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Adjudication Bureau

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OFFICE OF THE
ATTORNEY GENERAL

1996 JUL -2 PM 2:00

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

Case No. 39576

) PRELIMINARY SPECIAL
) MASTER'S REPORT
)
) FINDINGS OF FACT AND
) CONCLUSIONS OF LAW FOR
)
) WATER RIGHT 34-10674

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 34-10674 was filed on February 26, 1993, by Wiley F. Smith. A response was filed on July 1, 1993 by the State of Idaho Department of Water Resources. A hearing was held October 30, 1995. At the hearing, the parties discussed the elements of this right. 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. The signatories to the *Standard Form 5* are the claimant, Wiley F. Smith; the objector, Ben Howard; 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 2, source; element 3,

quantity; **element 5**, point of diversion; **element 6**, purpose of use; **element 7**, period of year; and **element 8**, place of use; 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 1**, name and address of claimant was changed from Ben Howard & Son to Wiley F. Smith. Wiley F. Smith and Ben Howard represented at the October 30, 1995 hearing, that the owner of this water right is Wiley Smith. **Element 8**, the place of use, however, remains on land owned by Ben Howard, since he uses this water right on his land pursuant to a lease agreement between Mr. Smith and Mr. Howard. **Element 4**, priority date was changed from December 31, 1940 to July 5, 1928. The parties and IDWR represent there is a sufficient factual basis for this change. In addition, since IDWR is a signatory to the *Standard Form 5*, the court may recognize the *Standard Form 5* as an *Amended Director's Report*, thus giving *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. S.B. 1480, 1996 Idaho Sess. Laws. 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 this water right 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, and good cause appearing, IT IS RECOMMENDED that water right 34-10674 be decreed with the elements set forth in the *Standard Form 5* except that element 9, annual volume of consumptive use shall not be included.

DATED: July 2, 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 FOR
PARTIAL DECREE FOR
Water Right 34-10674
1996 JUL -2 PM 2:00
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

NAME & ADDRESS: WILEY F SMITH
STAR ROUTE
MACKAY ID 83251

SOURCE: UNNAMED STREAM TRIBUTARY: ARENTSON GLUCH CREEK

QUANTITY: 0.06 CFS

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

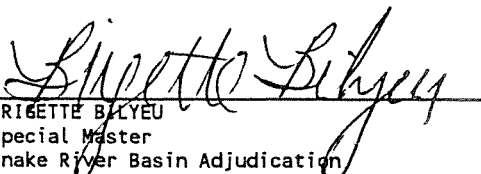
PRIORITY DATE: 07/05/1928

POINT OF DIVERSION: T11N R21E S36 NESE Within CUSTER County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	STOCKWATER	09-15 06-10	0.06 CFS

PLACE OF USE:	STOCKWATER	Within CUSTER County
	T10N R21E S02	SWSW
	S10	NENE
	S11	NENW
		SESW
		NWNE
		SWNE

B.B.
DATED June 2, 1996.


BRIGETTE BALYEU
Special Master
Snake River Basin Adjudication