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DEPARTMENT OF
WATER RESOURCES

2006 AUG -9 AM 11: 53

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	)	SECOND SPECIAL MASTER'S
	)	REPORT
Case No. 39576	)	
	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW
	)	
	)	FOR WATER RIGHT 65-22762

I. FINDINGS OF FACT

A notice of claim was filed for the above listed 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 or abstract for the elements of this water right.

On May 14, 2004, the claimants of the water rights, Cheryl and George Colwell, through their counsel of record Dana Hofstetter, filed an objection to the *Director's Report*. On May 3, 2005, the claimants filed a *Standard Form 5 – Stipulated Elements of a Water Right*, which resolved the claimant's objection. The Idaho Department of Water Resources concurred with the stipulation.

On September 21, 2005, this Special Master issued a *Special Master's Report* for the above-captioned water right, recommending that the right be decreed with the elements as set forth in the *Standard Form 5*. Thereafter, the Court received correspondence from Dana Hofstetter requesting that the subject water right be added to the list of water rights that are to be separately administered pursuant to Basin 65 General Provision No. 3. Upon receiving this correspondence, this Special Master withdrew the *Special Master's Report* for this water right.

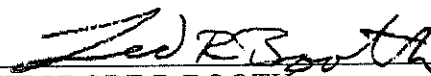
On April 7, 2006, the claimants filed a *Motion to Amend Objection, or in the Alternative, Motion to File Late Objection*. The *Motion* was granted, and a late objection was filed seeking to have the subject water right included on the separate streams list. On August 8, 2006, an

initial hearing was held on the objection. At the hearing, on the record, the claimants, by and through their attorney, withdrew the objection, and are now seeking to have the water right decreed in accordance with the previously filed *Standard Form 5*. Counsel for the Idaho Department of Water Resources, Deputy Attorney General Susan Hamlin, had no objection to the withdrawal of the late objection, with the proviso that the settlement set forth in the *Standard Form 5* constitutes a full and final settlement of the issues raised by the late objection, and that this claimant be precluded from again raising the same issue.

II. CONCLUSIONS OF LAW

Therefore based on the file and record herein and pursuant to the *Standard Form 5*, IT IS RECOMMENDED that water right 65-22762 be **decreed** with the elements as set forth in the attached *Recommendation for Partial Decree Pursuant to I.R.C.P. 54(b)*.

Dated August 8, 2006.


THEODORE R BOOTH
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 65-22762

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DEPARTMENT OF
WATER RESOURCES

NAME AND ADDRESS: CHERYL F COLWELL
GEORGE E COLWELL
3990 HWY 52
PAYETTE, ID 83661

SOURCE: BIG WILLOW CREEK TRIBUTARY: PAYETTE RIVER

QUANTITY: 0.44 CFS

PRIORITY DATE: 04/01/1890

POINT OF DIVERSION: T08N R04W S19 NENE (Instream Ending Point) Within Payette County
S22 LOT 7 (SESW) (Instream Beginning Point)

Ending point of diversion is in unsurveyed accretion land.

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Stockwater	01-01 TO 12-31	0.44 CFS

PLACE OF USE:	Stockwater	Within Payette County
	T08N R04W S17	SWSW LOT 2 (SESW)
		SWSE
	S19	NENE LOT 8 (NENE)
	S20 LOT 1	(NENE) LOT 7 (NENE)
	LOT 7	(NENE) LOT 6 (NWNW)
	S21	SWNE NWNW
	LOT 5	(SWNW) SENW
		NESE NWSE
	S22	NWSW LOT 6 (SWSW)
	LOT 7	(SESW)

Place of use includes unsurveyed accretion land.

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).

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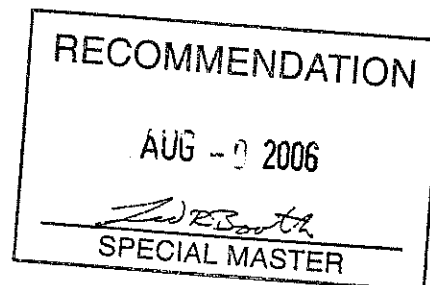
DEPARTMENT OF
WATER RESOURCES

SRBA Partial Decree Pursuant to I.R.C.P. 54(b) (continued)

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



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TWIN FALLS CO, IDAHO
FILED *[Signature]*

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): 65-22762

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 August 09, 2006, with sufficient first-class postage prepaid to the following:

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

GEORGE E COLWELL
Represented by:
DANA L. HOFSTETTER
608 WEST FRANKLIN STREET
BOISE, ID 83702
Phone: 208-424-7800

CHERYL F COLWELL
3990 HWY 52
PAYETTE, ID 83661

[Signature]
DEBBIE LASH
Deputy Clerk

CERTIFICATE OF MAILING

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08/09/06

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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

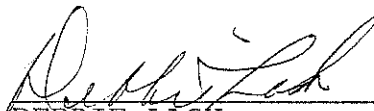
Water Right(s): 65-22762

On August 09, 2006, Special Master THEODORE R. BOOTH 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 August 09, 2006.


DEBBIE LASH
Deputy Clerk