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1996 JUL 11 AM 11:11 Department of Water Resources

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
Case No. 39576	)	
	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW FOR
	)	
	)	WATER RIGHT 34-00962

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 34-00962 was filed on March 1, 1993, by Ross Moody, President of Honolulu Copper Corporation. A response was filed on July 1, 1993 by the State of Idaho Department of Water Resources. The original director's report recommended that this claim be disallowed due to forfeiture or abandonment. A settlement conference was held January 19, 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 on September 20, 1995. The signatories to the *Standard Form 5* are the claimant/objector, Honolulu Copper Corporation; 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*.

One element of the water right as stipulated to in the *Standard Form 5*, remains **unchanged** from the original Director's Report; specifically, **element 1**, name and address of the claimant.

The remaining elements of this water right as stipulated to in the *Standard Form 5*, differ from the original Director's Report since the right was recommended disallowed due to forfeiture or abandonment: **element 2**, source of water is now Cliff Creek tributary Big Lost River; **element 3**, quantity is now 2.75 cfs with an additional description of the quantity, "up to 0.75 cfs of the water diverted may be taken through the water system. Remainder of water diverted to be released into Cliff Creek within 50 feet of the creek." At hearing on November 9, 1995 the parties and IDWR stipulated this additional description was required to adequately describe the quantity of this right given the unique diversion works. The parties explained the water for this right is diverted from the creek into a box and then goes into a pipeline. The total quantity of 2.75 cfs is needed to create a "head" of water with sufficient pressure to get the water through the pipeline. Thus the court holds this additional description should be included in the quantity element; **element 4**, priority date is now June 1, 1884; **element 5**, point of diversion is now T06N R23E S02 SWSENW; **element 6**, purpose of use is now mining; **element 7**, period of year is now year round; and **element 8**, the place of use is now T07N R23E S36. On November 9, 1995 a hearing on the *Standard Form 5* was held. At the hearing, the parties and IDWR represented there was a sufficient factual basis for these changes. 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*. The court gives *prima facie* weight to these elements of the water right.

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. 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 34-00962 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 11, 1996.


BRIGETTE BLYEU
Special Master, Reporting Area 1
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
Department of Water Resources

In Re SRBA)
Case No. 39576)
_____)

PRELIMINARY
SPECIAL MASTER'S RECOMMENDATION FOR
PARTIAL DECREE FOR
Water Right 34-00962

1996 JUL 11 AM 10:40
DISTRICT COURT - SRBA
TWIN FALLS, IDAHO

NAME & ADDRESS: HONOLULU COPPER CORPORATION
2927 MOKUMOA ST
HONOLULU HI 96819

SOURCE: CLIFF CREEK TRIBUTARY: BIG LOST RIVER

QUANTITY: 2.75 CFS

UP TO 0.75 CFS OF THE WATER DIVERTED MAY BE TAKEN THROUGH THE
WATER SYSTEM. REMAINDER OF WATER DIVERTED TO BE RELEASED INTO
CLIFF CREEK WITHIN 50 FEET OF THE CREEK.

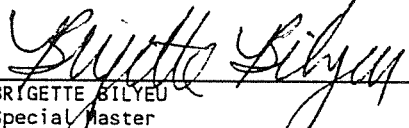
PRIORITY DATE: 06/01/1884

POINT OF DIVERSION: T06N R23E S02 SWSNW Within CUSTER County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	MINING	01-01 12-31	2.75 CFS

PLACE OF USE: MINING Within CUSTER County
T07N R23E S36 NWSE

DATED July 11, 1996.


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

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JUL 12 1996

Department of Water Resources

1996 JUL 11 AM 10:47

DISTRICT CLERK - SRBA
TWIN FALLS CO., IDAHO

FILED *DL*

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: 34-00962
	)	
Case No. 39576	)	CERTIFICATE OF MAILING
_____	)	

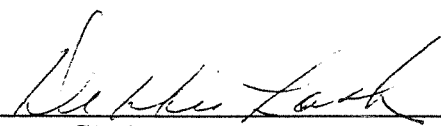
I certify that a true and correct copy of the *Preliminary Special Master's Report for Subcase No. 34-00962* and *Notice of Issuance of Preliminary Special Master's Report and Recommendation* were mailed on July 11, 1996 with sufficient first-class postage prepaid to the following:

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

Honolulu Copper Corporation
2927 Mokumoa Street
Honolulu, Hawaii 96819

Ross Moody
2927 Mokumoa Street
Honolulu, Hawaii 96819



Deputy Clerk