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Department of Water Resources
Adjudication Bureau

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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	)	PRELIMINARY SPECIAL MASTER'S
	)	REPORT
Case No. 39576	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW FOR
	)	
	)	WATER RIGHT 34-07124

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 34-07124 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 January 24, 1995 a *Motion to Withdraw or Dismiss Objections and to Vacate Settlement Conference* was filed by the United States. The United States was dismissed as a party. *Order Dismissing United States' Objection and Dismissing United States as Party to Subcase; Vacating Settlement Conference; and Requiring Standard Form 5* (Jan. 25, 1995). Subsequently, a settlement was reached as to how the elements of this water right could be decreed. On February 3, 1995 a *Standard Form 5* was filed reflecting the 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 claimant, Ben Howard; the objector, the United States Bureau of Land Management; 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*. The court gives *prima facie* weight to the *Standard Form 5* to which IDWR is a signatory.

As stipulated to in the *Standard Form 5*, all elements of the water right remain **unchanged** from the original *Director's Report*.

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 recommended 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 34-07124 be decreed with the elements as agreed to in *Standard Form 5* and as set forth in the Findings of Fact.

Therefore, based on the file and record herein, IT IS RECOMMENDED that water right 34-07124 be **decreed** with the elements as set forth in the attached *Preliminary Special Master's Recommendation for Partial Decree*.

DATED September 24, 1996.



BRIGETTE BILYEU
Special Master, Reporting Area 1
Snake River Basin Adjudication

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In Re SRBA)
Case No. 39576)
_____)

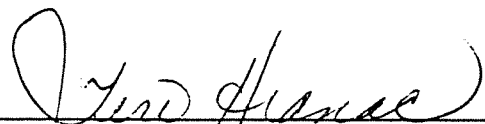
NOTICE OF ISSUANCE OF
PRELIMINARY SPECIAL MASTER'S
REPORT AND RECOMMENDATION

Water Right(s): 34-07124

On September 24, 1996, Special Master BRIGETTE BILYEU issued a PRELIMINARY SPECIAL MASTER'S REPORT and a PRELIMINARY SPECIAL MASTER'S RECOMMENDATION pursuant to SRBA Administrative Order 1 sections 11 (e) and (f).

These documents are served only on parties to the subcase. They are not served on the Presiding Judge. Parties to this subcase may file a Motion for Reconsideration or a Motion to Correct Clerical Errors with the Special Master, but must do so before October 08, 1996.

DATED September 24, 1996.


TERI HRANAC
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)
_____)

PRELIMINARY

SPECIAL MASTER'S RECOMMENDATION FOR 1:19
PARTIAL DECREE FOR DISTRICT COURT - SRBA
Water Right 34-07124 TWIN FALLS CO., IDAHO

FILED _____

NAME & ADDRESS: BEN HOWARD
PO BOX 502
CHALLIS ID 83226

SOURCE: POISON SPRING
SPRING

TRIBUTARY: SINKS
SINKS

QUANTITY: 0.12 CFS
40.0 AFY

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

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PRIORITY DATE: 02/09/1976

POINT OF DIVERSION: T10N R22E S17

NENWNW
SENWNW
NESWNW

Within CUSTER County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE
IRRIGATION

PERIOD OF USE
Irrigation Season

QUANTITY
0.12 CFS
40.0 AFY
0.07 CFS
4.1 AFY

STOCKWATER

05-01 12-31

PLACE OF USE:

IRRIGATION
T10N R21E S11
58.0 ACRES TOTAL

Within CUSTER County
SWNW 14.0

SENW 3.0

NESW 12.0

NWSW 29.0

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 12 ACRES WITHIN THE
PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

T10N R21E S10
Within CUSTER County
NWNE

CONSUMPTIVE USE: 30.0 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: Sept. 24, 1996


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

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In Re SRBA)
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_____)

CERTIFICATE OF MAILING

Water Right(s): 34-07124

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 September 24, 1996, with sufficient first-class postage prepaid to the following:

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

~~CLIVE STRONG~~
~~DEP AS OFFICE OF ATTY GEN~~
~~STATEHOUSE MAIL~~
~~BOISE, ID 83720~~

DISMISSED ON 01-25-1995 *****
USDI BLM

CHIEF, NTRL RESOURCES DIV
OFFICE OF THE ATTORNEY GENERAL
PO BOX 44449
BOISE, ID 83711-4449

BEN HOWARD
PO BOX 628
BRUNEAU, ID 83604

CERTIFICATE OF MAILING


TERI HRANAC
Deputy Clerk

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09/24/96