

AUG 11 2009

DEPARTMENT OF
WATER RESOURCES

COPY

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Attorneys for the State of Idaho

**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	)	Subcase no. 02-07416
	)	
Case No. 39576	)	MOTION TO ALTER OR AMEND
	)	SPECIAL MASTER RECOMMENDATION
	)	
	)	

Motion

The State of Idaho, Idaho Department of Parks and Recreation ("IDPR"), by and through its counsel of record, respectfully moves this Court to alter or amend the Special Master's Recommendation in this subcase. IDPR requests that the Special Master's Recommendation be amended as follows (the specific proposed changes are indicated by underlining):

1. In the "Place of Use" section, under "Wildlife" use, replace T06S R06E S14 NWNW with T06S R06E S14 NWSW.

2. In the "Place of Use" section, under "Recreation Storage" use, replace T06S R06E S13 NESE with T06S R06E S13 NWSE.

The grounds for this motion are discussed below. IDPR request oral argument on this motion.

Discussion

This subcase involves a claim by IDPR for water right 02-07416, which has several different uses, and a number of places of use, within Bruneau Dunes State Park. IDPR objected to the Director's Report. No responses to IDPR's objection were filed. On May 29, 2009, IDPR and the Idaho Department of Water Resources filed a *Standard Form 5* that resolved IDPR's objection and included eighty-four individual legal descriptions for the various places of use. On July 20, 2009, the Special Master filed a report stating: "The State is entitled to a partial decree adjudicating a water right as described in the *SF-5* and the attached *Special Master Recommendation for Partial Decree for Water Right 02-7416*." *Special Master Report, Subcase 02-7416* at 1 (July 20, 2009) (italics and boldface in original).

The *Special Master Recommendation* for water right 02-07416 was substantially identical to the *SF-5* with two minor exceptions: two of the eighty-four place of use descriptions in the *Special Master Recommendation* were slightly different from the corresponding descriptions in the *SF-5*. Specifically:

1. In the "Place of Use" descriptions for "Wildlife" use, the *Special Master Recommendation* included the location T06S R06E S14 NWNW, while the corresponding location in the *SF-5* was described as T06S R06E S14 NWSW.
2. In the "Place of Use" descriptions for "Recreation Storage" use, the *Special Master Recommendation* included the location T06S R06E S13 NESE, while the corresponding

location in the *SF-5* was described as T06S R06E S13 NWSE. The *Special Master Report* did not discuss or mention the two differences between the *SF-5* and the *Special Master Recommendation*.¹

On July 30, 2009, Donald V. Shaff of the Idaho Department of Water Resources sent a letter (by facsimile) to the Court, to the attention of the Special Master, notifying him that the partial decree recommendation deviated from the *SF-5* in the two respects described above, confirming that the *SF-5* was correct, and suggesting that the two place of use descriptions be changed to be consistent with the *SF-5*. A copy of the letter is attached hereto for this Court's convenience.

There is no dispute that the *SF-5* correctly describes the agreed-upon places of use for water right 02-07416. Nothing in the record explains or supports the two minor differences between the place of use descriptions in the *SF-5* and the *Special Master Recommendation*. Given the large number of place of use descriptions in the *SF-5*, it would appear that the most likely explanation for the two minor differences is that they resulted from inadvertent clerical or scrivener's errors. IDPR therefore respectfully requests that this Court amend the *Special Master Recommendation* for water right 02-07416 as described herein and enter a corresponding partial decree.

DATED this 10th day of August 2009.

LAWRENCE G. WASDEN
Attorney General

Clive J. Strong
Deputy Attorney General
Chief, Natural Resources Division

¹ Given the large number of place of use descriptions in the *SF-5*, it may be that the two minor differences between the *SF-5* and the *Special Master Recommendation* are inadvertent scrivener's errors.

MICHAEL C. ORR
Deputy Attorney General
Natural Resources Division

Michael C. Orr

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of August 2009, I caused to be served a true and correct copy of the foregoing **MOTION TO ALTER OR AMEND SPECIAL MASTER RECOMMENDATION** to the following parties by the indicated methods:

Clerk of the SRBA Court
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☒ Facsimile: 208-736-2121

Director,
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☒ Statehouse Mail

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83720-4449

- ☐ U.S. Mail
- ☒ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☐ Not Applicable

United States Department of Justice
Environment & Natural Resources
Division
550 West Fort Street
MSC 033
Boise, ID 83724

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____


MICHAEL C. ORR
Deputy Attorney General

**State of Idaho****DEPARTMENT OF WATER RESOURCES**

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

July 30, 2009

Faxed 7-30-09

SPECIAL MASTER TERRANCE DOLAN
SRBA DISTRICT COURT
PO BOX 2707
TWIN FALLS ID 83303-2707

Re: Snake River Basin Adjudication (SRBA)
Subcase No. 2-7416

Dear Special Master Dolan,

IDWR was informed and has confirmed the report and recommendation submitted July 20, 2009, deviates in two respects from the stipulated agreement (SF5) of the parties. Easier to state than actually do the data entry, I have confirmed the place of use for each water use of this water right are identical, if such makes it easier for the Court.

