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JAN 12 2010
DEPARTMENT OF
WATER RESOURCES

Attorneys for Terry and Anita Clark

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23326.0000

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

Subcase No. 37-21746

**MOTION TO ALTER OR AMEND SPECIAL
MASTER'S REPORT AND
RECOMMENDATION**

COME NOW Terry and Anita Clark ("Clark"), by and through undersigned counsel of record and pursuant to SRBA AO1 Section 13, and hereby submit this Motion to Alter or Amend Special Master's Report and Recommendation for water right no. 37-21746, entered on December 30, 2009. Clark seeks the correction of the Point of Diversion element of the Special Master's Recommendation. This motion is made based upon the following grounds:

1. On August 28, 2009, and in response to prior Objections and Amended Notices of Claim filed and submitted by Clark, the Idaho Department of Water Resources

("Department") filed Amended Director's Report for water right nos. 37-01120 and 37-21746.

A copy of that Amended Director's Report is attached hereto as Exhibit A. The Amended Director's Report did not draw the filing of any subsequent Objections.

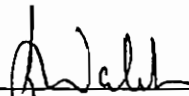
2. On December 30, 2009, Special Master Brigitte Bilyeu entered her Special Master's Report, Findings of Fact and Conclusions of Law for Water Right Nos. 37-01120 and 37-21746. Also entered on December 30, 2009, was a Special Master's Recommendation for each of the above-referenced water rights in the form of a proposed partial decree for each of them. *See* Exhibit B attached hereto.

3. Unfortunately, the Special Master's Recommendation for water right no. 37-21746 erroneously located one of the water right's three points of diversion as the SWNW of "T03N R21E S25." As set forth in the Amended Director's Report filed with the Court on August 28, 2009, the correct point of diversion is the SWNW T03N R21E of **Section 35**, rather than the "S25" contained within the Special Master's Recommendation. Given the Amended Director's Report on file with the Court, it appears that the Section identification error contained within the Special Master's Recommendation for water right no. 37-21746 is typographical in nature.

4. For the reasons set forth herein, Clark respectfully requests that the erroneous point of diversion for water right no. 37-21746 be corrected to read "S35," rather than "S25" as currently recommended in the Special Master's Recommendation of water right no. 37-21746, entered on December 30, 2009.

DATED this 11th day of January, 2010.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 

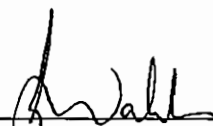
Andrew J. Waldera – Of the Firm
Attorneys for Terry and Anita Clark

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of January, 2010, I caused a true and correct copy of the foregoing **MOTION TO ALTER OR AMEND SPECIAL MASTER'S REPORT AND RECOMMENDATION** to be served by the method indicated below, and addressed to the following:

Director
IDAHO DEPARTMENT OF WATER RESOURCES
322 E. Front Street, 6th Floor
P.O. Box 83720
Boise, ID 83720
Fax: (208) 287-6700

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile



Andrew J. Waldera

1202

DISTRICT COURT - SRBA
TWIN FALLS CO. IDAHO
FILED _____
2009 AUG 28 PM 12 39

AMENDED DIRECTOR'S REPORT

Subcase Nos. 37-1120 and 37-21746

In Re SRBA
Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

**Prepared by the Idaho Department of Water Resources
Gary Spackman, Interim Director
Donald V. Shaff, Adjudication Bureau Chief**

August 28, 2009

Exhibit A

DESCRIPTIVE SUMMARY

This is an Amended Director's Report submitted by the Director of the Idaho Department of Water Resources.

DISCUSSION

Pursuant to the Special Master's *Order Granting Motion to File Amended Notice of Claim, Setting Subcase Deadlines and Status Conference* dated August 6, 2009, the Director submits for filing with the Court, an Amended Director's Report for subcases 37-1120 and 37-21746.

Respectfully submitted this 28th day of August, 2009.


DONALD V. SHAFF
Adjudication Bureau Chief

AMENDED DIRECTOR'S REPORT

08/27/2009

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

RIGHT NUMBER: 37-1120

NAME AND ADDRESS: ANITA K CLARK
PO BOX 308
CAREY ID 83320

TERRY L CLARK
PO BOX 308
CAREY ID 83320

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 1.100 CFS

PRIORITY DATE: 01/22/1913

POINT OF
DIVERSION:

T02N R21E S3 NENE Lot 1 Rediversion Within BLAINE County
T02N R21E S3 NWSE Rediversion Within BLAINE County
T03N R21E S35 SWNW Rediversion Within BLAINE County
T03N R22E S7 NWNE Within BLAINE County
T03N R22E S7 NENW Injection Within BLAINE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04/15 10/31	1.100 CFS

PLACE OF USE:

IRRIGATION in BLAINE County

T02N R21E S02 Lot 4 NWNW	4.00	T02N R21E S03 Lot 1 NENE	39.00
T02N R21E S03 Lot 2 NWNE	11.00	T02N R21E S03 SWNE	20.00
T02N R21E S03 SENE	27.00	T02N R21E S03 NESE	11.00
T02N R21E S03 NWSE	22.00	T02N R21E S03 SWSE	30.00

164 ACRES TOTAL

This right is limited to the irrigation of 55 acres within the place of use described above in a single irrigation season.

