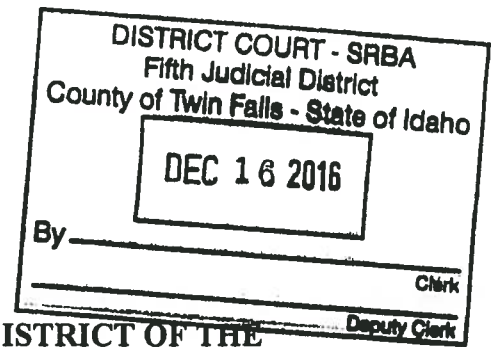


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DEPARTMENT OF
WATER RESOURCES



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

) SPECIAL MASTER'S REPORT
) (Holden v. Weece)
)
) FINDINGS OF FACT AND
) CONCLUSIONS OF LAW
)
) FOR WATER RIGHT 61-12301
)

I. APPEARANCES

Thomas J. Katsilometes of Thomas J. Katsilometes, PLLC, Boise, Idaho, for objectors Ricky C. and Kimberly M. Holden.

Robert W. Ward of Hall Friedly & Ward, Mountain Home, Idaho, for claimants Jackie and Teresa Weece.

II. PROCEDURAL BACKGROUND

On March 12, 2015, Jackie and Teresa Weece ("the Weeces") through their attorney Robert Ward filed a *Motion for Determination of Deferred De Minimus Domestic or Stock Water Use*. On June 8, 2015, the Idaho Department of Water Resources ("IDWR") filed its *Director's Report of Deferred De Minimus Domestic and/or Stock Water Use* recommending the elements of the water right claim. On August 3, 2015, Ricky and Kimberly Holden ("the Holdens") through their attorney Thomas Katsilometes filed a *Standard Form 1 Objection* to the *Director's Report* asserting that the water right should not exist. A trial was held in Boise, Idaho on November 17, 2016. At trial the Holdens moved to amend their objection to also object to the recommended priority date of March 13, 2000, first asserting that the priority date was "unknown," but later asserting that the priority date could be no earlier than the date the Weeces

acquired the real property associated with the water right claim (which occurred on May 20, 2005). Pursuant to I.R.C.P. 15(b), the motion to amend the objection was granted.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having heard the testimony of the witnesses and having reviewed other evidence produced at trial and having considered the closing arguments of the parties, this Special Master makes the following findings of fact and conclusions of law.

1. Water right claim 61-12301 was reported by the Director of IDWR in the *Director's Report of Deferred De Minimus Domestic and/or Stock Water Use*, filed June 8, 2015, with the following elements:

Source:	Ground Water
Quantity:	0.040 cfs
Priority Date:	03/13/2000
Point of Diversion:	T03S R06E S33 SENE Within Elmore County
Purpose and Period of Use:	Domestic 01/01 to 12/31
Place of Use:	T03S R06E S33 SENE

2. A director's report "constitute[s] prima facie evidence of the nature and extent of the water rights acquired under state law." I.C. § 42-1411 (4).

3. "Any party filing an objection to any portion of the director's report shall have the burden of going forward with the evidence to rebut the director's report as to all issues raised in the objection." I.C. § 42-1411 (5).

4. A water right with a source of groundwater for domestic purposes may be acquired through the acts of diversion of the water and application of the water to a domestic beneficial use. The acquisition of such domestic groundwater rights are excepted from the application, permit, and license procedures that apply to other water rights. I.C. § 42-227.

5. The Weeces are the current owners of the East ½ of Lot 16, Block 1, Airport Subdivision in Elmore County, Idaho ("East ½ Lot 16"). The Weeces reside in a residence located thereon. The Weeces acquired this property in May of 2005. See Corporation Warranty Deed, Objectors' Trial Exhibit #102.

6. Prior to the Weeces taking occupancy of the residence located on the East ½ Lot 16, the residence was occupied by Loree Saunders. Loree Saunders acquired ownership of the residence from the Holdens on May 10, 2001. *See Warranty Deed, Objectors' Trial Exhibit #101.*

7. The Weeces' water right claim is premised on the physical acts of diversion of water and its application to domestic beneficial use by Loree Saunders.

