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Department of Water Resources

1996 JUL 31 AM 10:24
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

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 34-10675

FINDINGS OF FACT

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 contained recommendations or abstracts for the elements of this water right.

An objection to the director's report for this water right 34-10675 was filed on February 26, 1993, by the United States of America, on behalf of USDA Forest Service. A response was filed on June 18, 1993, by the State of Idaho Department of Water Resources. A hearing was held October 30, 1995. 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 was filed on March 27, 1995. The signatories to the *Standard Form 5* are the claimant, Diamond Lazy "L" Ranch, Ltd.; the objector, USDA Forest Service; and the Idaho Department of Water Resources. Thus it appears that all parties to this subcase, and the IDWR, are signatories to the *Standard Form 5*.

Several elements of the water right as stipulated to in the *Standard Form 5*, remain **unchanged** from the original Director's Report. Specifically, **element 1**, claimant's name and address, **element 2**, source; **element 3**, quantity; **element 4**, priority date; **element 6**, purpose of use; and **element 7**, period of year; remain **unchanged** from the original Director's Report.

The remaining elements of this water right as stipulated to in the *Standard Form 5*, differ from the original Director's Report: **element 4**, point of diversion, was changed from T06N, R27E, S30, SWSE to T06N, R27E, S25, SWSE. IDWR and the parties stipulated this is the correct description of the point of diversion. **Element 8**, the place of use, was changed from T06N, R27E, S30, SWSE to T06N, R27E, S25, SWSE. IDWR and the parties stipulated this is the correct place of use for this water right. In addition, since IDWR is a signatory to the *Standard Form 5*, the court recognizes the *Standard Form 5* as an *Amended Director's Report*, and gives *prima facie* weight to these elements of the water right.

Element 9, annual volume of consumptive use is listed 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 need 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 34-10675 be decreed with the elements as set forth in the *Standard Form 5* based on the Findings of Fact listed above **except element 9** will not be decreed.

Therefore, based on the file and record herein, IT IS RECOMMENDED that water right 34-10675 be decreed with the elements as set forth in the attached *Preliminary Special Master's Recommendation for Partial Decree*.

DATED: July 31, 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)
)
)
)
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PRELIMINARY
SPECIAL MASTER'S RECOMMENDATION FOR SRBA
DISTRICT COURT FOR
TWIN FALLS CO., IDAHO
PARTIAL DECREE FOR
Water Right 34-10675

NAME AND ADDRESS: DIAMOND LAZY "L" RANCH LTD.
C/O JAMES LORD
BOX 5
DARLINGTON, ID 83231

SOURCE: SPRING TRIBUTARY: RAMSHORN CANYON

QUANTITY: 0.05 CFS

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

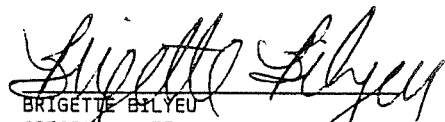
PRIORITY DATE: 03/16/1923

POINT OF DIVERSION: T06N R27E S25 SWSE (Butte County)

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Stockwater	01-01 TO 12-31	0.05 CFS

PLACE OF USE: Stockwater
T06N R27E S25 SWSE

DATED July 31, 1996.


BRIGETTE BILYEU
SPECIAL MASTER
SNAKE RIVER BASIN ADJUDICATION

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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: 34-10675

)

Case No. 39576

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CERTIFICATE OF MAILING

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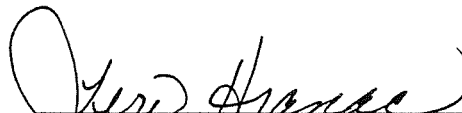
I certify that a true and correct copy of the *Preliminary Special Master's Report and Recommendation for Water Right 34-10675* and *Notice of Issuance of Preliminary Special Master's Report and Recommendation* were mailed on July 31, 1996 with sufficient first-class postage prepaid to the following:

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, Idaho 83720-0098

J. Dee May
Attorney at Law
P O Box 1846
Twin Falls, Idaho 83303-1846

United States Dept. Of Justice
550 West Fort Street, MSC 033
Boise, ID 83724


Deputy Clerk