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Department of Water Resources

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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	)	SPECIAL MASTER'S REPORT AND
	)	RECOMMENDATION
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.

A *Preliminary Special Master's Report and Recommendation; Findings of Fact and Conclusions of Law*, was issued for subcase 34-02055 on September 3, 1996. No Motions to Reconsider or Motions to Correct Clerical Errors were filed, and the time for such motions has now expired.

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 *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)
_____)

SPECIAL MASTER'S RECOMMENDATION FOR

PARTIAL DECREE FOR

Water Right 34-02055

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DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

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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.

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Department of Water Resources
Adjudication Bureau

PRIORITY DATE: 07/17/1908

POINT OF DIVERSION: T05N R27E S34

NESENW

Within BUTTE County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE
IRRIGATION
STOCKWATER

PERIOD OF USE
Irrigation Season
01-01 12-31

QUANTITY
1.4 CFS
0.14 CFS

PLACE OF USE:

IRRIGATION
T05N R27E S34
70.0 ACRES TOTAL

Within BUTTE County
NESW 10.0

SESW 30.0

NWSE 5.0

SWSE 25.0

STOCKWATER
T05N R27E S34

Within BUTTE County
NESW

SESW

NWSE

SWSE

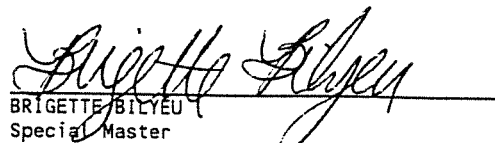
CONSUMPTIVE USE: 175.0 AFY

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 24 1996


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

SPECIAL MASTER'S RECOMMENDATION

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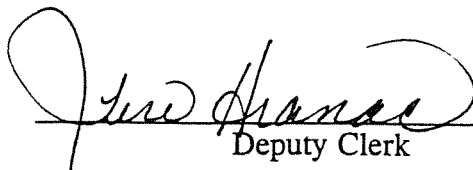
In Re SRBA	)	Subcase: 34-02055
	)	
Case No. 39576	)	CERTIFICATE OF MAILING
_____	)	

I certify that a true and correct copy of the *Special Master's Report and Recommendation* for Subcase 34-02055 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

Young Harvey Walker
Route 1, Box 200
Arco, ID 83213

U.S. Dept. of Justice
550 West Fort Street, MSC 033
Boise, ID 83724-0663


Deputy Clerk