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Department of Water Resources

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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	)	AMENDED PRELIMINARY
	)	SPECIAL MASTER'S REPORT
Case No. 39576	)	AND RECOMMENDATION
	)	
	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW FOR
	)	
_____	)	WATER RIGHT NO: 57-04104

FINDINGS OF FACT

A notice of claim was filed for this water right to 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 2 (Basin 57), which includes portions of Owyhee County. The Director of the Idaho Department of Water Resources then filed a *Director's Report for Reporting Area 57 (Director's Report)* which asserted how the elements of this water right should be decreed by the court.

An objection to the *Director's Report* for water right 57-04104 was filed on February 26, 1993, by the United States Bureau of Reclamation. A response to the objection was filed on July 1, 1993 by the State of Idaho Department of Water Resources.

On February 16, 1996, the United States and GEM Irrigation District filed *Parties' Stipulation to Consolidate Subcases*. An *Order Consolidating Subcases (Order)* was issued February 21, 1996, the *Order* consolidated subcases 57-02118, 57-02177, 57-04104, 57-10854, 57-10912, 57-10913 and 57-10807.

On April 3, 1996, the parties, the United States Bureau of Reclamation, and GEM Irrigation District filed a *Stipulation to Dismiss Objection and Dismiss the United States as a Party (Stipulation)*, which stated in part: "[t]he parties further agree that the water right filed by GEM Irrigation District, Subcase No. 57-04104, should be decreed as recommended." *Stipulation*, ¶ 7. Subsequently, the United States' objection was dismissed. *Order Dismissing Objections*, Apr. 8, 1996. On April 10, 1996, the United States' and GEM Irrigation filed *Parties' Stipulation to Amend Prior Stipulation to Dismiss Objection and Dismiss the United States as a Party*, which further clarified the parties' intent that water right 57-04104 should be decreed.

CONCLUSIONS OF LAW

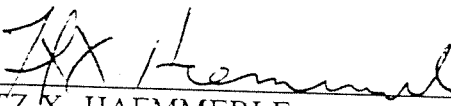
Under *SRBA Administrative Order 1*, a Special Master is required to make a recommendation to the Presiding Judge as to whether and how a water right should be recommended for each subcase.

Under I.R.C.P. 41, an action may be dismissed with prejudice by stipulation or court order. The record on file for this subcase, particularly the *Stipulation to Dismiss Objection and Dismiss United States as a Party*, clearly establishes the intent of the parties that this subcase be decreed as recommended.

Therefore, based on the file and record herein, IT IS RECOMMENDED that subcase 57-04104 be decreed as recommended in the *Preliminary Special Master's Report*.

IT IS SO RECOMMENDED.

DATED February 9, 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
PARTIAL DECREE FOR
Water Right 57-04104

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Department of Water Resources
Adjudication Bureau

NAME & ADDRESS: GEM IRRIGATION DISTRICT
PO BOX 67
HOMEDALE ID 83628

SOURCE: SAGE CREEK TRIBUTARY: SUCCOR CREEK

QUANTITY: 20.00 CFS

USE OF THIS RIGHT WITH RIGHT NO. 57-10913 IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 20 CFS.

PRIORITY DATE: 06/13/1906

POINT OF DIVERSION: T03N R05W S17 SWNNW Within CUYHEE County

PURPOSE AND PERIOD OF USE: PURPOSE OF USE PERIOD OF USE QUANTITY
IRRIGATION Irrigation Season 20.00 CFS

PLACE OF USE: IRRIGATION Within CUYHEE County

T03N R05W S04	Lot 3	(NWNW) 26.0	SWNW 16.0	NWSW 11.9	SWSW 33.3
S05	Lot 1	(NENE) 8.7	Lot 2 (NWNE) 32.5	SWNE 13.5	SENE 29.2
	Lot 3	(NENW) 8.1	NESE 27.1	NWSE 1.8	SWSE 2.6
		SESE 24.7			
S07		NESE 3.7	SESE 8.2		
S08		NENE 27.4	NWNE 9.5	SWNE 23.0	SENE 31.8
		SESW 13.4	NESW 18.6	NWSW 21.6	SWSW 4.3
		NESE 39.5	NWSE 23.6	SWSE 20.5	SESE 38.2
S09		SWNE 31.8	NENW 20.3	NWNW 25.0	SWNW 38.9
		SESW 40.2	NESW 39.7	NWSW 38.6	SWSW 32.0
		SESW 31.5	NESE 37.5	NWSE 39.4	SWSE 36.6
		SESE 37.4			
S10		NWSW 18.1	SWSW 16.5		
S16		NENE 4.0	NWNE 7.8		
T04N R05W S19		NESW 33.4	Lot 9 (NWSW) 31.5	Lot 10 (SWSW) 35.6	SESW 35.4
		SWSE 37.4	SESE 32.4		
S29	Lot 8	(NWNW) 3.4	Lot 7 (SWNW) 8.1	Lot 6 (NWSW) 24.6	Lot 5 (SWSW) 33.4
S30		NENE 15.2	NWNE 37.2	SWNE 40.0	SENE 11.3
		NENW 36.9	Lot 1 (NWNW) 34.1	Lot 2 (SWNW) 28.3	SESW 30.1
		NESW 21.1	Lot 3 (NWSW) 2.6	SESW 1.4	NESE 21.5
		NWSE 33.9	SWSE 31.2	SESE 32.1	
S31		NENE 17.0	NWNE 8.5	SENE 7.1	
S32		NESW 12.9	NWSW 13.2	SESW 32.6	SWSE 9.4
R06W S23		SENE 27.8	NESE 21.1		
S24	Lot 6	(SWNE) 13.4	Lot 4 (SWNW) 34.4	Lot 5 (SESW) 23.4	NESW 35.6
		NWSW 31.7	SWSW 24.7	SESW 35.7	NESE 8.1
		NWSE 7.2	SWSE 38.2	SESE 28.1	
S25		NENE 35.5	NWNE 14.4	SENE 3.9	NENW 1.8
2152.9 ACRES TOTAL					

USE OF THIS RIGHT WITH RIGHT NOS. 57-02118, 57-02177 &
57-10854 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF
2794.1 ACRES IN A SINGLE IRRIGATION SEASON.

CONSUMPTIVE USE:

USE OF THIS RIGHT WITH RIGHT NOS. 57-02118, 57-02177 &
57-10854 IS LIMITED TO A TOTAL COMBINED ANNUAL CONSUMPTIVE USE
VOLUME OF 9779.4 AF.

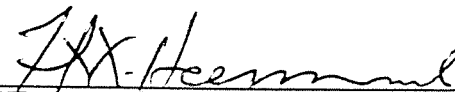
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

SPECIAL MASTER'S RECOMMENDATION

OTHER PROVISIONS: (CONT)

RIGHTS HAVE ALSO BEEN CLAIMED TO WATER FROM BASIN 02 FOR THE SAME PURPOSE OF USE AT THE SAME PLACE OF USE DESCRIBED ABOVE, WHICH WILL BE INCLUDED IN A DIRECTOR'S REPORT TO BE FILED AT A LATER DATE. ANY WATER RIGHTS RECOMMENDED IN THE BASIN 02 REPORT FOR THE SAME PURPOSE OF USE AT THE SAME PLACE OF USE DESCRIBED ABOVE WILL CONTAIN COMBINED USE LIMITATIONS FOR THIS RIGHT AND THE BASIN 02 RIGHTS.

DATED:


FRITZ X. HAEMMERLE
Special Master
Snake River Basin Adjudication

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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) CERTIFICATE OF MAILING
Case No. 39576) Water Right No. 57-04104
_____)

I certify that a true and correct copy of the *Amended Preliminary Special Master's Report and Recommendation; Findings of Fact and Conclusions of Law for Water Right No. 57-04104* and *Notice of Issuance of Amended Preliminary Special Master's Report and Recommendation* were mailed on September 26, 1996, with sufficient first-class postage prepaid to the following:

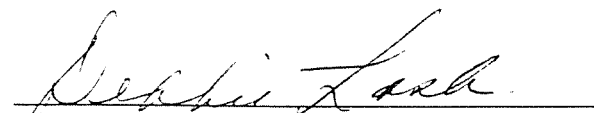
Chief, Natural Resources Division
Office Of The Attorney General
State of Idaho
P. O. Box 44449
Boise, ID 83711-4449

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

The United States Department of Justice
Environment and Natural Resources Division
550 West Fort Street, Box 33
Boise, ID 83724

Brad A Flinders
P O Box 1565
Nyssa, Oregon 97913

DATED: September 26, 1996.


Deputy Clerk