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Department of Water Resources

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DISTRICT COURT-SFBA
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	)	AMENDED PRELIMINARY
	)	SPECIAL MASTER'S REPORT
Case No. 39576	)	
	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW FOR
	)	
	)	WATER RIGHT 34-04042

On July 25, 1996 a *Preliminary Special Master's Report; Findings of Fact and Conclusions of Law* was issued for water right 34-04042. The quantity was erroneously recommended as .035 cfs. The correct quantity is .35 cfs. This *Amended Preliminary Special Master's Report; Findings of Fact and Conclusions of Law* corrects the error in the quantity element.

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 34-04042 was filed on February 26, 1993, by the United States Bureau of Land Management. A response was filed on June 4, 1993, by the State of Idaho Department of Water Resources. On June 18, 1993, a response was filed by the claimants, John D. and Merle M. King. Subsequently, a settlement was reached as to how the elements of this water right could be decreed, and a *Standard Form 5 - Proposed Elements of a Water Right* was filed on March 27, 1995. The signatories to the *Standard Form 5* are the claimants, Merle M. King and John D. King; the objector, the United States

Bureau of Land Management; 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 5**, point of diversion; **element 6**, purpose of use; **element 7**, period of year; **element 8**, place of use for irrigation portion of the right; and **element 9**, annual volume of consumptive use; remain **unchanged** from the original Director's Report.

The remaining element of this water right as stipulated to in the *Standard Form 5*, differs from the original Director's Report: **element 8**, place of use for the stockwater portion of the right, was changed from T04N R24E S02, NWSE SWSE; T04N R24E S11, SWNE NWSE SWSE to T04N R24E S02 NWSE SWSE; T04N R24E S11, SWNE. A hearing on the *Standard Form 5* was held on April 26, 1995. At the hearing IDWR and the parties represented that there is a factual basis for the change in the legal description of the place of use. 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*, giving *prima facie* weight to these elements of the water right.

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* weight. The record on file for this subcase, including the *Standard Form 5*, clearly establishes the intent of the parties that water right 34-04042 be decreed with the elements as set forth in the attached *Preliminary Special Master's Recommendation for Partial Decree*.

DATED: August 2, 1996.


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

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Department of Water Resources
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)
_____)
AMENDED PRELIMINARY SPECIAL MASTER'S
RECOMMENDATION FOR PARTIAL DECREE
Water Right 34-04042

NAME & ADDRESS: MERLE M. KING
JOHN D. KING
HC 60 BOX 280
DARLINGTON ID 83231

SOURCE: UNNAMED STREAM TRIBUTARY: ANTELOPE CREEK

QUANTITY: .35 CFS

THE QUANTITY FOR NON-IRRIGATION USE SHALL NOT EXCEED 13,000
GALLONS PER DAY.

PRIORITY DATE: 05/01/1947

POINT OF DIVERSION: T04N R24E S11 NESWSE Within BUTTE COUNTY

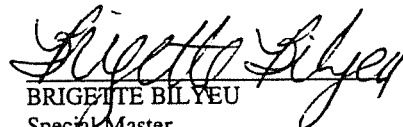
PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	IRRIGATION	IRRIGATION SEASON	0.31 CFS
	STOCK WATER	03-01 to 12-01	0.04 CFS

PLACE OF USE: IRRIGATION:
T04N R24E S02 NWSE 2.0 SWSE 1.0
S11 SWNE 4.0
7.0 ACRES TOTAL

STOCK WATER:
T04N R24E S02 NWSE SWSE
S11 SWNE

CONSUMPTIVE USE: 17.5 AFY
THE CONSUMPTIVE USE VOLUME LISTED IS ONLY FOR THE IRRIGATION
PORTION OF THIS WATER RIGHT.

DATED August 2, 1996.


BRIGITTE BILYEU
Special Master
Snake River Basin Adjudication