

8/27/01

12/13/00

4/20/00

9/29/00

8/27/01

8/27/01

8/27/01

8-31-2001

11-27-01

12/13/00

8/27/01

8/27/01

8/27/01

8/27/01

8/27/01

8/27/01

Seq#	Split	N	Basis	Source Table	Status	Version	Source List	Water Use List	Owner List
39				wrWaterRight	Remarks				
39	A			wrAdjudicationClaim	Remarks	0.1	BILLINGSLEY	IRRIGATION, STOCKWATER	
39	A	1		wrAdjudicationRecom	Remarks	0.1	BILLINGSLEY	IRRIGATION, STOCKWATER	
39	A		Decreed	wrWaterRight ✓	Active	2.14	BILLINGSLEY	IRRIGATION	DILATUSH, ALICE I (Current); DILA
39	B		Decreed	wrAdjudicationClaim	Active	0.12	BILLINGSLEY	IRRIGATION	BECK, BARBARA A (Current); BECI
39	B	1	Decreed	wrAdjudicationRecom	Closed	0.03	BILLINGSLEY	IRRIGATION	BECK, BARBARA A (Current); BECI
39	B	2	Decreed	wrAdjudicationRecom	Active	0.03	BILLINGSLEY	IRRIGATION	BECK, BARBARA A (Current); BECI
39	B		Decreed	wrWaterRight ✓	Active	0.26	BILLINGSLEY	IRRIGATION	SHOKAL, EDWARD C (Current); SH
39	C		Decreed	wrAdjudicationClaim	Active	0.28	BILLINGSLEY	IRRIGATION	VEENENDAAL, DICK J (Current); V
39	C	1	Decreed	wrAdjudicationRecom	Closed	0.06	BILLINGSLEY	IRRIGATION	VEENENDAAL, DICK J (Current); V
39	C	2	Decreed	wrAdjudicationRecom	Active	0.06	BILLINGSLEY	IRRIGATION	VEENENDAAL, DICK J (Current); V
39	D		Decreed	wrAdjudicationClaim	Active	0.26	BILLINGSLEY	IRRIGATION, STOCKWATER	WALMSLEY, FRED J (Current); WA
39	D		Decreed	wrAdjudicationRecom	Closed	0.06	BILLINGSLEY	IRRIGATION, STOCKWATER	WALMSLEY, FRED J (Current); WA
39	D	2	Decreed	wrAdjudicationRecom	Active	0.06	BILLINGSLEY	IRRIGATION, STOCKWATER	WALMSLEY, FRED J (Current); WA
39	E		Decreed	wrAdjudicationClaim	Active	0.04	BILLINGSLEY	IRRIGATION	GLAUNER, FRANK L (Current); GLA
39	E	1	Decreed	wrAdjudicationRecom	Active	0.04	BILLINGSLEY	IRRIGATION	GLAUNER, FRANK L (Current); GLA
39	E		Decreed	wrWaterRight ✓	Active	0.04	BILLINGSLEY	IRRIGATION	GLAUNER, FRANK L (Current); GLA
39	F		Decreed	wrAdjudicationClaim	Active	0.12	BILLINGSLEY	IRRIGATION	BOLDUC, CHRISTINA J (Current); B
39	F	1	Decreed	wrAdjudicationRecom	Active	0.04	BILLINGSLEY	IRRIGATION	BOLDUC, CHRISTINA J (Current); B
39	F		Decreed	wrWaterRight ✓	Active	0.04	BILLINGSLEY	IRRIGATION	BOLDUC, CHRISTINA J (Current); B
39	G		Decreed	wrAdjudicationClaim	Active	0.1	BILLINGSLEY	IRRIGATION, STOCKWATER	MC FADDAN, LINDA L (Current); M
39	G	1	Decreed	wrAdjudicationRecom	Active	0.04	BILLINGSLEY	IRRIGATION, STOCKWATER	MC FADDAN, LINDA L (Current); M
39	G		Decreed	wrWaterRight ✓	Active	0.04	BILLINGSLEY	IRRIGATION, STOCKWATER	MC FADDAN, LINDA L (Current); M
39	H		Decreed	wrAdjudicationClaim	Active	0.28	BILLINGSLEY	IRRIGATION	ROESER, JANINE LEYDET (Curren
39	H	1	Decreed	wrAdjudicationRecom	Closed	0.04	BILLINGSLEY	DOMESTIC	ROESER, JANINE LEYDET (Curren
39	H	2	Decreed	wrAdjudicationRecom	Active	0.04	BILLINGSLEY	DOMESTIC	ROESER, JANINE LEYDET (Curren
39	J		Decreed	wrAdjudicationClaim	Active	0.28	BILLINGSLEY	AESTHETIC, IRRIGATION, STOCK	POTTER, MARK B (Current); POTT
39	J	1	Decreed	wrAdjudicationRecom	Closed	0.04	BILLINGSLEY	DOMESTIC	POTTER, MARK B (Current); POTT
39	J	2	Decreed	wrAdjudicationRecom	Active	0.06	BILLINGSLEY	IRRIGATION	POTTER, MARK B (Current); POTT
39	K		Decreed	wrAdjudicationClaim	Active	0.2	BILLINGSLEY	IRRIGATION, STOCKWATER	EASTERDAY, LOVA U (Current); E/
39	K	1	Decreed	wrAdjudicationRecom	Active	0.2	BILLINGSLEY	IRRIGATION, STOCKWATER	EASTERDAY, LOVA U (Current); E/
39	K		Decreed	wrWaterRight ✓	Active	0.2	BILLINGSLEY	IRRIGATION, STOCKWATER	EASTERDAY, LOVA U (Current); E/
39	L		Decreed	wrAdjudicationClaim	Active	0.12	BILLINGSLEY	IRRIGATION	EVANS, GREGORY R (Current); SP
39	L	1	Decreed	wrAdjudicationRecom	Closed	0.03	BILLINGSLEY	IRRIGATION	EVANS, GREGORY R (Current); SP
39	L	2	Decreed	wrAdjudicationRecom	Active	0.03	BILLINGSLEY	IRRIGATION	EVANS, GREGORY R (Current); SP
39	M		Beneficial	wrAdjudicationClaim	Active	0.12	BILLINGSLEY	AESTHETIC, IRRIGATION, STOCK	WOOLLEY, BLANCHE (Current); W

