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Department of Water Resources
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1996 JUL 19 PM 2:22

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

FILED *JA*

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

) PRELIMINARY SPECIAL
) MASTER'S REPORT
)
) FINDINGS OF FACT AND
) CONCLUSIONS OF LAW FOR
)
) WATER RIGHTS: 34-00148,
) 34-00148A, 34-00148B, 34-00148C and
) 34-00148D

FINDINGS OF FACT

A notice of claim was filed for water right 34-00148. The director of the State of Idaho Department of Water Resources (IDWR) examined the water system for Reporting Area 1 and investigated and abstracted the notices of claim for Reporting Area 1 (Basin 34), which includes portions of Custer, Butte, Bonneville and Jefferson Counties, State of Idaho. The *Director's Report for Reporting Area 34* contained recommendations or abstracts for the elements of this water right.

An objection to the Director's Report for water right 34-00148 was filed on February 26, 1993, by the United States Bureau of Land Management. A response was filed on May 28, 1993 by the State of Idaho Department of Water Resources. Subsequently, a settlement was reached as to how the elements of this water right could be decreed, and a *Standard Form 5 - Stipulated Elements of a Water Right* was filed reflecting the settlement agreement of the parties. The signatories to the *Standard Form 5* are the claimant, Milt Butler; a non-party, Ray Black; and the Idaho Department of Water Resources (IDWR). One objector, the United States Bureau of Land Management, was dismissed as a party and its objection was dismissed with prejudice on

January 25, 1995. *Order Dismissing United States' Objection and Dismissing United States as Party to Subcase; Vacating Settlement Conference; and Requiring Standard Form 5*, (January 25, 1995). Thus it appears that all parties to this subcase, and IDWR, are signatories to the *Standard Form 5*. In addition, a *Notice of Completed Administrative Proceeding* was filed June 17, 1996 and an *Amended Notice of Completed Administrative Proceeding (Notices of Completed Administrative Proceedings)* was filed July 12, 1996. Both the *Notices of Completed Administrative Proceedings* and the *Standard Form 5* record a split of water right 34-00148.

This *Preliminary Special Master's Report; Findings and Conclusions of Law for Water Right Nos. 34-00148, 34-00148A 34-00148B, 34-00148C and 34-00148D* involves dividing a water right. A *Notice of Claim* was filed only for 34-00148. No claim was filed under the numbers 34-00148A, 34-00148B, 34-00148C or 34-00148D. Originally, a Director's Report was filed only for 34-00148; no Director's Report was originally filed for 34-00148A, 34-00148B, 34-00148C or 34-00148D. However, Director's Reports for 34-00148A, 34-00148B, 34-000148C and 34-00148D were attached to the *Notices of Completed Administrative Proceeding*.

The *Standard Form 5* and the *Notices of Completed Administrative Proceeding* propose that the original water right 34-00148 be split into three water rights to accommodate the sale of portions of real property and portions of the water right. Sales of real property and appurtenant water rights have been common during the pendency of the SRBA.

In order to accurately decree water rights, the SRBA must recognize that the sale of real property and appurtenant water rights often involves the sale of a portion of property, and a portion of a water right. There are no statutes, laws or constitutional provisions which prohibit such transfers. Dividing water rights in such a manner is lawful.

The entire water right sought to be divided here was claimed under water right 34-00148 by Milt Butler. Water right no. 34-00148 was included in the Director's Report. Subsequently, Mr. Butler sold 7 acres of his 130 acre place of use to Mr. Ray Black. As part of the terms of the sale, Mr. Black and Mr. Butler agreed that the portion of the water right for the 7 acres would be conveyed to Mr. Black and that Mr. Butler would retain a water right for the remaining acres. (*IDWR's Report Re: Water Right Splits* at 1.)

The seller/Mr. Butler, and the buyer/Mr. Black utilized a *Standard Form 5* filed with the court for the dual purposes of resolving the objection to 34-00148 and agreeing to the manner of splitting the original water right between Mr. Black and Mr. Butler. The Idaho Department of Water Resources also signed off on the division of this right as set forth in the *Standard Form 5*. Subsequently, Jerry and Susan Flynt and Cynthia and Mitchell Myers acquired a portion of the water right. The *Notices of Completed Administrative Proceeding* and attached *Amended Director's Reports* establish the further division of this water right and are treated as *prima facie* evidence of these water rights.

