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Department of Water Resources

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DISTRICT COURT - SRBA
TWIN FALLS, 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 34-02055

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 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 34-02055 was filed on February 26, 1993, by the United States Bureau of Land Management. A response was filed on July 1, 1993, by the State of Idaho Department of Water Resources. Subsequently, an agreement was reached as to how water right 34-02055 should be decreed. On February 14, 1995 an *Amended Standard Form 5* was filed. The signatories to the *Amended Standard Form 5* are the claimant, Young Harvey Walker; the objector, United States Bureau of Land Management; and IDWR. Thus it appears that all parties to this subcase, and the Idaho Department of Water Resources, are signatories to the *Standard Form 5*. 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*, and gives it *prima facie* weight.

A. UNCHANGED ELEMENTS

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; and **element 9**, annual volume of consumptive use remain **unchanged** from the original *Director's Report*.

B. CHANGED ELEMENTS

The remaining elements of this water right as stipulated to in the *Amended Standard Form 5*, differ from the original *Director's Report*.

Element 6, purpose of use has been changed to delete the additional language "NON-IRRIGATION USES: STOCKWATER, 500 HEAD CATTLE" contained in the *Amended Standard Form 5*. This language is deleted because there was no showing this language is necessary to define or administer the quantity element. *Silkey v. Tiegs*, 51 Idaho 344, 5 P.2d 1049 (1931); *In Re SRBA, Special Master's Second Amended Recommendation Re: Basin-Wide Issue 12* (Aug. 12, 1996).

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

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 an *Amended 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 establishes the intent of the parties that water right 34-02055 be decreed with the elements as set forth in the Findings of Fact listed above.

Therefore, based on the file and record herein, IT IS RECOMMENDED that water right 34-02055 be decreed with the elements as set forth in the attached *Preliminary Special Master's Recommendation for Partial Decree*.

IT IS SO RECOMMENDED.

DATED September 3, 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 SEP -3 AM 10:53
SPECIAL MASTER'S RECOMMENDATION FOR

PARTIAL DECREE FOR

Water Right 34-02055
DISTRICT COURT - SRBA
TWIN FALLS, IDAHO
FILED

NAME & ADDRESS: YOUNG HARVEY WALKER
RT 1 BOX 200
ARCO ID 83213

SOURCE: BRIER CANYON

TRIBUTARY: SINKS

QUANTITY: 1.4 CFS

THE QUANTITY OF WATER DIVERTED UNDER THIS RIGHT SHALL NOT
EXCEED 13,000 GALLONS PER DAY.

PRIORITY DATE: 07/17/1908

POINT OF DIVERSION: T05N R27E S34 NESENW Within BUTTE County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	IRRIGATION	Irrigation Season	1.4 CFS
STOCKWATER	STOCKWATER	01-01 12-31	0.14 CFS

PLACE OF USE:	IRRIGATION	Within BUTTE County			
T05N R27E S34	NESW 10.0	SESW 30.0	NWSE 5.0	SWSE 25.0	
70.0 ACRES TOTAL					

STOCKWATER	Within BUTTE County			
T05N R27E S34	NESW	SESW	NWSE	SWSE

CONSUMPTIVE USE: 175.0 AFY

THE CONSUMPTIVE USE VOLUME REPORTED IS ONLY FOR THE IRRIGATION
PORTION OF THIS WATER RIGHT.

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

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR
STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL
USE FOR THE PURPOSES OF ADMINISTRATION OR CHANGE IN USE OF THIS
WATER RIGHT.

DATED: { SEP 3 1996

Brigitte Liljeu
BRIGETTE LILJEU
Special Master
Snake River Basin Adjudication

SPECIAL MASTER'S RECOMMENDATION

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AUG-29-1996