8. The well that services the residence now occupied by the Weeces and formerly occupied by Loree Saunders is located on adjacent Lot 17, which at all times relevant to this matter has been owned by the Holdens.

9. There is another water right diverted from that same well, water right 61-7751. The Holdens are the owners of water right 61-7751. Water right 61-7751 is authorized for domestic use for two duplexes located on Lot 17. IDWR Trial Exhibit #4.

10. In their Notice of Claim, the Weeces claimed a priority date of February 9, 2000. The *Director's Report* for the claim recommended a priority date of March 13, 2000. At trial, IDWR Adjudication Section Manager Carter Fritschle, who investigated the claim and prepared the *Director's Report*, testified that the recommended priority date of March 13, 2000, was derived from a document in the IDWR's records, which is a Central District Health Department Mortgage Survey Report for Sewage and Water Systems stating that the septic system associated with the residence located on the East ½ Lot 16 was inspected on March 13, 2000. *See IDWR Trial Exhibit #5.*

11. The Holdens assert that water right 61-12301 never came into existence for the reason that the then occupant of the residence located on the East ½ Lot 16, Loree Saunders, domestically used water pursuant to a temporary accommodation made by the Holdens to use water from water right 61-7751. Water right 61-7751 is not authorized to be used on the East ½ Lot 16.

12. There is no evidence in the record that would indicate whether Loree Saunders intended her domestic use of water to be under water right 61-7751 or whether she intended to create a new water right. Whatever her intent, it is not relevant. Under Idaho law, there is no intent element associated with establishing a valid water right via diversion and application to beneficial use. *Joyce Livestock Company v. United States of America*, 144 Idaho 1, 8-9, 156 P.3d 502, 509-510 (2007).

13. Attached to the Weeces water right claim (IDWR Trial Exhibit # 3) is a document entitled Joint Well Use and Maintenance Agreement ("Agreement"). The Agreement recites that it was entered into between the Holdens and Loree Saunders. Mr. Holden testified that he does not regard the Agreement as being valid and that it was used to satisfy Loree Saunders' mortgage company to facilitate the purchase and sale of the East ½ Lot 16 from the Holdens to Loree Saunders. This Special Master makes no findings as to the validity or invalidity of the Agreement. Carter Fritschle testified that he did not rely upon the Agreement to determine any of the recommend elements of water right 61-12301.

14. During closing arguments, counsel for the Holdens asserted Loree Saunders' use of the well was pursuant to permission by the Holdens. Whether Loree Saunders' use of the well was by permission or pursuant to the terms of the Agreement is immaterial. "[I]n this state one may have a valid appropriation though only a temporary and revocable way of conveyance for his water; diversion and application to a beneficial use being the two essentials." *Joyce Livestock Company v. United States of America*, 144 Idaho 1, 8, 156 P.3d 502, 509 (2007) quoting *Morgan v. Udy*, 58 Idaho 670, 680, 79 P.2d 295, 299 (1938).

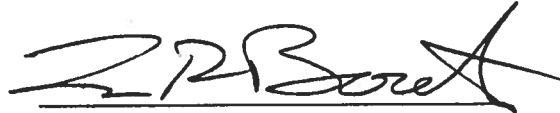
15. Loree Saunders lived in the residence located on the East ½ Lot 16, which was supplied with water from the well located on Lot 17 and which was connected to a sewage disposal system. From these facts the *Director's Report* properly infers that Loree Saunders domestically used water during the time she occupied the residence. Therefore the required elements of diversion of water and application to beneficial use have been satisfied.

16. The priority date recommended in the *Director's Report* of March 13, 2000, is based upon the fact that as of that date the residence was connected to a useable sewage system and therefore the residence was occupiable and actual domestic use of water could have begun on that date. This Special Master notes that Loree Saunders did not acquire ownership of the East ½ Lot 16 until approximately 14 months later, May 10, 2001. Objector's Trial Exhibit #101. However, evidence of the date upon which Loree Saunders acquired ownership of the East ½ Lot 16 is insufficient to show that no domestic use of water took place between the dates of March 13, 2000, and May 10, 2001. Accordingly, the presumption of correctness afforded the *Director's Report* has not been rebutted regarding priority date.