OVERVIEW

This recommendation has two primary components. First, it recommends that water right 34-00148 and 34-00148A not be confirmed in any decree. Second, it recommends that the division of this right be accommodated by assigning new numbers to the split rights. The Idaho Department of Water Resources has assured the court during hearings, and in its *IDWR's Report Re: Water Right Splits*, that it can and will accommodate a court decision not to confirm 34-00148 and 34-00148A in a decree. In addition, this *Preliminary Special Master's Report* recommends that the split of former 34-00148 be accommodated by each new portion of the right retaining the original numerical water right number, but adding a letter suffix B, C & D. In summary, 34-00148 and 34-00148A would no longer exist. Each element of Mr. Butler's portion of the right would be fully described under water right number 34-00148C. Each element of Mr. Black's portion of the right would be fully described under water right number 34-00148B. Each element of the right for the Flynts and Myers would be fully described under water right 34-00148D.

UNCHANGED ELEMENTS

The *Standard Form 5* together with the *Amended Director's Reports* attached to the *Notices of Completed Administrative Proceeding* fully describe each element of the proposed new split rights. Most elements of the new water rights remain unchanged from the original director's report. For the new water rights, **element 2**, source; **element 4**, priority date; **element 5**, point of diversion; **element 6**, purpose of use; and **element 7**, period of year; remain unchanged from the original Director's Report for 34-00148.

CHANGED ELEMENTS

The remaining elements of this water right as stipulated to in the *Standard Form 5* and as set forth in the *Amended Director's Reports*, differ from the original Director's Report for 34-00148 to accommodate the division of the right.

Element 1, name and address of claimant was changed from Milt Butler to Ray Black for 34-00148B, Milt Butler for 34-00148C, and Jerry Flynt, Susan Flynt, Cynthia Myers, and Mitchell Myers for 34-00148D.

Element 3, quantity was changed from 2.35 to 0.126 cfs for 34-00148B, 2.025 cfs for 34-00148C, and 0.199 cfs for 34-00148D to reflect the portion of the quantity of water which each of the split rights retains. The new quantities, 0.126 cfs, 2.025 cfs and 0.199 cfs total 2.35 which was the original quantity.

Element 8, legal description was changed to reflect the legal descriptions which accompany each of the new split rights.

Element 9, annual volume of consumptive use was changed to reflect the portion of consumptive use pertinent to each of the new split rights.

CONCLUSIONS OF LAW

Under *SRBA Administrative Order 1*, a Special Master is required to make a recommendation to the Presiding Judge as to whether and how a water right should be recommended for each subcase.

Where a *Standard Form 5* is signed by every party to the subcase and the Idaho Department of Water Resources, it may be given *prima facie* weight. An *Amended Director's Report* is also *prima facie* evidence of the right. The record on file for this subcase, including the *Standard Form 5* and the *Amended Director's Reports* as attached to the *Notices of Completed Administrative Proceeding*, clearly establishes the intent of the parties that this water right be decreed under three new numbers to reflect the division of the right and with the elements as set forth in the *Standard Form 5* and *Amended Director's Reports*.

Water right numbers 34-00148B, 34-00148C and 34-00148D do not constitute a change in the point of diversion, place of use, period of use, or nature of use of water pursuant to I.C. § 42-222.

Therefore, based on the file and record herein, and good cause appearing, IT IS RECOMMENDED that subcase no. 34-00148 and 34-00148A **not** be confirmed in any decree. IT IS FURTHER RECOMMENDED that 34-00148B, 34-00148C, and 34-00148D be decreed with the elements set forth in the *Preliminary Special Master's Recommendation for Partial Decree*.

DATED: July 18, 1996.



