

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

2006 FEB 10 PM 2 28

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: 29-04467
	)	(Digital Boundary-Lava Irrigation 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 Lava Irrigation Co., Inc. and Marsh Valley Development, Inc. The *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

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In Re SRBA)
Case No. 39576)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 29-04467

NAME AND ADDRESS: LAVA IRRIGATION CO INC
PO BOX 182
LAVA HOT SPRINGS, ID 83246

SOURCE: PORTNEUF RIVER TRIBUTARY: SNAKE RIVER

QUANTITY: 20.50 CFS

USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 22.76 CFS. COMBINED RIGHT NOS.:
29-47A, 29-48, 29-4467, 29-10816.

PRIORITY DATE: 08/07/1932

POINT OF DIVERSION: T09S R38E S09 LOT 6 (NWNESE) Within Bannock County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	20.50 CFS
	Stockwater	01-01 TO 12-31	0.12 CFS

PLACE OF USE:

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO
THE IRRIGATION OF A COMBINED TOTAL OF 614.8 ACRES IN A SINGLE
IRRIGATION SEASON. COMBINED RIGHT NOS.: 29-47A, 29-48, 29-4467,
29-10816.

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 AS 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.

PLACE OF USE IS WITHIN THE AREA SERVED BY THE LAVA IRRIGATION
COMPANY INC.

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

THIS RIGHT IS SUBJECT TO REGULATION BY THE WATERMASTER OF WATER
DISTRICT 29.

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).

RECOMMENDATION

FEB 10 2006

Dianna J. Lacy
SPECIAL MASTER

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



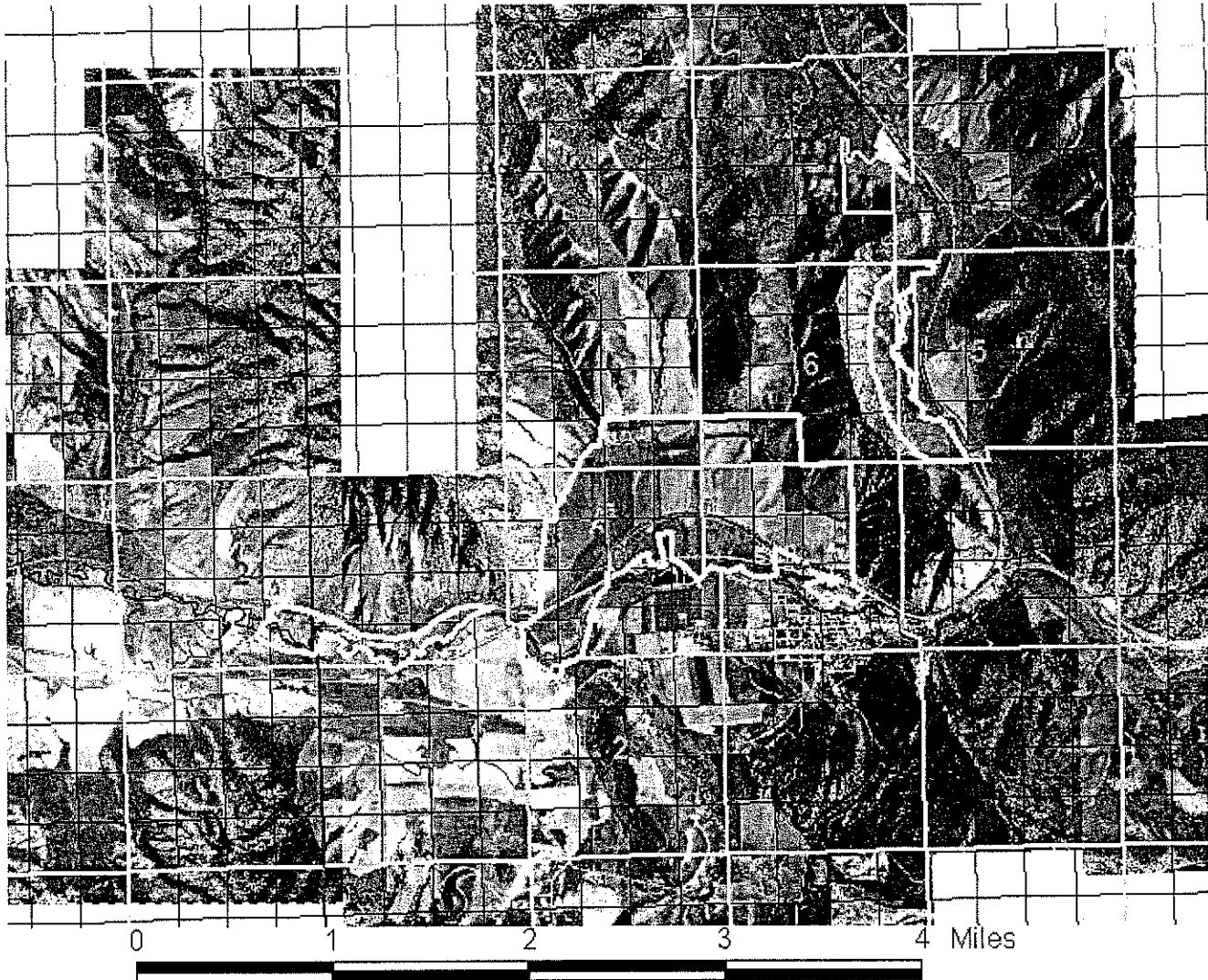
Department of Water Resources

ESSENTIAL TO THE STATE OF IDAHO
TWIN FALLS CO., IDAHO

Claim No.: 29-47A, 29-4467
29-48, 29-10816⁸

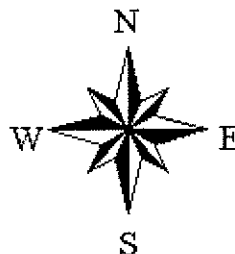
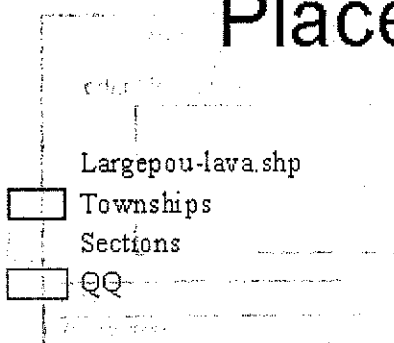
Twp 9S, Rge 37E

Twp 09S, Rge 38E



Irrigated Acres = 614.8

Place of Use Boundary



GIS Place of Use Illustration
1987/1988 NAPP Photography
Prepare by: E. Carlsen
Date: January 2003

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
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In Re SRBA)
)
Case No. 39576)
)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

Water Right(s): 29-04467

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

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)
Case No. 39576)
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CERTIFICATE OF MAILING

Water Right(s): 29-04467

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

MARSH VALLEY DEVELOPMENT INC
Represented by:
RANDALL C BUDGE
201 E CENTER, STE A2
PO BOX 1391
POCATELLO, ID 83204-1391
Phone: 208-232-6101

CERTIFICATE OF MAILING

PAGE 1
02/10/06

LAVA IRRIGATION CO INC
PO BOX 182
LAVA HOT SPRINGS, ID 83246


JANET CONNELL
Deputy Clerk

RECEIVED
FEB 14 2006
DEPARTMENT OF
WATER RESOURCES