I have enclosed an IDWR recommendation with overstrike and underscore to demonstrate the two place of use descriptions I believe should be changed comparing the SMRR to the SF5, which I confirmed again is correct. I have also enclosed a map showing the place of use presuming it will aid the court in reconciling the place of use list. I hope you find these helpful.

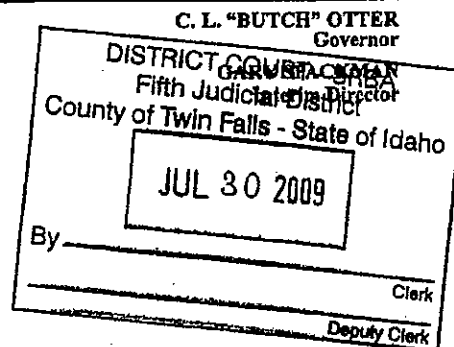
I would be happy to assist the Court further, if I have been less than clear in the letter.

Sincerely,

Donald V. Shaff, MPA
Adjudication Bureau Chief

Enclosures

C: M. Orr, State of Idaho
United States
G. Baxter w/o Enclosures
R. Ridgeway



07/30/2009

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 2-7416

NAME AND ADDRESS: STATE OF IDAHO
DEPT OF PARKS & RECREATION
STATEHOUSE MAIL
PO BOX 83720
BOISE ID 83720-0065

SOURCE: SNAKE RIVER

TRIBUTARY: COLUMBIA RIVER

QUANTITY: 1.950 CFS
881.90 APY

PRIORITY DATE: 04/04/1985

POINT OF
DIVERSION:

T06S R06E S2 SWNE Lot 2 Within OWYHEE County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
RECREATION STORAGE	01/01 12/31	300.00 APY
RECREATION	10/01 05/15	1.950 CFS 881.90 APY
WILDLIFE	10/01 05/15	1.950 CFS 881.90 APY
DIVERSION TO STORAGE	10/01 05/15	1.950 CFS
WILDLIFE STORAGE	01/01 12/31	300.00 APY

PLACE OF USE: WILDLIFE in OWYHEE County

T06S R06E S13	SWNE	T06S R06E S13	SENW
T06S R06E S13	NESW	T06S R06E S13	SWSW
T06S R06E S13	SESW	T06S R06E S13	NWSE
T06S R06E S13	SWSE	T06S R06E S14	NESW
T06S R06E S14	NWNW NWSW	T06S R06E S14	SWSW
T06S R06E S14	SESW	T06S R06E S14	NESE
T06S R06E S14	NWSE	T06S R06E S14	SWSE
T06S R06E S14	SESE	T06S R06E S23	NENE
T06S R06E S23	NWNE	T06S R06E S23	NENW
T06S R06E S24	NWNE	T06S R06E S24	NENW
T06S R06E S24	NWNW		

WILDLIFE STORAGE in OWYHEE County

T06S R06E S13	SWNE	T06S R06E S13	SENW
T06S R06E S13	NESW	T06S R06E S13	SWSW
T06S R06E S13	SESW	T06S R06E S13	NWSE
T06S R06E S13	SWSE	T06S R06E S14	NESW
T06S R06E S14	NWSW	T06S R06E S14	SWSW
T06S R06E S14	SESW	T06S R06E S14	NESE
T06S R06E S14	NWSE	T06S R06E S14	SWSE
T06S R06E S14	SESE	T06S R06E S23	NENE
T06S R06E S23	NWNE	T06S R06E S23	NENW
T06S R06E S24	NWNE	T06S R06E S24	NENW

T06S R06E S24 NWNW

RECREATION in OWYHEE County

T06S R06E S13	SWNE	T06S R06E S13	SENW
T06S R06E S13	NESW	T06S R06E S13	SWSW
T06S R06E S13	SESW	T06S R06E S13	NWSE
T06S R06E S13	SWSE	T06S R06E S14	NESW
T06S R06E S14	NWSW	T06S R06E S14	SWSW
T06S R06E S14	SESW	T06S R06E S14	NESE
T06S R06E S14	NWSE	T06S R06E S14	SWSE
T06S R06E S14	SESE	T06S R06E S23	NENE
T06S R06E S23	NWNE	T06S R06E S23	NENW
T06S R06E S24	NWNE	T06S R06E S24	NENW
T06S R06E S24	NWNW		

RECREATION STORAGE in OWYHEE County

T06S R06E S13	SWNE	T06S R06E S13	SENW
T06S R06E S13	NESW	T06S R06E S13	SWSW
T06S R06E S13	SESW	T06S R06E S13	NWSE NWSE
T06S R06E S13	SWSE	T06S R06E S14	NESW
T06S R06E S14	NWSW	T06S R06E S14	SWSW
T06S R06E S14	SESW	T06S R06E S14	NESE
T06S R06E S14	NWSE	T06S R06E S14	SWSE
T06S R06E S14	SESE	T06S R06E S23	NENE
T06S R06E S23	NWNE	T06S R06E S23	NENW
T06S R06E S24	NWNE	T06S R06E S24	NENW
T06S R06E S24	NWNW		

Place of use is located within Bruneau Dunes State Park.

