

DEPARTMENT OF
WATER RESOURCES

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

DEC - 9 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 ON MOTION
TO SET ASIDE PARTIAL DECREE**

WATER RIGHT: 34-452E

I. PROCEDURAL BACKGROUND

The SRBA District Court issued a *Partial Decree* for water right 34-282C on January 15, 1998. The SRBA District Court issued an *Order Amending Irrigation Period of Use Element in Partial Decree and Incorporating into Partial Decree an Express Statement Regarding General Provisions, Nunc Pro Tunc* on December 14, 2001. A *Motion to Set Aside Partial Decree* was filed by Max and Cheryl Bingham on March 18, 2008. An *Order of Reference Appointing Special Master Brigitte Bilyeu* was issued March 18, 2008.

Hearings were held on the *Motion* on May 14, 2008, July 30, 2008, and December 3, 2008. At the hearings, the court determined the following:

- 1.) No parties to the SRBA objected to the *Motion*.
- 2.) A clerical error resulted in the point of diversion being described as T06N R25E S24 NWNWNE. The point of diversion should have been described as T06N R25E S24 NENWNE.
- 3.) There was no finding of specific prejudice to other parties.

An *Amended Director's Report* was issued August 6, 2008. The *Amended Director's Report* recommended the water right with the corrected legal description. No objections or responses were filed. At the December 3, 2008 hearing, the claimant and IDWR concurred that a *Special Master's Report and Recommendation* should issue consistent with the *Amended Director's Report*.

SPECIAL MASTER'S REPORT AND RECOMMENDATION
ON MOTION TO SET ASIDE PARTIAL DECREE
G:/BASIN FOLDERS/34MRR/282C.452E.MRR.SET ASIDE PD.GRANT
12/4/08

II. STANDARD OF REVIEW

A *Partial Decree* for this right was issued January 15, 1998 and an *Order Amending Partial Decree* was filed December 14, 2001. *Motions to Set Aside Partial Decree* may be considered under Idaho Rule of Civil Procedure 60(a) or 60(b). I.R.C.P. 60(a) allows a court to correct clerical errors.

There was no dispute that the *Partial Decree* and *Order Amending Partial Decree* contained a clerical error in the legal description for the point of diversion. The *Amended Director's Report* issued August 6, 2008 corrects the legal description, and no *Objections* were filed to the *Amended Director's Report*.

III. CONCLUSIONS AND RECOMMENDATIONS

Therefore, based on the file and record herein, IT IS RECOMMENDED that the *Motion to Set Aside Partial Decree* be **granted**. Accordingly, this water right should be decreed with the elements set forth in the attached *Special Master's Recommendation for Amended Partial Decree*. The recommended elements are consistent with the *Amended Director's Report*.

Dated: December 9, 2008.


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

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

DEC - 9 2008

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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)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 34-00452E

NAME AND ADDRESS: CHERY L BINGHAM
MAX J BINGHAM
3861 N HWY 93
LESLIE, ID 83255

SOURCE: BIG LOST RIVER TRIBUTARY: SINKS

QUANTITY: 1.26 CFS

USE OF THIS RIGHT WITH RIGHT NOS. 34-00282C, 34-02438 AND
34-10795 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 3.66
CFS.

PRIORITY DATE: 06/01/1885

POINT OF DIVERSION: T06N R25E S24 NENWNE Within Custer County

PURPOSE AND			
PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	05-01 TO 10-15	1.26 CFS

THE PERIOD OF USE FOR IRRIGATION DESCRIBED ABOVE MAY BE EXTENDED
IN SEASONS OF UNUSUAL CHARACTERISTICS TO A BEGINNING DATE OF
04-20 AND AN ENDING DATE OF 10-31 AT THE DISCRETION OF THE
DIRECTOR OF THE IDAHO DEPARTMENT OF WATER RESOURCES.

PLACE OF USE:	Irrigation		Within Custer County
	T06N R26E S19	SESW 38.0	SWSE 36.0
		SESE 39.0	
	S30	NENE 33.0	
	146.0 Acres Total		

USE OF THIS RIGHT WITH RIGHT NOS. 34-00282C, 34-02438 AND
34-10795 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF
146 ACRES IN A SINGLE IRRIGATION SEASON.
THIS RIGHT IS LIMITED TO THE IRRIGATION OF 63 ACRES WITHIN THE
PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

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

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

DEC 09 2008

[Signature]
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

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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho
DEC - 9 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)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

Water Right (s) : 34-452E

On December 9, 2008, Special Master BRIGETTE BILYEU issued a SPECIAL MASTER'S REPORT AND RECOMMENDATION ON MOTION TO SET ASIDE PARTIAL DECREE 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: December 9, 2008.


JANET CONNELL
Deputy Clerk

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DEC 10 2008

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
DEC - 9 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	)	CERTIFICATE OF MAILING
	)	
Case No. 39576	)	
_____	)	Water Right (s) : 34-452E

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT AND RECOMMENDATION ON MOTION TO SET ASIDE PARTIAL DECREE was mailed on December 9, 2008, with sufficient first-class postage prepaid to the following:

Director of IDWR
PO Box 83720
Boise, Idaho 83720-0098

Max and Cheryl Bingham
3861 N. Hwy 93
Leslie, Idaho 83255


Deputy Clerk