

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

AUG 18 2009

By _____ Clerk
_____ Deputy Clerk

In Re SRBA

Case No. 39576

**SPECIAL MASTER'S REPORT AND
RECOMMENDATION REGARDING
CORRECTION TO PARTIAL DECREE**

WATER RIGHT: 27-12095
(Torgesen Ranch)

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 Bilveu*. A hearing was held on January 30, 2009.

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.

Subsequently, IDWR also reported that there was additional information required to accurately describe the elements of this water right. Thus, IDWR prepared and filed a *Standard Form 5* on July 23, 2009 to resolve the remaining issues. Therefore, it is appropriate that the SRBA District Court set aside the *Partial Decree* and enter an *Amended Partial Decree* which accurately describes the elements and deletes the above referenced language in this water right.

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: August 18, 2009.


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

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

AUG 18 2009

In Re SRBA)
)
Case No. 39576)
_____)

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

Water Right 27-12095

By _____

Clerk
Deputy Clerk

NAME AND ADDRESS: TORGESEN RANCH INC
C/O KENT FOSTER
HOLDEN KIDWELL HAHN & CRAPO
PO BOX 50130
IDAHO FALLS, ID 83405

SOURCE: UNNAMED STREAMS TRIBUTARY: BLACKFOOT RIVER

QUANTITY: 0.02 CFS
2.11 AFY

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

Right Nos. 27-12094, 27-12095 and 27-11344 are limited to a
total combined annual diversion volume of 2.11 AF.

PRIORITY DATE: 05/01/1946

POINT OF DIVERSION: T07S R42E S36 NWNWNE (Instream Ending Point) Within Caribou County
NWNWNE (Instream Ending Point)
SENWNE (Instream Beginning Point)
NWNENW (Instream Beginning Point)
SWNENW (Instream Beginning Point)
NENW (Instream Ending Point)

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Stockwater	05-15 TO 10-01	0.02 CFS
			2.11 AFY

PLACE OF USE: Stockwater Within Caribou County
T07S R42E S36 NWNW NENW

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.

RECOMMENDATION

AUG 18 2009

Bigelle Delaney
SPECIAL MASTER

John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

RECEIVED

AUG 19 2009

DEPARTMENT OF
WATER RESOURCES

RECEIVED

AUG 18 2009

DEPARTMENT OF
WATER RESOURCES

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

AUG 18 2009

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

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NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

Water Right(s): 27-12095

On August 18, 2009, 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 August 18, 2009.


JANET CONNELL
Deputy Clerk

RECEIVED
AUG 19 2009
DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho
AUG 18 2009
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)
_____)

CERTIFICATE OF MAILING

Water Right(s): 27-12095

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 August 18, 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

TORGESSEN RANCH INC

Represented by:
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1000 RIVERWALK DR, STE 200
PO BOX 50130
IDAHO FALLS, ID 83405
Phone: 208-523-0620

CERTIFICATE OF MAILING

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STATE OF IDAHO

Represented by:

NATURAL RESOURCES DIV CHIEF

STATE OF IDAHO

ATTORNEY GENERAL'S OFFICE

PO BOX 44449

BOISE, ID 83711-4449



JANET CONNELL
Deputy Clerk