objections were filed by Kenneth Andrus, Lava Irrigation Co., Inc., and the United States Bureau of Land Management. The United States Bureau of Land Management's *Objection* was resolved with a *Stipulation to Resolve Objection* filed on July 8, 2004. The remaining *Objections* were resolved with the filing of the *Portneuf River Settlement Agreement Basin 29: Portneuf River* (hereafter "*Portneuf River Agreement*").

II. ANALYSIS

A. Portneuf River Agreement

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) Specifically, the *Portneuf River Agreement* sets forth provisions for an extended season of use, administration of an upper and lower division, allocation of rights within each division,

measurement at the Topaz Gauge, administration on East Bob Creek and West Bob Creek, and modification of the diversion structure.

B. Digital Boundary

The place of use element for this water right is described by a digital boundary rather than with legal subdivisions such as Township, Range, Section, and Quarter- Quarter designations. The place of use agreed on by the parties and IDWR is illustrated by the map overlay attached to the *Recommendation for Partial Decree*. The digital boundary for the place of use is described on the CD-Rom filed July 8, 2003.

III. 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: February 10, 2006.



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

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In Re SRBA)
Case No. 39576)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 29-00053

NAME AND ADDRESS: PORTNEUF MARSH VALLEY CANAL CO
C/O ELLIS GILBERT
2777 E HAWKINS RD
DOWNEY, ID 83234

SOURCE: TOPONCE CREEK TRIBUTARY: PORTNEUF RIVER

POINT OF INJECTION INTO PORTNEUF RIVER. POINT OF REDIVERSION
FROM PORTNEUF RIVER.

QUANTITY: 164.43 CFS
16410.00 AFY

THIS RIGHT WHEN COMBINED WITH 29-589 IS LIMITED TO A COMBINED
TOTAL OF 16410 AFA.
USE OF THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED
ANNUAL DIVERSION VOLUME OF 23695 AF. COMBINED RIGHT NOS.: 29-53,
29-589, 29-4060.

PRIORITY DATE: 07/06/1912

POINT OF DIVERSION: T06S R38E S33 SWSSE Within Caribou County
R39E S19 SWSWSW (Injection)
T09S R37E S22 LOT 3 (SWSSENW) (Rediversion) Within Bannock County

PURPOSE AND

PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation Storage	01-01 TO 12-31	16410.00 AFY
	Irrigation from Storage	04-15 TO 09-15	16410.00 AFY
	Diversion to Storage	09-16 TO 04-14	164.43 CFS

PLACE OF USE:

5103.2 ACRES TOTAL
PLACE OF USE IS WITHIN THE AREA SERVED BY THE PORTNEUF MARSH
VALLEY CANAL CO. LTD.
USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO
THE IRRIGATION OF A COMBINED TOTAL OF 5103.2 ACRES IN A SINGLE
IRRIGATION SEASON. COMBINED RIGHT NOS.: 29-52, 29-53, 29-589,
29-4060, 29-13318.
USE OF WATER UNDER THIS RIGHT DOES NOT INCLUDE A USE ON
FEDERAL PUBLIC LAND.
THE BOUNDARY ENCOMPASSING THE PLACE OF USE FOR THIS WATER RIGHT
IS DESCRIBED WITH A DIGITAL BOUNDARY AS DEFINED BY I.C. SECTION
42-202B(2) AND AUTHORIZED PURSUANT TO I.C. SECTION 42-1411 (2)(h)
THE DATA COMPRISING THE DIGITAL BOUNDARY ARE INCORPORATED HEREIN
BY REFERENCE AND ARE STORED ON A CD-ROM DISK ISSUED IN DUPLICATE
ORIGINALS ON FILE WITH THE SRBA DISTRICT COURT AND THE IDAHO
DEPARTMENT OF WATER RESOURCES. A MAP DEPICTING THE PLACE OF USE
IS ATTACHED HERETO TO ILLUSTRATE THE PLACE OF USE DESCRIBED BY
THE DIGITAL BOUNDARY.

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

SUITABLE MEASURING DEVICES SHALL BE INSTALLED ON THE PORTNEUF
RIVER ABOVE THE FLOW LINE OF THE PORTNEUF-MARSH VALLEY
IRRIGATING COMPANY RESERVOIR AT WHICH POINT THE WATER COMES INTO
THE RESERVOIR AT T6S R38E S11 NWSESW AND IMMEDIATELY BELOW THE
DAM OF SAID RESERVOIR AT T6S R39E S19 SWSWSW SO THAT THE WATER

OTHER PROVISIONS (continued)

RELEASED MAY BE MORE ACCURATELY DETERMINED. THE NORMAL FLOW OF THE PORTNEUF RIVER MAY NOT BE OBSTRUCTED BY THE RESERVOIR WITH REFERENCE TO THE AMOUNT OF WATER DELIVERED THROUGH THE RESERVOIR DURING THE IRRIGATING SEASON. NO CHARGE SHALL BE MADE AGAINST THE NORMAL STREAM FLOW FROM THE POINT ABOVE THE RESERVOIR LOCATED AT T 6S R38E S11NWSESW AND THE POINT BELOW THE RESERVOIR LOCATED AT T6S R39E S19 SWSWSW.

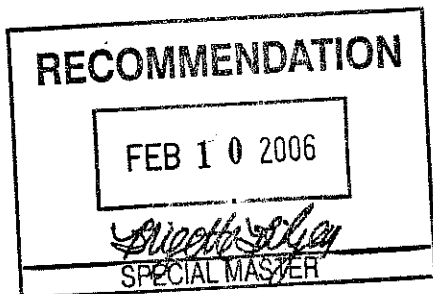
THE OPERATION AND ADMINISTRATION OF THIS WATER RIGHT IS SUBJECT TO THE TERMS AND CONDITIONS OF THE PORTNEUF RIVER SETTLEMENT AGREEMENT, BASIN 29: PORTNEUF RIVER FILED WITH THE SRBA DISTRICT COURT APRIL 22, 2005.

THIS STORAGE WATER RIGHT IS TO BE DELIVERED WITHOUT CONVEYANCE LOSS FROM THE RESERVOIR TO THE POINT OF DIVERSION LOCATED ON THE PORTNEUF RIVER AT T9S R37E SEC 22 SWSNW (LOT 3) FOR THE PORTNEUF-MARSH VALLEY CANAL COMPANY'S CANAL THROUGH SAID COMPANY'S DRAINAGE CANAL AND THE PORTNEUF RIVER.

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 - CRBA

TWIN FALLS CO., IDAHO

FILED

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Department of Water Resources

Boundary of Service Area for
PORTNEUF MARSH VALLEY CANAL CO LTD

T10S R37E

29-52, 29-53, 29-589,
29-4060 and 29-13318

Service Area
Township/Range
Section

GIS Place of Use Illustration
1987/1988 NAPP Photography
Prepared by: E. Carlsen
Date: November 2005

0 1 2 3 4 Miles

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
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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

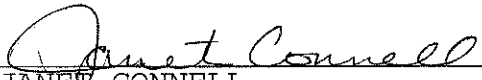
Water Right(s): 29-00053

On February 10, 2006, 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 February 10, 2006.


JANET CONNELL
Deputy Clerk

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

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CERTIFICATE OF MAILING

Water Right(s): 29-00053

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 10, 2006, with sufficient first-class postage prepaid to the following:

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

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

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

CERTIFICATE OF MAILING

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02/10/06

USDI BLM

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

KENNETH D ANDRUS
6948 E OLD OREGON TRAIL RD
LAVA HOT SPRINGS, ID 83246
Phone: 208-776-5380


JANET CONNELL
Deputy Clerk