

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA
TWIN FALLS CO. IDAHO
FILED _____
2009 JUL 8 AM 11 45

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 REGARDING
CORRECTION TO PARTIAL DECREE**

WATER RIGHT: 27-11367

I. PROCEDURAL BACKGROUND

The SRBA District Court issued an *Order of Partial Decree* for the above listed water right. After the *Director's Reports* for Basin 27 were filed, the Idaho Department of Water Resources conducted a review of its recommendations. During that review, IDWR discovered that some corrections were needed and notified the Court.

On November 18, 2008, IDWR sent a letter providing the Court with additional information about the necessary corrections. The letter was served on the parties to the subcases. The IDWR letter identified this subcase as having an error in the *Director's Report* which was carried over to the *Partial Decree*. The error involved incorrect language regarding historic beneficial use for stockwater. Presiding Judge John Melanson issued an *Order of Reference Appointing Special Master Brigitte Bilyeu*. A hearing was held on January 30, 2009.

II. FINDINGS OF FACT

At the hearing held on January 30, 2009, IDWR reported that the *Partial Decree* should be set aside. IDWR explained that the *Partial Decree* incorrectly included the following language:

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

IDWR reported that this language should be deleted because IDWR does have information about historic beneficial use for this right. The Court set a deadline of March 27, 2009 for any party to the subcase to file an Objection to removal of the language from the *Partial Decree. Order Setting Deadline and Status Conference*. (February 6, 2009)

No objections were filed, and the time for filing such objections has now expired. Therefore, it is appropriate that the SRBA District Court set aside the *Partial Decree* and enter an *Amended Partial Decree* which merely deletes the above referenced language.

III. CONCLUSIONS AND RECOMMENDATIONS

Therefore, based on the file and record herein, IT IS RECOMMENDED that the *Partial Decree* be set aside and that this water right be decreed with the elements set forth in the attached *Special Master's Recommendation for Amended Partial Decree*.

Dated: July 8, 2009.



BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

DISTRICT COURT SRBA
IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AMENDED

FILED

In Re SRBA)
Case No. 39576)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

2009 JUL 8 AM 11 45

Water Right 27-11367

NAME AND ADDRESS: KEITH BITTON
397 FISH HATCHERY RD
GRACE, ID 83241

SOURCE: SLUG CREEK TRIBUTARY: BLACKFOOT RIVER

QUANTITY: 0.02 CFS
1.47 AFY

PRIORITY DATE: 09/25/1927

POINT OF DIVERSION: T08S R43E S24 NWSNE (Instream Ending Point) Within Caribou County
S25 SENENE (Instream Beginning Point)

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Stockwater	05-01 TO 11-30	0.02 CFS
			1.47 AFY

PLACE OF USE:	Stockwater		Within Caribou County
	T08S R43E S24	SWNE	NESE
		NWSE	SESE
	S25	NENE	

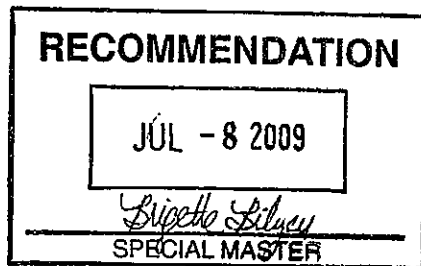
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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).

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)
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Water Right(s): 27-11367

Julie Murphy
JULIE MURPHY
Deputy Clerk

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In Re SRBA

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CERTIFICATE OF MAILING

Water Right(s): 27-11367

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 July 08, 2009, with sufficient first-class postage prepaid to the following:

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

SHOSHONE-BANNOCK TRIBES

Represented by:
JEANETTE WOLFLEY
SPECIAL COUNSEL
SHOSHONE-BANNOCK TRIBE
202 N ARTHUR
POCATELLO, ID 83202
Phone: 208-232-1922

STATE OF IDAHO

Represented by:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
PO BOX 44449
BOISE, ID 83711-4449

CERTIFICATE OF MAILING

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07/08/09

KEITH BITTON
397 FISH HATCHERY RD
GRACE, ID 83241
Phone: 208-427-6661



JULIE MURPHY
Deputy Clerk