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

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	)	PRELIMINARY SPECIAL MASTER'S
	)	REPORT
Case No. 39576	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW FOR
	)	
	)	WATER RIGHT 34-00081

A notice of claim was filed for this water right pursuant to I.C. § 42-1409 (1990). The director of the State of Idaho Department of Water Resources (IDWR) examined the water system for Reporting Area 1 and investigated 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 (Director's Report)* contained recommendations or abstracts for the elements of this water right.

An objection to the *Director's Report* for this water right 34-00081 was filed on February 26, 1993, by the United States Bureau of Land Management. A response was filed on June 18, 1993, by the State of Idaho Department of Water Resources. On June 28, 1993 a response was filed by the claimants, Earl McAfee and Terry McAfee. On June 22, 1994, the United States filed its *United States' Notice of Withdrawal of Objection* withdrawing the objection filed by the United States. On February 7, 1995, this court issued its *Order Dismissing United States' Objection and Dismissing United States as a Party to Subcase; and Requiring Standard Form 5*. Subsequently, a settlement was reached as to how the elements of this water right could be decreed, and on March 8, 1995, a *Standard Form 5 - Proposed Elements of a Water Right* was filed reflecting the settlement agreement of the parties that the water right is correctly described

in the *Director's Report*. The signatories to the *Standard Form 5* are the claimants/respondents, Earl Bruce McAfee and Terry McAfee; and the Idaho Department of Water Resources. Thus it appears that all parties to this subcase, and IDWR, are signatories to the *Standard Form 5*.

All elements of the water right as stipulated to in the *Standard Form 5*, remain **unchanged** from the original *Director's Report*. Thus the court gives *prima facie* weight to the *Standard Form 5* to which IDWR is a signatory.

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 treated as an *Amended Director's Report* and given *prima facie* evidence of the right. The record on file for this subcase, including the *Standard Form 5*, clearly establishes the intent of the parties that water right 34-00081 be decreed with the elements as set forth in the attached *Preliminary Special Master's Recommendation for Partial Decree*.

IT IS SO RECOMMENDED.

DATED July 25, 1996.



BRIGETTE BILYEU
Special Master, Reporting Area 1
Snake River Basin Adjudication