0	39 M	OK	Decreed	wrWaterRight ✓	Active	0.04	BILLINGSLEY	DOMESTIC	WOOLLEY, BLANCHE (Current); W
	39 N		Beneficial	wrAdjudicationClaim	Active	0.12	BILLINGSLEY	AESTHETIC, IRRIGATION, STOCK	KORBIS, GEORGE J (Current); KOR
-	39 N	OK	Decreed	wrWaterRight ✓	Active	0.04	BILLINGSLEY	DOMESTIC	KORBIS, GEORGE J (Current); KOR
	39 P		Decreed	wrAdjudicationClaim	Active	0.12	BILLINGSLEY	AESTHETIC, IRRIGATION, STOCK	BOTHWELL, BRUCE R (Current); B
	39 P	1	Decreed	wrAdjudicationRecom	Closed	0.04	BILLINGSLEY	DOMESTIC	BOTHWELL, BRUCE R (Current); B
3/4/01 0	39 P	(2)	Decreed	wrAdjudicationRecom	Active	0.14	BILLINGSLEY	AESTHETIC, DOMESTIC, IRRIGAT	BOTHWELL, BRUCE R (Current); B
	39 Q		Decreed	wrAdjudicationClaim	Active	0.2	BILLINGSLEY	IRRIGATION	HAGERMAN JOINT SCHOOL DIST
4-27-01	39 Q	(1)	Decreed	wrAdjudicationRecom	Active	0.2	BILLINGSLEY	IRRIGATION	HAGERMAN JOINT SCHOOL DIST

