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AUG 16 1996

Department of Water Resources

1996 AUG 14 PM 2:06

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	)	SPECIAL MASTER'S REPORT
	)	
Case No. 39576	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW FOR
	)	
	)	WATER RIGHT 34-07407
_____	)	

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 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 (Director's Report)* contained a recommendation or abstract for the elements of this water right.

An objection to the *Director's Report* for water right 34-07407 was file on February 26, 1993, by the United States Bureau of Land Management. A response was filed on June 18, 1993 by the State of Idaho Department of Water Resources. On January 24, 1995 a *Motion to Withdraw or Dismiss Objections and to Vacate Settlement Conference* was filed by the United States. On January 25, 1995, the Special Master issued its *Order Dismissing United States' Objection and Dismissing United States as Party to Subcase; Vacating Settlement Conference; and Requiring Standard Form 5*. Subsequently, a settlement was reached as to how the elements of this water right could be decreed. On February 3, 1995 a *Standard Form 5* was filed reflecting the agreement of the parties that the water right is correctly described in the *Director's Report*. The signatories to the *Standard Form 5* are the claimant, Ben Howard; and the Idaho Department of Water Resources. Thus it appears that all parties to this subcase, and IDWR, are signatories to the *Standard Form 5*.

All elements of the water right as stipulated to in the *Standard Form 5*, remain **unchanged** from the original *Director's Report* **except** element 9.

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 for non-irrigation rights, 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 will not be decreed.

The court gives *prima facie* weight to the *Standard Form 5* to which IDWR is a signatory.

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.

A *Preliminary Special Master's Report and Recommendation; Findings of Fact and Conclusions of Law*, was issued for subcase 34-07407 on July 25, 1996. No Motions to Reconsider or Motions to Correct Clerical Errors were filed, and the time for such motions has now expired.

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 34-07407 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, IT IS RECOMMENDED that water right 34-07407 be decreed with the elements as set forth in the *Special Master's Recommendation for Partial Decree* attached hereto.

DATED August 13, 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)
)
)
)
)
)

SPECIAL MASTER'S RECOMMENDATION FOR 2:06
PARTIAL DECREE FOR
DISTRICT COURT - SRBA
Water Right 34-07407
TWIN FALLS CO., IDAHO

NAME & ADDRESS: BEN HOWARD
PO BOX 502
CHALLIS ID 83226

SOURCE: POISON SPRING
SPRING

TRIBUTARY: SINKS
SINKS

QUANTITY: 0.02 CFS
0.6 AFY

PRIORITY DATE: 12/31/1981

POINT OF DIVERSION: T10N R22E S17

NENWNW
SENWNW
NESWNW

Within CUSTER County

PURPOSE AND
PERIOD OF USE: PURPOSE OF USE
DOMESTIC

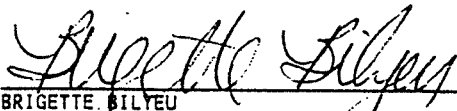
PERIOD OF USE
01-01 12-31

QUANTITY
0.02 CFS
0.6 AFY

PLACE OF USE: DOMESTIC
T10N R21E S11

Within CUSTER County
SWNW

DATED: August 14, 1996


BRIGETTE SILYEU
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)

Case No. 39576)

CERTIFICATE OF MAILING

Water Right No. 34-07407

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT, SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF PRELIMINARY SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on July 25, 1996, with sufficient first-class postage prepaid to the following:

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

CLIVE STRONG
DEP AG OFFICE OF ATTY GEN
STATEHOUSE MAIL
BOISE, ID 83720

CHIEF, NTRL RESOURCES DIV
OFFICE OF THE ATTORNEY GENERAL
PO BOX 44449
BOISE, ID 83711-4449

BEN HOWARD
PO BOX 628
BRUNEAU, ID 83604

K. JACK HAUGRUD
U.S. DEPARTMENT OF JUSTICE
550 WEST FORT STREET, MSC 033
BOISE, ID 83724-0663


TERI HRANAC
Deputy Clerk

CERTIFICATE OF MAILING

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08/14/96