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SEP 25 1996

Department of Water Resources

1996 SEP 24 AM 10: 26

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	)	SPECIAL MASTER'S REPORT AND
	)	RECOMMENDATION
Case No. 39576	)	
	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW FOR
	)	
_____	)	WATER RIGHT 34-00081

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 this water right 34-00081 was filed 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 June 28, 1993 a response was filed by the claimants, Earl McAfee and Terry McAfee. On June 22, 1994, the United States filed its *United States' Notice of Withdrawal of Objection* withdrawing the objection filed by the United States. On February 7, 1995, this court issued its *Order Dismissing United States' Objection and Dismissing United States as a Party to Subcase; and Requiring Standard Form 5*. Subsequently, a settlement was reached as to how the elements of this water right could be decreed, and on March 8, 1995, a *Standard Form 5 - Proposed Elements of a Water Right* was filed reflecting the settlement 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 claimants/respondents, Earl Bruce McAfee and Terry McAfee; 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*. Thus 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 decreed for each subcase.

A *Preliminary Special Master's Report and Recommendation; Findings of Fact and Conclusions of Law*, was issued for subcase 34-00081 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.

A *Preliminary Special Master's Report and Recommendation; Findings of Fact and Conclusions of Law*, was issued for subcase 34-00081 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* weight. The record on file for this subcase, including the *Standard Form 5*, clearly establishes the intent of the parties that water right 34-00081 be decreed with the elements as set forth in the attached *Special Master's Recommendation for Partial Decree*.

IT IS SO RECOMMENDED.

DATED September 24, 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)
_____)

1996 SEP 24 AM 10: 26
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
SPECIAL MASTER'S RECOMMENDATION FOR
PARTIAL DECREE FOR
Water Right 34-00081 FILED

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SEP 25 1996

Department of Water Resources
Adjudication Bureau

NAME & ADDRESS: TERRY MC AFFEE
EARL BRUCE MC AFFEE
RT 5 BOX 50
RUPERT ID 83350

SOURCE: NAVARRE CREEK TRIBUTARY: BIG LOST RIVER

QUANTITY: 1.6 CFS

PRIORITY DATE: 10/28/1919

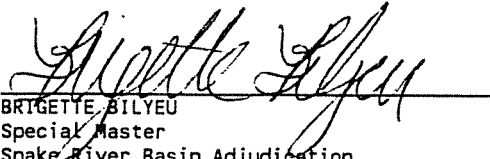
POINT OF DIVERSION: T07N R23E S08 LOT 2 (NWNE) Within CUSTER County
S17 SWNE
NENE

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	IRRIGATION	Irrigation Season	1.6 CFS

PLACE OF USE:	IRRIGATION	Within CUSTER County
	T07N R23E S05	SESW 20.0
	S08 Lot 2	(NWNE) 10.0
	79.0 ACRES TOTAL	SWSE 13.0
		SWNE 20.0 Lot 3 (NENW) 4.0
		NWSE 12.0

CONSUMPTIVE USE: 197.5 AFY

DATED: SEP 24 1996


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

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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

) Subcase: 34-00081

Case No. 39576

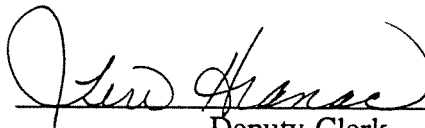
) CERTIFICATE OF MAILING
)
)
_____)

I certify that a true and correct copy of the *Special Master's Report and Recommendation* for Subcase 34-00081 and *Notice of Issuance of Special Master's Report and Recommendation* were mailed on September 24, 1996 with sufficient first-class postage prepaid to the following:

Director of IDWR
P O Box 83720
Boise, Idaho 83720-0098

Roger D. Ling
P.O. Box 396
Rupert, ID 83350

Terry McAfee
Earl McAfee
Route 5, Box 50
Rupert, ID 83350



Deputy Clerk