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Department of Water Resources

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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 AND RECOMMENDATION
Case No. 39576	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW FOR
	)	
_____	)	WATER RIGHT 34-07407

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 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 (Director's Report)* contained a recommendation or abstract for the elements of this water right.

An objection to the *Director's Report* for water right 34-07407 was file 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 January 24, 1995 a *Motion to Withdraw or Dismiss Objections and to Vacate Settlement Conference* was filed by the United States. On January 25, 1995, the Special Master issued its *Order Dismissing United States' Objection and Dismissing United States as Party to Subcase; Vacating Settlement Conference; and Requiring Standard Form 5*. Subsequently, a settlement was reached as to how the elements of this water right could be decreed. On February 3, 1995 a *Standard Form 5* was filed reflecting the 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 claimant, Ben Howard; 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* except element 9.

Element 9, annual volume of consumptive use is listed in the *Standard Form 5* as *de minimis*. However, since the *Standard Form 5* was executed, the legislature amended I.C. §§ 42-1401A and 42-1411 removing the requirement that annual volume of consumptive use be decreed unless a quantified amount is reported in the Director's Report. No such quantified amount was reported for this right, therefore the annual volume of consumptive use will not be decreed.

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 34-07407 be decreed with the elements as set forth in *Standard Form 5* based on the Findings of Fact listed above.

Therefore, based on the file and record herein, IT IS RECOMMENDED that water right 34-07407 be decreed with the elements as set forth in the *Preliminary Special Master's Recommendation for Partial Decree* attached hereto.

IT IS SO RECOMMENDED.

DATED July 25, 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
SPECIAL MASTER'S RECOMMENDATION 25 PM 4:16

PARTIAL DECREE FOR DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
Water Right 34-07407 FILED

NAME AND ADDRESS: BEN HOWARD
PO BOX 502
CHALLIS, ID 83226

SOURCE: POISON SPRING TRIBUTARY: SINKS

QUANTITY: 0.02 CFS
0.60 AFY

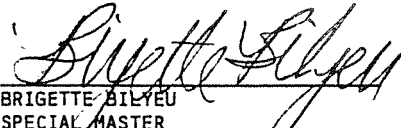
PRIORITY DATE: 12/31/1981

POINT OF DIVERSION: T10N R22E S17 NENWNW (Custer County)
SENWNW (Custer County)
NESWNW (Custer County)

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Domestic	01-01 TO 12-31	0.02 CFS 0.60 AFY

PLACE OF USE: Domestic
T10N R21E S11 SWNW

DATED July 25, 1996.


BRIGETTE BILYEU
SPECIAL MASTER
SNAKE RIVER BASIN ADJUDICATION