

2007 NOV 14 PM 2:29

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; FINDINGS OF |
| Case No. 39576 | ) | FACT AND CONCLUSIONS OF LAW |
|                | ) |                             |
|                | ) | FOR WATER RIGHT: 21-4173    |
| _____          | ) |                             |

**I. FINDINGS OF FACT**

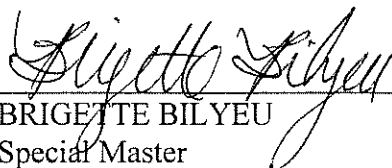
A notice of claim was filed for this water right pursuant to I.C. § 42-1409. The Director of the State of Idaho Department of Water Resources examined the water system for this reporting area. The *Director's Report* contained a recommendation for the elements of this water right.

An *Objection* was filed by James F. Hagenbarth on April 21, 2006. The *Objection* was resolved on May 22, 2007 with the filing of a *Standard Form 5*. All parties to the subcase and IDWR are signatories to the *Standard Form 5*.

**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: November 14, 2007.

  
\_\_\_\_\_  
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

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In Re SRBA )  
PARTIAL DECREE PURSUANT TO  
Case No. 39576 ) I.R.C.P. 54(b) FOR  
Water Right 21-04173

DISTRICT COURT-SRBA  
TWIN FALLS CO., IDAHO  
FILED

NAME AND ADDRESS: DAVID J HAGENBARTH  
JAMES F HAGENBARTH  
PO BOX 1128  
DILLON, MT 59725-1128

SOURCE: KICK CREEK TRIBUTARY: SINKS

QUANTITY: 3.50 CFS

The quantity of water under this right for stockwater use shall  
not exceed 13,000 gallons per day.

PRIORITY DATE: 05/01/1894

POINT OF DIVERSION: T13N R40E S11 NWSWNE Within Clark County

PURPOSE AND  
PERIOD OF USE:

| PURPOSE OF USE | PERIOD OF USE  | QUANTITY |
|----------------|----------------|----------|
| Irrigation     | 05-01 TO 10-31 | 3.50 CFS |
| Stockwater     | 04-01 TO 12-31 | 0.23 CFS |

PLACE OF USE:

| Irrigation        | Within Clark County                                                                     |
|-------------------|-----------------------------------------------------------------------------------------|
| T13N R40E S10     | SESW 25.0<br>NESE 28.0<br>NWSE 12.0<br>SWSE 36.0<br>SESE 40.0                           |
| S11               | NESW 40.0<br>NWSW 27.0<br>SESW 40.0<br>SESE 40.0<br>NWSE 40.0<br>SWSE 40.0<br>SESE 39.0 |
| S12               | NESW 7.4<br>NWSW 40.0<br>SESW 16.0                                                      |
| S14               | NENE 9.7<br>NWNE 19.0<br>NENW 21.0<br>NWNW 9.8                                          |
| S15               | NENE 40.0<br>NWNE 40.0                                                                  |
| R41E S07 LOT 2    | (SWNW) 19.0                                                                             |
| 668.9 Acres Total |                                                                                         |
| Stockwater        | Within Clark County                                                                     |
| T13N R40E S10     | NESE                                                                                    |
| S11               | NWSW<br>SESW<br>NESE<br>NWSE<br>SWSE                                                    |
| S12               | NWSW                                                                                    |

This right is limited to the irrigation of 383 acres within the  
place of use described above in a single irrigation season.  
The rights listed below are limited to the irrigation of a  
combined total of 668.9 acres in a single irrigation season.  
Combined Right Nos.: 21-2054B, 21-4170, 21-4171, 21-4172,  
21-4173, 21-4174, 21-4175, 21-12854, 21-12939, 31-2274, 31-2275,  
31-10245, 31-10740

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

The quantity of water decreed for this water right for  
stockwater use is not a determination of historical beneficial  
use.

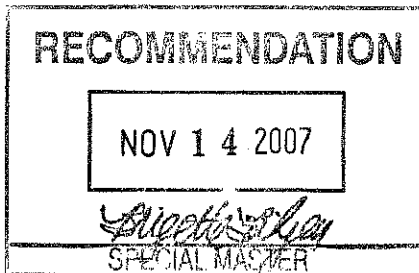
SRBA Partial Decree Pursuant to I.R.C.P. 54(b) (continued)

OTHER PROVISIONS (continued)

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

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In Re SRBA )  
Case No. 39576 )  
\_\_\_\_\_ )

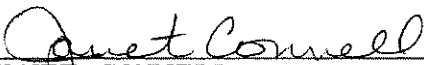
NOTICE OF ISSUANCE OF  
SPECIAL MASTER'S  
RECOMMENDATION  
  
Water Right(s): 21-04173

On November 14, 2007, 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 November 14, 2007.

  
\_\_\_\_\_  
JANET CONNELL  
Deputy Clerk

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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

CERTIFICATE OF MAILING

Water Right(s): 21-04173

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 November 14, 2007, with sufficient first-class postage prepaid to the following:

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

JAMES F HAGENBARTH

Represented by:

JOHN M MARSHALL  
601 W BANNOCK ST  
PO BOX 2720  
BOISE, ID 83701-2720  
Phone: 208-388-1200

DAVID J HAGENBARTH  
JAMES F HAGENBARTH  
PO BOX 1128  
DILLON, MT 59725-1128  
Phone: 406-683-2163

CERTIFICATE OF MAILING

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11/14/07  
  
JANET CONNELL  
Deputy Clerk