IV. RECOMMENDATION

Having weighed the entirety of the evidence presented, this Special Master finds and concludes that the Holdens have not met their burden to show that the *Director's Report* is incorrect. Therefore, IT IS RECOMMENDED that water right 61-12301 be **decreed** with the elements as set forth in the attached *Recommendation for Partial Decree Pursuant to I.R.C.P. 54(b)*.

Dated December 16, 2016



Theodore R. Booth
Special Master
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)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
) Water Right 61-12301
_____)

NAME AND ADDRESS: JACKIE WEECE
TERESA WEECE
4210 SW AVIATION DR
MOUNTAIN HOME, ID 83647

SOURCE: GROUND WATER

QUANTITY: 0.04 CFS

Right Nos. 61-7551 and 61-12301 are limited to a total combined
diversion rate of 0.06 cfs.
The quantity of water under this right shall not exceed 13,000
gallons per day.

PRIORITY DATE: 03/13/2000

POINT OF DIVERSION: T03S R06E S33 SENE Within Elmore County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Domestic	01-01 TO 12-31	0.04 CFS

Domestic use is for 1 home.

PLACE OF USE: Domestic Within Elmore County
T03S R06E S33 SENE

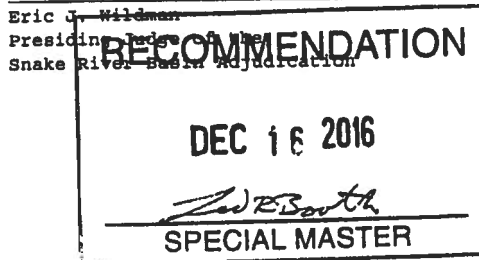
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

The quantity of water decreed for this water right is not a
determination of historical beneficial use.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance
with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a
final judgment and that the court has and does hereby direct that the above judgment or order shall be a final
judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.



DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
DEC 16 2016	
By _____	Clerk
Deputy Clerk	

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(s): 61-12301

CERTIFICATE OF MAILING

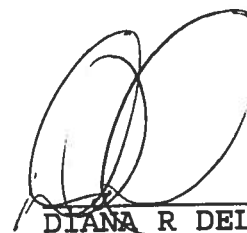
I certify that a true and correct copy of the SPECIAL MASTER'S REPORT, SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on December 16, 2016, with sufficient first-class postage prepaid to the following:

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

JACKIE & TERESA WEECE
JACKIE WEECE
TERESA WEECE
Represented by:
ROBERT WARD
340 E 2ND NORTH
MOUNTAIN HOME, ID 83647
Phone: 208-587-4412

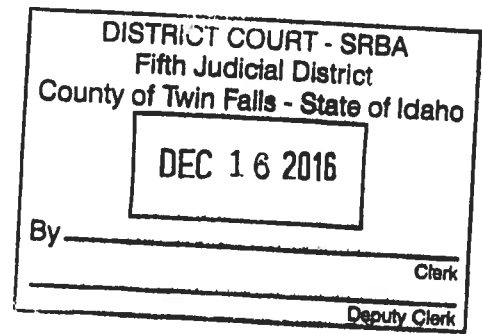
RICKY C & KIMBERLY M HOLDEN
Represented by:
THOMAS J KATSILOMETES
100 N 9TH ST STE 200
PO BOX 777
BOISE, ID 83701
Phone: 208-529-9377

CERTIFICATE OF MAILING



DIANA R DELANEY
Deputy Clerk

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12/16/16



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)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

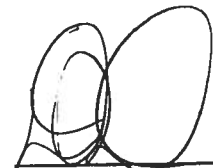
Water Right(s): 61-12301

On December 16, 2016, Special Master THEODORE R. BOOTH
issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s)
pursuant to SRBA Administrative Order 1 (A01), Section 13a.

Pursuant to SRBA Administrative Order 1 (A01), Section 13a, any
party to the adjudication including parties to the subcase, may file a
Motion to Alter or Amend on or before the 28th day of the next month.

Failure of any party in the adjudication to pursue or participate
in a Motion to Alter or Amend the SPECIAL MASTER'S RECOMMENDATION
shall constitute a waiver of the right to challenge it before the
Presiding Judge.

DATED December 16, 2016.



DIANA R DELANEY
Deputy Clerk