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. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

The point at which the water is diverted into the system of ponds is located within SENW, S13, T06S, R06E.

Water shall not be diverted under this right unless the flow of the Snake River exceeds established downstream minimum stream flows.



Idaho Department of Water Resources

Adjudication Recommendation

2-7416

(WILDLIFE)

Legend

Place of Use



State Outline



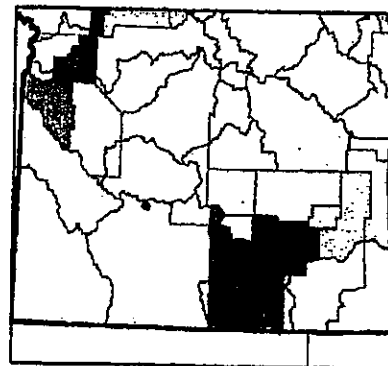
Townships



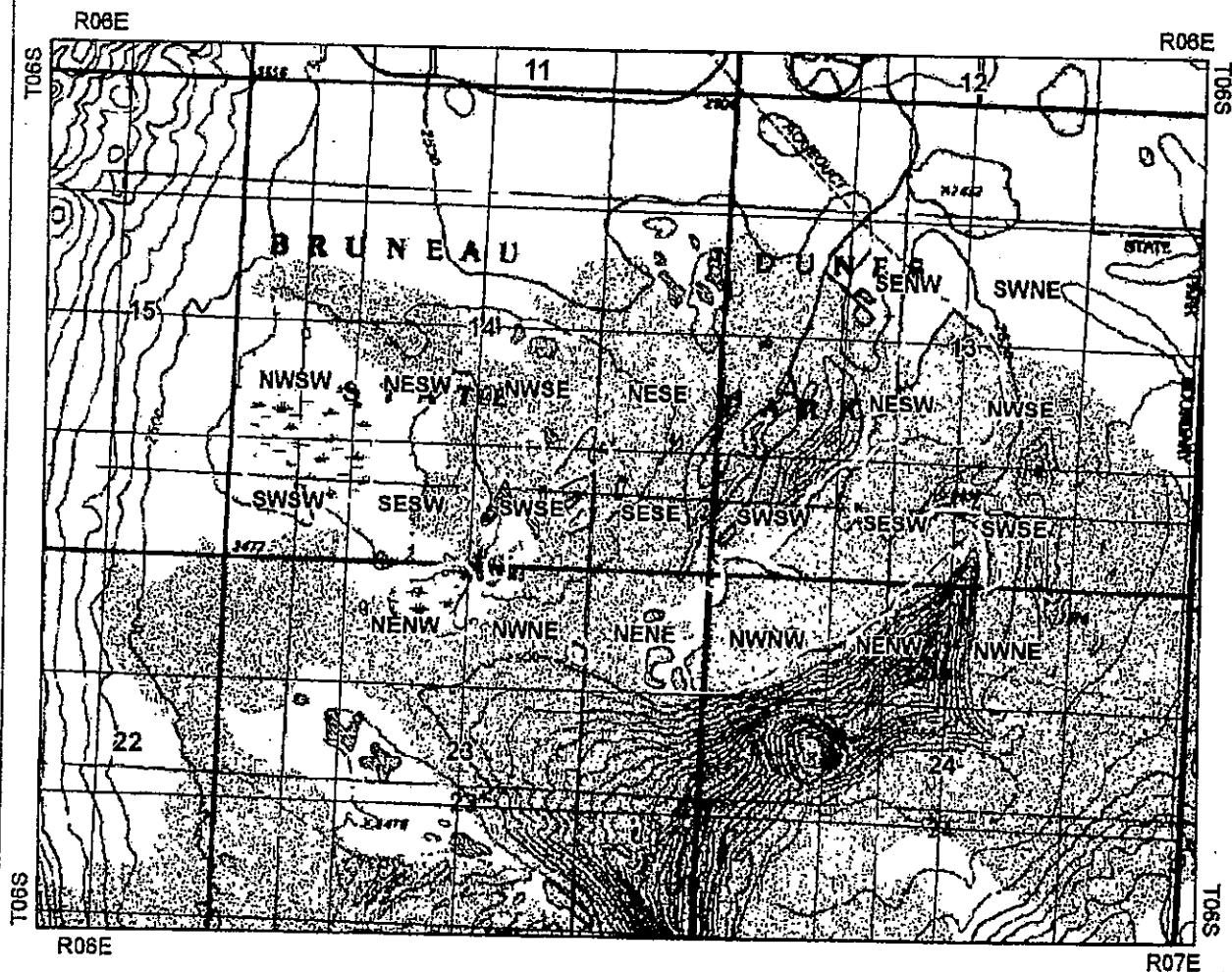
PLS Sections



Quarter Quarters



**Owyhee County
IDWR Basin 2**



Prepared by Don Shaff

On July 30, 2009

USGS 7.5 Minute Topographic Map

0 0.375 0.75 1.5 Miles