The rights listed below are limited to the irrigation of a combined total of 164 acres in a single irrigation season. Combined Right Nos.: 37-1120, 37-1140, 37-21383, and 37-21746.

The rights listed below are limited to the irrigation of a combined total of 170 acres in a single irrigation season. Combined Right Nos.: 37-1120, 37-1140, 37-21383, 37-21746, and 37-21963.

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.

In accordance with Baptie v. Lewis (Blaine County, January 22, 1926), the water diverted from the Logan Tunnel is developed water and not tributary to Muldoon Creek or Little Wood River. Water diverted from Logan Tunnel shall be administered separately from those sources.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.

08/27/2009

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

RIGHT NUMBER: 37-21746

NAME AND ADDRESS: ANITA K CLARK
PO BOX 308
CAREY ID 83320TERRY L CLARK
PO BOX 308
CAREY ID 83320

SOURCE: MULDOON CREEK

TRIBUTARY: LITTLE WOOD RIVER

QUANTITY: 3.890 CFS

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

PRIORITY DATE: 01/23/1926

POINT OF
DIVERSION:

T02N R21E S3 NENE Lot 1 Within BLAINE County

T02N R21E S3 NWSE Within BLAINE County

T03N R21E S35 SWNW Within BLAINE County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	04/15 10/31	3.840 CFS
STOCKWATER	01/01 12/31	0.050 CFS

PLACE OF USE: IRRIGATION in BLAINE County

T02N R21E S02 Lot 4 NWNW	4.00	T02N R21E S03 Lot 1 NENE	39.00
T02N R21E S03 Lot 2 NWNE	11.00	T02N R21E S03 SWNE	20.00
T02N R21E S03 SENE	27.00	T02N R21E S03 NESE	11.00
T02N R21E S03 NWSE	22.00	T02N R21E S03 SWSE	30.00

STOCKWATER in BLAINE County

T02N R21E S02 Lot 4 NWNW		T02N R21E S03 Lot 1 NENE	
T02N R21E S03 Lot 2 NWNE		T02N R21E S03 SWNE	
T02N R21E S03 SENE		T02N R21E S03 NESE	
T02N R21E S03 NWSE		T02N R21E S03 SWSE	

164 ACRES TOTAL

The rights listed below are limited to the irrigation of a combined total of 170 acres in a single irrigation season. Combined Right Nos.: 37-1120, 37-1140, 37-21383, 37-21746, and 37-21963.

This right is limited to the irrigation of 101 acres within the place of use described above in a single irrigation season.

The rights listed below are limited to the irrigation of a combined total of 164 acres in a single irrigation season. Combined Right Nos.: 37-1120, 37-1140, 37-21383, and 37-21746.

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(5), Idaho Code.

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

Amended Director's Report

37-21746

08/27/2009

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

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Right includes accomplished change in place of use pursuant to Section
42-1425, Idaho Code.

CERTIFICATE OF SERVICE

I certify that on Aug 28th, 2009, I caused to be served a true and correct copy of this Amended Director's Report, to the following persons, in the manner indicated and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

☐ Overnight Mail
☐ Regular Mail
☐ Hand-Delivered
☒ Facsimile

2. Copies to:

Chief, Natural Resources Div.
Office of the Attorney General
P.O. Box 44449
Boise, ID 83711-4449

☐ Overnight Mail
☐ Regular Mail
☒ Hand-Delivered
☐ Facsimile

United States Department of Justice
Environment & Natural Resources Div.
550 W. Fort Street MSC 033
Boise, ID 83724

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

Blaine County Courthouse
201 2nd Ave S. Ste 110
Hailey, ID 83333

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

Andrew J. Waldera
Scott L. Campbell
Moffatt Thomas
P.O. Box 829
Boise, ID 83701-0829

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile



Signature of person delivering form

AMENDED DIRECTOR'S REPORT

2009 DEC 30 PM 2 46

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 NOS.: 37-1120 and 37-
) 21746

RECEIVED

DEC 31 2009

MOFFATT, THOMAS, BARRETT,
ROCK & FIELDS, CHTD

I. FINDINGS OF FACT

A notice of claim was filed for these water rights 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 recommendations for the elements of these water rights.

Objections were filed by Terry and Anita Clark on November 13, 2007. A *Motion to File Amended Notice of Claims* was filed by Terry and Anita Clark on May 12, 2009. An *Amended Director's Report* was filed on August 28, 2009. The *Amended Director's Report* was placed on the Docket Sheet. No objections were filed to the *Amended Director's Report*, and the time for filing such objections has now expired.

II. CONCLUSIONS OF LAW

Therefore, based on the file and record herein, IT IS RECOMMENDED that these water rights be decreed with the elements set forth in the attached *Special Master's Recommendation for Partial Decrees*.

DATED: December 30, 2009.