BRIGETTE BILYEU
Special Master, Reporting Area 1
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)
Case No. 39576)
_____)

PRELIMINARY 1996 JUL 18 PM 2:22
SPECIAL MASTER'S RECOMMENDATION FOR
PARTIAL DECREE FOR DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
Water Right 34-00148B
FILED *CA*

NAME & ADDRESS: RAY BLACK
PO BOX 16
MACKAY ID 83251

SOURCE: BIG LOST RIVER TRIBUTARY: SINKS

QUANTITY: 0.126 CFS

PRIORITY DATE: 03/01/1902

POINT OF DIVERSION: T08N R21E S12 NENWNW Within CUSTER County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	IRRIGATION	Irrigation Season	0.126 CFS

PLACE OF USE: IRRIGATION Within CUSTER County
T09N R22E S30 NWSE 7.0
7.0 ACRES TOTAL

USE OF THIS RIGHT WITH RIGHT NO. 34-00147B IS LIMITED TO
THE IRRIGATION OF A COMBINED TOTAL OF 7 ACRES IN A SINGLE
IRRIGATION SEASON.

CONSUMPTIVE USE:
USE OF THIS RIGHT WITH RIGHT NO. 34-00147B IS LIMITED TO A
TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 17.5 AF.

DATED July 18, 1996.

Brigette Bilyeu
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

In Re SRBA)
Case No. 39576)
_____)

PRELIMINARY 7/18/96 2:22
SPECIAL MASTER'S RECOMMENDATION FOR
PARTIAL DECREE FOR
TWIN FALLS CO. IDAHO
Water Right 34-00147C
FILED

NAME & ADDRESS: MILT BUTLER
PO BOX 27
MACKAY ID 83251

SOURCE: BIG LOST RIVER TRIBUTARY: SINKS

QUANTITY: 2.025 CFS

PRIORITY DATE: 03/01/1902

POINT OF DIVERSION: T08N R21E S12 NENWNW Within CUSTER County

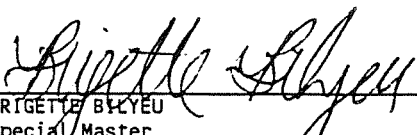
PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	IRRIGATION	Irrigation Season	2.025 CFS

PLACE OF USE:	IRRIGATION	Within CUSTER County			
	T09N R22E S30	NESE 40.0	NWSE 7.0	SWSE 25.0	SESE 40.0
	112.0 ACRES TOTAL				

USE OF THIS RIGHT WITH RIGHT NO. 34-00147C IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 112 ACRES IN A SINGLE
IRRIGATION SEASON.

CONSUMPTIVE USE:
USE OF THIS RIGHT WITH RIGHT NO. 34-00147C IS LIMITED TO A
TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 280 AF.

DATED July 18, 1996.


BRIGETTE BLYEU
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

In Re SRBA)
Case No. 39576)
_____)

PRELIMINARY 1996 JUN 18 PM 3:22
SPECIAL MASTER'S RECOMMENDATION FOR
PARTIAL DECREE FOR DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
Water Right 34-00148D
FILED *JA*

NAME & ADDRESS: JERRY FLYNT
SUSAN FLYNT
CYNTHIA MYERS
MITCHELL MYERS
PO BOX 3823
KETCHUM ID 83340

SOURCE: BIG LOST RIVER TRIBUTARY: SINKS

QUANTITY: 0.199 CFS

PRIORITY DATE: 03/01/1902

POINT OF DIVERSION: T08N R21E S12 NENWNW Within CUSTER County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	IRRIGATION	Irrigation Season	0.199 CFS

PLACE OF USE: IRRIGATION Within CUSTER County
T09N R22E S30 NWSE 6.0 SWSE 5.0
11.0 ACRES TOTAL

USE OF THIS RIGHT WITH RIGHT NO. 34-00147D IS LIMITED TO
THE IRRIGATION OF A COMBINED TOTAL OF 11 ACRES IN A SINGLE
IRRIGATION SEASON.

CONSUMPTIVE USE:

USE OF THIS RIGHT WITH RIGHT NO. 34-00147D IS LIMITED TO A
TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 27.5 AF.

DATED July 18, 1996.

Brigette Bilyeu
BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication