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Department of Water Resources

1996 SEP 26 PM 4: 50

DISTRICT COURT-SABA
TWIN FALLS CO., IDAHO
FILED 12

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 57-02380

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 notice of claim for Reporting Area 2 (Basin 57), which includes portions of Owyhee County, State of Idaho. The *Director's Report for Reporting Area 2 (Director's Report)* contained recommendations or abstracts for the elements of this water right.

Subcase 57-02380 involves a stock water and wildlife claim filed by the United States Bureau of Land Management (BLM). After the *Directors Report* was filed the BLM objected to **element 3:** quantity, **element 7:** purpose of use, and **element 12:** water right recommendation. The BLM challenged the failure of the *Director's Report* to allocate a specific amount of water for wildlife consumption and that wildlife was not included as a purpose of use. The United States also challenged the number of livestock contained on the *Director's Report*. The BLM also alleged various minor corrections.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

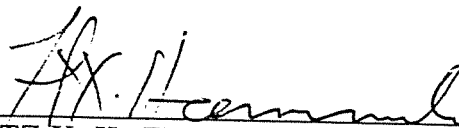
On January 22, 1996 the BLM filed a *Standard Form 5* which, contrary to the *Director's Report* included wildlife as a purpose of use. The *Standard Form 5* failed to specify a particular

quantity of range cattle under purpose of use. The Idaho Department of Water Resources (IDWR) filed a report on the *Standard Form 5*. IDWR did not sign off on the *Standard Form 5* because of the inclusion of wildlife as a purpose of use and failure to specify a particular amount of cattle. Furthermore, the *Standard Form 5* failed to include a combined use statement as a general remark and as included in the *Director's Report*.

After the *Standard Form 5* and IDWR's report on the *Standard Form 5* were filed, the district court designated BWI 12. The purpose of the BWI designation was to address various issues dealing with *de minimis* stock water claims. On June 14, 1996 this court issued its decision regarding BWI 12. For subcase 57-02380 the court adopts and incorporates the decision involving BWI 12 into this Special Master's findings of fact and conclusions of law. One of the issues decided in BWI 12 involved how diversion rate would be decreed. BWI 12 held that stock water claims involving diversions would be decreed as claimed or actual diversion rate not to exceed 13,000 gallons per day. In decreeing or recommending a particular diversion rate for stock water claims, the court recognizes that the amount recommended may not reflect actual or historical use for that stock water claim. Given the *de minimis* nature of stock water claims in that stock water claims constitute 1% to 2% of water claimed in the SRBA, it would be overly burdensome for IDWR to spend a finite amount of resources investigating these *de minimis* claims. To solve this problem the court shall recommend a particular diversion rate were the diversion rate may not reflect actual historical and beneficial use. For Subcase 57-02380 the diversion rate would be .01 cfs not to exceed 13,000 gallons per day.

Consistent with these findings and as a matter of law the Special Master recommends water right 57-02380 as listed on the attached *Special Master's Recommendation* for Partial Decree.

DATED September 26, 1996.


FRITZ X. HAEMMERLE
Special Master, Reporting Area 2
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: 51
PARTIAL DECREE FOR
DISTRICT COURT-SR3A
Water Right 57-02380
TWIN FALLS CO. IDAHO
FILED JX

NAME & ADDRESS: UNITED STATES OF AMERICA ACTING THROUGH
USDI BUREAU OF LAND MANAGEMENT
IDAHO STATE OFFICE
3380 AMERICANA TERRACE
BOISE ID 83706

SOURCE: UPPER BIRCH SPRING TRIBUTARY: BIRCH CREEK
QUANTITY: 0.01 CFS

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

PRIORITY DATE: 01/24/1942

POINT OF DIVERSION: T07S R01E S07 SNNWNE Within OWYHEE County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	STOCKWATER	01-01 12-31	0.01 CFS

PLACE OF USE: STOCKWATER Within OWYHEE County
T07S R01E S07 NWNW

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.

DATED: SEP 26 1998

 Fritz X. Haemmerle
FRITZ X. HAEMMERLE
Special Master
Snake River Basin Adjudication

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Department of Water Resources

SEP 26 PM 4:51

DISTRICT COURT-SRBA
TWIN FALLS CO. IDAHO
FILED *[Signature]*

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 REPORT
AND RECOMMENDATION

Water Right(s): 57-02380

On September 26, 1996, Special Master FRITZ X HAEMMERLE issued a SPECIAL MASTER'S REPORT AND RECOMMENDATION for this subcase pursuant to SRBA Administrative Order 1 (A.O.1), Section 11(b).

Pursuant to SRBA Administrative Order 1, Section 12b, any party to the adjudication may file a Notice of Challenge to a SPECIAL MASTER'S REPORT AND RECOMMENDATION within 21 days following the date of publication of the filing of the Special Master's report in the Docket Sheet except parties to the subcase who failed to file a Motion for Reconsideration or a Motion to Correct Clerical Errors before the Special Master (A.O.1, Section 11f). The Notice of Challenge shall appear on the Docket Sheet and shall be served on parties to the subcase(s) covered by the challenged report and the SRBA Court Reporter.

DATED September 26, 1996.

[Signature: Debbie Lash]

DEBBIE LASH
Deputy Clerk

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Department of Water Resources

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DISTRICT COURT-SRBA
TWIN FALLS CO. IDAHO
FILED RL

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): 57-02380

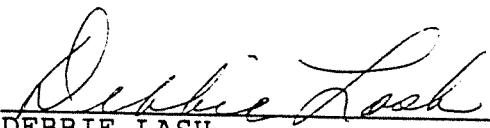
CERTIFICATE OF MAILING

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 September 26, 1996, with sufficient first-class postage prepaid to the following:

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

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

K. JACK HAUGRUD
U.S. DEPARTMENT OF JUSTICE
550 WEST FORT STREET, MSC 033
BOISE, ID 83724-0663


DEBBIE LASH
Deputy Clerk

CERTIFICATE OF MAILING

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09/26/96