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

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

DISTRICT COURT - SRDA
TWIN FALLS CO., IDAHO

In Re SRBA)
Case No. 39576)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 37-01120

FILED

2009 DEC 30 PM 2 46

NAME AND ADDRESS: ANITA K CLARK
TERRY L CLARK
PO BOX 308
CAREY, ID 83320

SOURCE: GROUND WATER

QUANTITY: 1.10 CFS

PRIORITY DATE: 01/22/1913

POINT OF DIVERSION: T02N R21E S03 LOT 1 (NBNE) (Rediversion) Within Blaine County
T03N R21E S15 NWSE (Rediversion)
R22E S07 SWNW (Rediversion)
NWNE
NENW (Injection)

PURPOSE AND PERIOD OF USE: PURPOSE OF USE PERIOD OF USE QUANTITY
Irrigation 04-15 TO 10-31 1.10 CFS

PLACE OF USE: Irrigation Within Blaine County
T02N R21E S02 LOT 4 (NWNW) 4.0
S03 LOT 1 (NENE) 39.0 LOT 2 (NWNW) 11.0
SWNE 20.0 SENE 27.0
NESE 11.0 NWSE 22.0
SWSE 30.0
164.0 Acres Total

The rights listed below are limited to the irrigation of a combined total of 170 acres in a single irrigation season. Combined Right Nos.: 37-1120, 37-1140, 37-21383, 37-21746 and 37-21963.

The rights listed below are limited to the irrigation of a combined total of 164 acres in a single irrigation season. Combined Right Nos.: 37-1120, 37-1140, 37-21383 and 37-21746. This right is limited to the irrigation of 55 acres within the place of use described above in a single irrigation season.

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

In accordance with Baptie v. Lewis (Blaine County, January 22, 1926), the water diverted from the Logan Tunnel is developed water and not tributary to Muldoon Creek or Little Wood River. Water diverted from Logan Tunnel shall be administered separately from those sources.

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 DATE OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RECOMMENDATION

DEC 30 2009

Dianna L. Lyle
SPECIAL MASTER

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

In Re SRBA)
Case No. 39576)

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

FILED

Water Right 37-21746

2009 DEC 30 PM 2 46

NAME AND ADDRESS: ANITA K CLARK
TERRY L CLARK
PO BOX 308
CAREY, ID 83320

SOURCE: MULDOON CREEK TRIBUTARY: LITTLE WOOD RIVER

QUANTITY: 3.89 CFS

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

PRIORITY DATE: 01/23/1926

POINT OF DIVERSION: T02N R21E S03 LOT 1 (NENE) Within Blaine County
NWSE
T03N R21E S25 SWNW

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Irrigation	04-15 TO 10-31	3.84 CFS
Stockwater	01-01 TO 12-31	0.05 CFS

PLACE OF USE:

Irrigation	Within Blaine County
T02N R21E S02 LOT 4 (NWNW) 4.0	
S03 LOT 1 (NENE) 39.0	LOT 2 (NWNW) 11.0
SWNE 20.0	SENE 27.0
NESE 11.0	NWSE 22.0
SWSE 30.0	
164.0 Acres Total	

Stockwater	Within Blaine County
T02N R21E S02 LOT 4 (NWNW)	
S03 LOT 1 (NENE)	LOT 2 (NWNW)
SWNE	SENE
NESE	NWSE
SWSE	

The rights listed below are limited to the irrigation of a
combined total of 164 acres in a single irrigation season.
Combined Right Nos.: 37-1120, 37-1140, 37-21383 and 37-21746.
The rights listed below are limited to the irrigation of a
combined total of 170 acres in a single irrigation season.
Combined Right Nos.: 37-1120, 37-1140, 37-21383, 37-21746 and
37-21963.

This right is limited to the irrigation of 101 acres within the
place of use described above in a single irrigation season.

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

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

RECOMMENDATION

DEC 30 2009

Biggelle Lilley
SPECIAL MASTER

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).

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

2009 DEC 30 PM 2 47

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

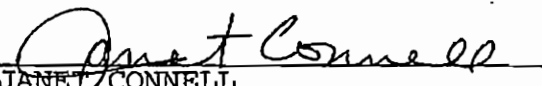
Water Right(s): 37-01120
37-21746

On December 30, 2009, Special Master BRIGETTE BILYEU issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s) pursuant to SRBA Administrative Order 1 (A01), 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 30, 2009.


JANET CONNELL
Deputy Clerk

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

2009 DEC 30 PM 2 47

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): 37-01120
37-21746

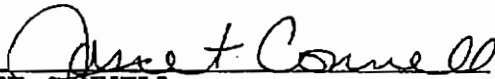
CERTIFICATE OF MAILING

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 December 30, 2009, with sufficient first-class postage prepaid to the following:

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

ANITA K CLARK
TERRY & ANITA CLARK
TERRY L CLARK

Represented by:
SCOTT L CAMPBELL
101 S CAPITOL BLVD 10TH FLOOR
PO BOX 829
BOISE, ID 83701-0829
Phone: 208-345-2000


JANET CONNELL
Deputy Clerk

CERTIFICATE OF MAILING

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12/30/09