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JUL 26 1995
Department of Water Resources

1995 JUL 25 PM 3: 57
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 34-10893

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 recommendation or abstracts for the elements of this water right.

An objection to the *Director's Report* for water right 34-10893 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. Subsequently, a settlement was reached as to how the elements of this water right could be decreed. On January 24, 1995 a *Standard Form 5* was filed reflecting the settlement agreement of the parties that the water right is correctly described in the *Director's Report*. On February 14, 1995 an *Amended Standard Form 5* was filed. The signatories to the both the original and amended *Standard Forms 5* are the claimant, Orval C. Beus; United States Department of Justice for Bureau of Land Management; and the Idaho Department of Water Resources. Thus is appears that all parties to this subcase, and IDWR, are signatories to the original and amended *Standard Form 5*.

All elements of the water right as stipulated to in the *Amended Standard Form 5*, remain **unchanged** from the original *Director's Report* except for element 9. The court gives *prima facie* weight to the *Amended Standard Form 5* to which IDWR is a signatory.

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.

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 34-10893 be decreed with the elements as set forth in the attached *Preliminary Special Master's Recommendation for Partial Decree*.

Therefore, based on the file and record herein, IT IS RECOMMENDED that water right 34-10893 be decreed with the elements as set forth in the attached *Preliminary Special Master's Recommendation for Partial Decree*.

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 1996 JUL 25 PM 3:57
SPECIAL MASTER'S RECOMMENDATION FOR
DISTRICT COURT-SRBA
PARTIAL DECREE FOR TWIN FALLS CO., IDAHO
FILED
Water Right 34-10893

NAME AND ADDRESS: ORVAL C. BEUS
2845 WOOD CANYON
SODA SPRINGS, ID 83276

SOURCE: GROUNDWATER

QUANTITY: 0.04 CFS

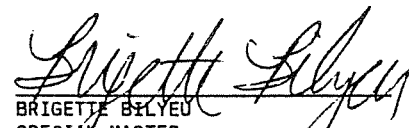
PRIORITY DATE: 08/31/1984 -

POINT OF DIVERSION: T08N R20E S25 LOT 01 (NESESW) (Custer County)

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Domestic	01-01 TO 12-31	0.04 CFS

PLACE OF USE: Domestic
T08N R20E S25 LOT 01 (NESW) LOT 01 (SESW)

DATED July 25, 1996.


BRIGETTE BILYEU
SPECIAL MASTER
SNAKE RIVER BASIN ADJUDICATION

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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	)	Subcase: 34-10893
	)	
Case No. 39576	)	CERTIFICATE OF MAILING
_____	)	

I certify that a true and correct copy of the *Preliminary Special Master's Report and Recommendation; Findings of Fact and Conclusions of Law for Water Right 34-10893* and *Notice of Issuance of Preliminary Special Master's Report and Recommendation* were mailed on July 25, 1996 with sufficient first-class postage prepaid to the following:

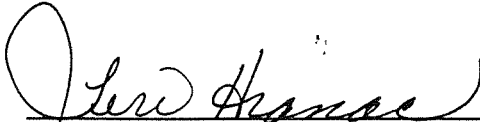
Chief, Natural Resources Division
Office Of The Attorney General
State of Idaho
P. O. Box 44449
Boise, ID 83711-4449

Director of IDWR
P.O. Box 83720
Boise, ID 83720-0098

United States Department of Justice
Environment & Natural Resources Division
550 West Fort Street, MSC 033
Boise, Idaho 83706

Orval C. Beus
2845 Wood Canyon
Soda Springs, Idaho 83276

DATED: July 25, 1996



Deputy Clerk