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AUG 23 1996

Department of Water Resources

1996 AUG 22 PM 12:44

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 34-00439A

I. 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 (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 34-00439A was filed by the United States Bureau of Land Management. On June 4, 1993, a response was filed by the Idaho Department of Water Resources. A response was also filed on June 23, 1993 by claimant Smith Ranches, Inc. Subsequently, a settlement was reached as to how the elements of this water right could be decreed. A *Standard Form 5 - Proposed Elements of a Water Right* was filed on February 6, 1995, reflecting the agreement of the parties. The signatories to the *Standard Form 5* are the claimant/respondent, Smith Ranches, Inc; the objectors, Bureau of Land Management; and IDWR. Thus it appears that all parties to this subcase, and IDWR, are signatories to the *Standard Form 5*.

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

A. UNCHANGED ELEMENTS

Most elements of the water right remain unchanged from the original *Director's Report*, specifically, **element 1**, name and address of the claimant; **element 2**, source; **element 3**, quantity; **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 34-00439A.

B. CHANGED ELEMENTS

The remaining elements of this water right as stipulated to in the *Standard Form 5* differ from the original *Director's Report* for 34-00439A.

Element 8, the place of use was changed to accurately reflect the legal description of the place of use.

Element 9, annual volume of consumptive use is changed from 832.5 AFY to 830 AFY.

II. 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 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 34-00439A be decreed with the elements as set forth in the *Standard Form 5* as set forth in the Findings of Fact.

Therefore, based on the file and record herein, IT IS RECOMMENDED that water right 34-00439A be decreed with the elements as set forth in the attached *Preliminary Special Master's Recommendation for Partial Decree*.

DATED August ^{22nd} 20, 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

1996 AUG 22 PM 2:44
SPECIAL MASTER'S RECOMMENDATION FOR
DISTRICT COURT - SRBA
PARTIAL DECREE FOR TWIN FALLS CO., IDAHO
Water Right: 34-00439A

NAME & ADDRESS: SMITH RANCHES INC
C/O HAROLD SMITH
PO BOX 106
DARLINGTON ID 83231

SOURCE: ANTELOPE CREEK TRIBUTARY: BIG LOST RIVER

QUANTITY: 7.15 CFS

PRIORITY DATE: 08/03/1885

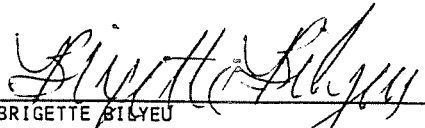
POINT OF DIVERSION: T04N R24E S10 SWNW Within BUTTE County
S15 NWSW
S16 NENW
S17 NESE
NENW

PURPOSE AND PERIOD OF USE: PURPOSE OF USE PERIOD OF USE QUANTITY
IRRIGATION Irrigation Season 7.15 CFS

PLACE OF USE: IRRIGATION Within BUTTE County
T04N R24E S09 SESE 40.0
S10 SWNE 10.0 SWNW 25.0 SENW 40.0 NESW 20.0
NWSW 24.0 SWSW 40.0 SESW 39.0 SWSE 15.0
S15 NENW 15.0 NWNW 40.0 SWNW 24.0
332.0 ACRES TOTAL

CONSUMPTIVE USE: 830.0 AFY

DATED: AUG 22 1996


BRIGETTE BILBEY
Special Master
Snake River Basin Adjudication

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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

Case No. 39576

CERTIFICATE OF MAILING

Water Right No. 34-00439A

CERTIFICATE OF MAILING

I certify that a true and correct copy of PRELIMINARY SPECIAL MASTER'S REPORT, PRELIMINARY SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF PRELIMINARY SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on August 22, 1996, with sufficient first-class postage prepaid to the following:

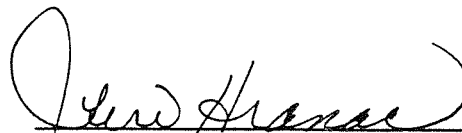
DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

~~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

MORTON B. HILLER
PO BOX 52020
IDAHO FALLS, ID 83405

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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08/22/96