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DISTRICT COURT-3RD
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	)	SPECIAL MASTER'S REPORT
	)	
Case No. 39576	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW FOR
	)	
	)	WATER RIGHTS: 34-00147,
	)	34-00147A, 34-00147B, 34-00147C and
	)	34-00147D

FINDINGS OF FACT

A notice of claim was filed for water right 34-00147. 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* contained a recommendation or abstract for the elements of water right 34-00147.

An objection to the Director's Report for water right 34-00147 was filed on February 26, 1993, by the United States Bureau of Land Management. A response was filed on May 28, 1993 by the State of Idaho Department of Water Resources. On June 22, 1993, the United States filed its *United States' Notice of Withdrawal of Objection*. On January 23, 1995, the United States filed its *United States' Motion to Vacate Settlement Conference and Withdraw/Dismiss Objection*. The court granted the motion. *Order Dismissing United States' Objection and Dismissing United States as a Party to Subcase; Vacating Settlement Conference; and Requiring Standard Form 5* (Jan. 25, 1995). A *Notice of Completed Administrative Proceeding* was filed June 17, 1996 and an *Amended Notice of Completed Administrative*

Proceeding (Notices of Completed Administrative Proceeding) was filed July 12, 1996. Both *Notices of Completed Administrative Proceeding* record a split of water right 34-00147.

This *Special Master's Report; Findings and Conclusions of Law for Water Right Nos. 34-00147, 34-00147A 34-00147B, 34-00147C and 34-00147D* involves dividing a water right. A *Notice of Claim* was filed only for 34-00147. No claim was filed under the numbers 34-00147A, 34-00147B, 34-00147C or 34-00147D. Originally, a Director's Report was filed only for 34-00147; no Director's Report was originally filed for 34-00147A, 34-00147B, 34-00147C or 34-00147D. However, Director's Reports for 34-00147A, 34-00147B, 34-00147C and 34-00147D were attached to the *Notices of Completed Administrative Proceeding*.

The *Notices of Completed Administrative Proceedings* propose that the original water right 34-00147 be split into three water rights to accommodate the sale of a portions of real property and portions of a water right. Sales of real property and appurtenant water rights have been common during the pendency of the SRBA.

In order to accurately decree water rights, the SRBA must recognize that the sale of real property and appurtenant water rights often involves the sale of a portion of property, and a portion of a water right. There are no statutes, laws or constitutional provisions which prohibit such transfers. Dividing water rights in such a manner is lawful.

The entire water right sought to be divided here was claimed under water right 34-00147 by Milt Butler. Subsequently, Ray Black, Jerry and Susan Flint and Mitchell and Cynthia Myers acquired portions of this water right. Water right no. 34-00147 was included in the Director's Report. The *Notices of Completed Administrative Proceeding* and attached *Amended Director's Reports* establish the division of this water right and are *prima facie* evidence of these water rights.

OVERVIEW

This recommendation has two primary components. First, it recommends that water right 34-00147 and 34-00147A not be confirmed in any decree. Second, it recommends that the division of the rights be accommodated by assigning new numbers to the split rights. The Idaho Department of Water Resources has assured the court that it can and will accommodate a decision not to confirm 34-00147 and 34-00147A in a decree. In addition, this *Special Master's Report*

recommends that the split of former 34-00147 be accommodated by each new portion of the right retaining the original numerical water right number, but adding a letter suffix B, C & D. In summary, 34-00147 and 34-00147A would no longer exist. Each element of Mr. Butler's portion of the right would be fully described under water right number 34-00147C. Each element of Mr. Black's portion of the right would be fully described under water right number 34-00147B. Each element of the right for the Flynts and Meyers would be fully described under water right 34-00147D.

UNCHANGED ELEMENTS

The *Amended Director's Reports* attached to the *Notices of Completed Administrative Proceeding* fully describe each element of the proposed new split rights. Most elements of the new water rights remain unchanged from the original director's report. For the new water rights, **element 2**, source; **element 4**, priority date; **element 5**, point of diversion; **element 6**, purpose of use; and **element 7**, period of year; remain unchanged from the original Director's Report for 34-00147.

CHANGED ELEMENTS

The remaining elements of this water right as stipulated to in the *Standard Form 5* and as set forth in the *Amended Director's Reports*, differ from the original Director's Report for 34-00147 to accommodate the division of the right.

Element 1, name and address of claimant was changed from Milt Butler to Ray Black for 34-00147B, Milt Butler for 34-00147C, and Jerry Flynt, Susan Flynt, Cynthia Myers, and Mitchell Myers for 34-00147D.

Element 3, quantity was changed from 0.85 to 0.046 cfs for 34-00147B, 0.732 cfs for 34-00147C, and 0.072 cfs for 34-00147D to reflect the portion of the quantity of water which each of the split rights retains. The new quantities, 0.046 cfs, 0.732 cfs and 0.072 cfs total 0.85; the original quantity.

Element 8, legal description was changed to reflect the legal descriptions which accompany each of the new split rights.

Element 9, annual volume of consumptive use was changed to reflect the portion of consumptive use pertinent to each of the new split rights.

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 decreed.

A *Preliminary Special Master's Report and Recommendation; Findings of Fact and Conclusions of Law*, was issued for subcases 34-00147, 34-00147A, 34-00147B, 34-00147C and 34-00147D on July 18, 1996. No Motions to Reconsider or Motions to Correct Clerical Errors were filed, and the time for such motions has now expired.

An *Amended Director's Report* as attached to the *Notices of Completed Administrative Proceeding* is *prima facie* evidence of the right. The record on file for this subcase clearly establishes the intent of the parties that this water right be decreed under three new numbers to reflect the division of the right with the elements as set forth in the *Amended Director's Reports*.

Water right numbers 34-00147B, 34-00147C and 34-00147D do not constitute a change in the point of diversion, place of use, period of use, or nature of use of water pursuant to I.C. § 42-222.

Therefore, based on the file and record herein, IT IS RECOMMENDED that subcase no. 34-00147 and 34-00147A not be confirmed in any decree. IT IS FURTHER RECOMMENDED that 34-00147B, 34-00147C, and 34-00147D be decreed with the elements set forth in the *Special Master's Recommendation for Partial Decree*.

DATED: August 2, 1996.



BRIGETTE BILYEU
Special Master, Reporting Area 1
Snake River Basin Adjudication