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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho
MAR 16 2010
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	)	SPECIAL MASTER'S REPORT AND
	)	RECOMMENDATION ON MOTION TO
	)	SET ASIDE PARTIAL DECREE
Case No. 39576	)	
	)	WATER RIGHT: 21-2100
	)	
_____	)	

I. PROCEDURAL BACKGROUND

The SRBA District Court issued a *Partial Decree* for this water right on February 2, 2007. On August 29, 2007 a *Motion to Set Aside Partial Decree* was filed by North Henry's Lake Homeowners Association..

Presiding Judge John Melanson issued an *Order of Reference Appointing Special Master Brigitte Bilyeu* on August 29, 2007. Hearings were held on October 31, 2007, September 9, 2009 and March 3, 2010. An *Application for Order to Show Cause* was filed by the State of Idaho on February 9, 2010.

II. FINDINGS OF FACT

A *Stipulation to Resolve Motion to Set Aside Partial Decree in subcase 21-2100* was filed on March 2, 2010. A *Standard Form 5* was filed on March 3, 2010. The *Stipulation to Resolve* and the related *Standard Form 5* resolved the issues in this subcase. The *Motion to Set Aside* filed by North Henry's Lake Homeowners Association was related to the *Motion to Alter or Amend* filed in 21-10015. After lengthy negotiations between the parties and significant legal and technical review by IDWR, the parties reached a resolution which was memorialized in the *Stipulation to Resolve* and the *Standard Form 5*. At the hearing held on March 3, 2010, the State of Idaho indicated that the *Stipulation to Resolve* and the *Standard Form 5* resolved its

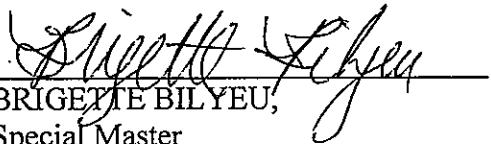
Application for Order to Show Cause. Consequently, the State of Idaho withdrew its *Application for Order to Show Cause*.

The court has considered I.R.C.P. 60(b)(6), the procedural history of this subcase, and the argument of counsel in ruling on the *Motion to Set Aside*. Considering the history, file of record, *Stipulation to Resolve* and the *Standard Form 5*, the *Motion to Set Aside* is **granted**.

III. CONCLUSIONS AND RECOMMENDATIONS

Therefore, based on the file and record herein, IT IS RECOMMENDED that the *Partial Decree* for 21-2100 be *Set Aside* and an *Amended Partial Decree* be issued with the elements set forth in the attached *Special Master's Recommendation for Amended Partial Decree*.

Dated: March 16, 2010.


BRIGETTE BILYEU,
Special Master
Snake River Basin Adjudication

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

AMENDED

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 21-02100

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho
MAR 16 2010
By _____ Clerk Deputy Clerk

NAME AND ADDRESS: STATE OF IDAHO
DEPT OF FISH & GAME
PO BOX 25
BOISE, ID 83707

SOURCE: SHERWOOD SPRING TRIBUTARY: HENRYS LAKE
HENRYS LAKE TRIBUTARY: HENRYS FORK

QUANTITY: 6.00 CFS

Diversion of water from the additional point of diversion
authorized under Transfer 74584 located in L2, (SESW), Sec. 33,
T16N, R43E shall not exceed a maximum diversion rate of 4.00 cfs.

PRIORITY DATE: 02/03/1948

POINT OF DIVERSION: T16N R43E S33 LOT 2 (SESW) Within Fremont County
NWSE

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Fish Propagation	01-01 TO 12-31	6.00 CFS

PLACE OF USE:	Fish Propagation	Within Fremont County
	T16N R43E S33	LOT 2 (SESW) LOT 1 (SWSE)

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

Diversion of water from Henrys Lake is limited to those times
water is available for diversion under this right and priority
from Unnamed Stream at the original point of diversion in the
NESE, S33, T16N, R43E, and to the amount of water that actually
reaches State Highway 287 in the SESE, S33, T16N, R43E or at
another suitable location and then flows into Henrys Lake.
Unnamed stream is known locally as Pittsburg Creek.
The use of water under this right shall in no way affect the
water rights or use of water of senior water users, including
water right no. 21-10015.

Prior to diversion of water under Transfer 74584, the right
holder shall provide a means of measurement acceptable to the
department for measuring the flow from Unnamed Stream at: the
original point of diversion in the NESE, S33, T16N, R43E; where
Unnamed Stream flows under State Highway 287 in the SESE, S33,
T16N, R43E or at another suitable location; and at the point of
diversion from Henrys Lake in Lot 2 (SESW), S33, T16N R43E.

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

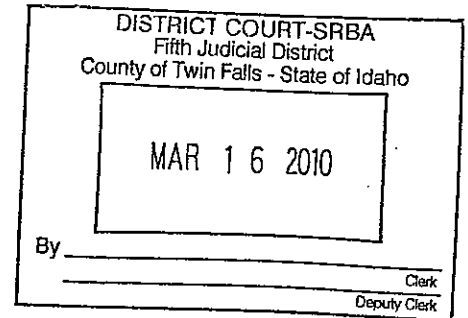
MAR 16 2010

Lupetto Lilley
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.

Eric J. Wildman
Presiding Judge of the
Snake River Basin Adjudication



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

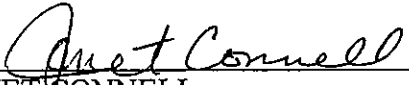
In Re SRBA	)	NOTICE OF ISSUANCE OF
	)	SPECIAL MASTER'S REPORT AND
	)	RECOMMENDATION ON MOTION TO
	)	SET ASIDE PARTIAL DECREE
Case No. 39576	)	
_____	)	Water Right (s) : 21-2100

On March 16, 2010 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.

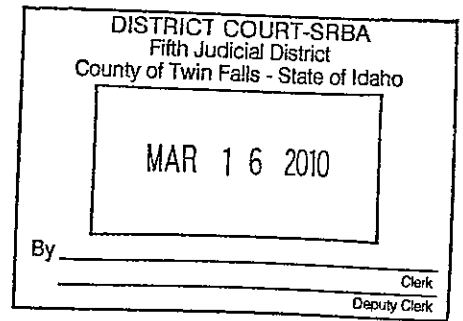
Pursuant to SRBA Administrative Order 1, Section 13a, any party to the adjudication including parties to the subcase, may file a Motion to Alter or Amend on or before the 28th day of the next month.

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: March 16, 2010.



JANET CONNELL
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)
Water Right (s) : 21-2100

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTERS REPORT AND
RECOMMENDATION ON MOTION TO SET ASIDE PARTIAL DECREE was mailed on
MARCH 16, 2010, with sufficient first-class postage prepaid to the following:

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

North Henry's Lake
Represented by:
Robert Harris
Luke Marchant
1000 Riverwalk Dr., Ste 200
PO Box 50130
Idaho Falls, Idaho 83405

State of Idaho
Represented by:
Natural Resources Div Chief
Attorney General's Office
PO Box 44449
Boise, Idaho 83711


Deputy Clerk