

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

FEB 15 2008

By _____ Clerk

Deputy Clerk

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

**SPECIAL MASTER'S REPORT AND
RECOMMENDATION; FINDINGS OF
FACT AND CONCLUSIONS OF LAW**

WATER RIGHT NO.: 37-07920

I. FINDINGS OF FACT

A 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 Gary and Helen Demoss on March 10, 2006. The *Demosses' Withdrawal of Objection* was filed on May 4, 2007. A hearing was held on September 26, 2007. There was no opposition to the withdrawal of the *Objections*. ***Order Dismissing Objection*** (September 28, 2007) There are no unresolved objections remaining in this subcase.

II. CONCLUSIONS OF LAW

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 15, 2008.

Brigitte Bilyeu
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)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 37-07920

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
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By _____	Clerk
_____	Deputy Clerk

NAME AND ADDRESS: STATE OF IDAHO
IDAHO WATER RESOURCE BOARD
322 E FRONT ST
PO BOX 83720
BOISE, ID 83720-0098

SOURCE: MALAD RIVER TRIBUTARY: SNAKE RIVER

QUANTITY: 39.00 CFS

PRIORITY DATE: 06/19/1981

This minimum streamflow shall be junior and subordinate to all consumptive use rights diverted from groundwater within the Snake River Aquifer tributary to the Malad River, held in trust by the State of Idaho, which may be approved or diverted later in time than the priority of this right. Approval of this minimum streamflow right shall not give rise to any right or claim against any future rights to the consumptive use of groundwater held in trust by the State of Idaho initiated later in time than the priority of this right to the extent that such uses are within the limits established pursuant to the Swan Falls Agreement, the Idaho State Water Plan, and Chapter 2, Title 42, Idaho Code.

POINT OF DIVERSION: T06S R13E S34 LOT 1 (NENW) (Instream Ending Point) Within Gooding County
S35 NENW (Instream Beginning Point)
NWNW (Instream Beginning Point)

This minimum instream flow begins at the downstream side of the Idaho Power Company diversion structure located on or near the line separating the NE NW, Section 35, Township 6 South, Range 13 East, B. M., from the NW NW, Section 35, Township 6 South, Range 13 East, B. M., and ends downstream approximately one (1) mile at the confluence of the Malad River with the Snake River in Lot 1 (NE NW) Section 34, Township 6 South, Range 13 East, B. M.

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Minimum Stream Flow	01-01 TO 12-31	39.00 CFS

Use of water under this right shall be non-consumptive.
The purpose of this minimum stream flow is to maintain trout rearing and spawning habitat.

PLACE OF USE: The Place of Use is within the reach between the beginning instream point and the ending instream point described for the points of diversion for this right.

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

Upon the future finding and order of the Director that gauging stations are required to maintain the approved minimum flow on the Malad River, such measuring devices shall be permanently installed and maintained as specified by the Department. The Board, upon receiving a request, or upon its own initiative,

RECOMMENDATION	
FEB 15 2008	

OTHER PROVISIONS (continued)

may petition the Director for an amendment to the right. The petition must set forth any significant change in circumstances and evidence of the public interest supporting the proposed amendment. The Director will notify the general public and specific persons or known interested parties of the proposed change, and conduct a hearing for the purpose of determining whether the right should be amended in the public interest. The burden of proof at the hearing shall be upon the persons or parties seeking the amendment to establish that the amendment of the right would be in the public interest.

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 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): 37-07920

On February 15, 2008, 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 15, 2008.



JANET CONNELL
Deputy Clerk

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
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In Re SRBA)
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CERTIFICATE OF MAILING

Water Right(s): 37-07920

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 15, 2008, with sufficient first-class postage prepaid to the following:

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

STATE OF IDAHO
Represented by:
DAVID J. BARBER
DEPUTY ATTORNEY GENERAL
PO BOX 44449
BOISE, ID 83711-4449
Phone: 208-334-2400


JANET CONNELL
Deputy Clerk

CERTIFICATE OF MAILING

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