

1996 JUL 26 AM 9:02

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 57-02380

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 notice of claim for Reporting Area 2 (Basin 57), which includes portions of Owyhee County, State of Idaho. The *Director's Report for Reporting Area 2 (Director's Report)* contained recommendations or abstracts for the elements of this water right.

Subcase 57-02380 involves a stock water and wildlife claim filed by the United States Bureau of Land Management (BLM). After the *Directors Report* was filed the BLM objected to **element 3:** quantity, **element 7:** purpose of use, and **element 12:** water right recommendation. The BLM challenged the failure of the *Director's Report* to allocate a specific amount of water for wildlife consumption and that wildlife was not included as a purpose of use. The United States also challenged the number of livestock contained on the *Director's Report*. The BLM also alleged various minor corrections.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On January 22, 1996 the BLM filed a *Standard Form 5* which, contrary to the *Director's Report* included wildlife as a purpose of use. The *Standard Form 5* failed to specify a particular

quantity of range cattle under purpose of use. The Idaho Department of Water Resources (IDWR) filed a report on the *Standard Form 5*. IDWR did not sign off on the *Standard Form 5* because of the inclusion of wildlife as a purpose of use and failure to specify a particular amount of cattle. Furthermore, the *Standard Form 5* failed to include a combined use statement as a general remark and as included in the *Director's Report*.

After the *Standard Form 5* and IDWR's report on the *Standard Form 5* were filed the district court designated BWI 12. The purpose of the BWI designation was to address various issues dealing with *de minimis* stock water claims. On June 14, 1996 this court issued its decision regarding BWI 12. For subcase 57-02380 the court adopts and incorporates the decision involving BWI 12 into this Special Master's findings of fact and conclusions of law. One of the issues decided in BWI 12 involved how diversion rate would be decreed. BWI 12 held that stock water claims involving diversions would be decreed as claimed or actual diversion rate not to exceed 13,000 gallons per day. In decreeing or recommending a particular diversion rate for stock water claims the court recognizes that the amount recommended may not reflect actual or historical use for that stock water claim. Given the *de minimis* nature of stock water claims in that stock water claims constitute 1% to 2% of water claimed in the SRBA, it would be overly burdensome for IDWR to spend a finite amount of resources investigating these *de minimis* claims. To solve this problem the court shall recommend a particular diversion rate were the diversion rate may not reflect actual historical and beneficial use. For Subcase 57-02380 the diversion rate would be .01 cfs not to exceed 13,000 gallons per day.

Consistent with these findings and as a matter of law the Special Master recommends water right 57-02380 as listed on the attached *Preliminary Special Master's Recommendation* for Partial Decree.

DATED July 25, 1996.



FRITZ X. HAEMMERLE
Special Master, Reporting Area 2
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 FOR
PARTIAL DECREE FOR
Water Right 57-02380

1996 JUL 26 AM 9:02
DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED 12

NAME & ADDRESS: US DEPT OF INTERIOR
BUREAU OF LAND MANAGEMENT
IDAHO STATE OFFICE
3380 AMERICANA TERRACE
BOISE ID 83706

SOURCE: UPPER BIRCH SPRING TRIBUTARY: BIRCH CREEK

QUANTITY: 0.01 CFS

USE OF THIS WATER RIGHT SHALL NOT EXCEED 13,000 GALLONS PER
DAY.

PRIORITY DATE: 01/24/1942

POINT OF DIVERSION: T07S R01E S07 SWNWNE Within Owyhee County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	STOCKWATER	01-01 12-31	0.01 CFS

PLACE OF USE: STOCKWATER Within Owyhee County
T07S R01E S07 NWNE

DATED July 25th, 1996.

Fritz X. Haemmerle
FRITZ X. HAEMMERLE
Special Master
Snake River Basin Adjudication

1996 JUL 26 AM 9:02

DISTRICT COURT-SRBA
TWIN FALLS CO, IDAHO
FILED AK

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	)	CERTIFICATE OF MAILING
	)	
Case No. 39576	)	Water Right 57-02380
	)	

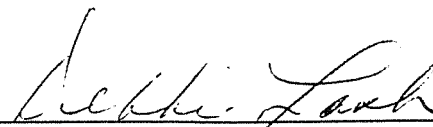
I certify that a true and correct copy of the *Preliminary Special Master's Report and Recommendation; Findings of Fact and Conclusions of Law for Water Right No. 57-02380* and *Notice of Issuance of Preliminary Special Master's Report and Recommendation* were mailed on February 9, 1996, with sufficient 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

The United States Department of Justice
Environment and Natural Resources Division
550 West Fort Street, Box 33
Boise, ID 83724

Director of IDWR
P O Box 83720
Boise, Idaho 83720

DATED: February 9, 1996.



Deputy Clerk