04/18/2002

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 36-39D

NAME AND ADDRESS: SUSAN K WALMSLEY
PO BOX 179
HAGERMAN ID 83332

FRED J WALMSLEY
PO BOX 179
HAGERMAN ID 83332

SOURCE: BILLINGSLEY CREEK

TRIBUTARY: SNAKE RIVER

QUANTITY: 0.08 CFS

THE APPROPRIATOR IS ENTITLED TO THE QUANTITY OF WATER DESCRIBED FOR STOCK WATER PURPOSES AT A POINT OF MEASUREMENT WHERE THE DELIVERY DITCH ENTERS THE PLACE OF USE DESCRIBED, SO LONG AS THE QUANTITY DIVERTED AT THE POINT OF DIVERSION DOES NOT CONSTITUTE UNREASONABLE WASTE.

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

PRIORITY DATE: 01/02/1891

POINT OF DIVERSION:

T07S R13E S11 SESENE Within GOODING County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
STOCKWATER	01/01 12/31	0.010 CFS
IRRIGATION	02/15 11/30	0.080 CFS

PLACE OF USE:

IRRIGATION Within GOODING County

T07S R13E S11 NWSE 2.0

STOCKWATER same as IRRIGATION

2 ACRES TOTAL

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.

EXPLANATORY MATERIAL: Decreed

WATER IS DELIVERED THROUGH THE BUCKEYE DITCH.
PROPERTY IS ALSO KNOWN AS LOTS 8 & 9, BLK 02, WILLOWBROOK
SUBDIVISION.
STOCKWATER, 10 RANGE CATTLE & HORSES

Water Right 36-39D

Decreed 9/29/2000

Department of Water Resources

Department of Water Resource
Southern Region

WIN FALLS

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

Case No. 39576

**NOTICE OF ISSUANCE AND NOTICE
OF SERVICE**

Water Right(s): 36-00039D

On December 15 1999, Special Master Thomas R. Cushman issued a *Special Master's Report and Recommendation* for the above subcase(s) pursuant to *SRBA Administrative Order I (AOI)*, Section 13a.

Pursuant to *SRBA Administrative Order 1*, Section 13b, any party to the subcase, may file a Notice of Challenge by December 30, 1999.

I certify that a true and correct copy of the SPECIAL MASTER'S RECOMMENDATION was mailed to the following:

Representative of:
Director of IDWR
PO Box 83720
Boise, ID 83720-0098

Fred & Susan Walmsley
PO Box 179
Hagerman, ID 83332

Michael C. Creamer
Givens Pursley
PO Box 2720
Boise, ID 83701-2720

DATED: December 15, 1999.

Deputy Clerk

1999 DEC 15 PM 2:33

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
	)	
Case No. 39576	)	FINDINGS OF FACT
	)	
	)	FOR WATER RIGHT 36-00039D
	)	
_____	)	

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 examined the water system for this reporting area. The *Director's Report* contained a recommendation or abstract for the elements of this water right.

On December 15, 1999, an *Order on Cranney Bros.' Motion to Alter or Amend the Special Master's Recommendation* was issued and is incorporated herein in its entirety.

Therefore, based on the file and record herein, IT IS RECOMMENDED that this water right be decreed with the elements as set forth in the *Order on Cranney Bros.' Motion to Alter or Amend the Special Master's Recommendation* and in the attached *Partial Decree Pursuant to I.R.C.P. 54(b) for Water Right 36-00039D*.

DATED: December 15, 1999.



THOMAS R. CUSHMAN
Special Master
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

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 36-000390

1999 DEC 15 PM 2:33

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

FILED _____

NAME AND ADDRESS: FRED J WALMSLEY
SUSAN K WALMSLEY
PO BOX 179
HAGERMAN, ID 83332

SOURCE: BILLINGSLEY CREEK TRIBUTARY: SNAKE RIVER

QUANTITY: 0.08 CFS

PRIORITY DATE: 01/02/1891

POINT OF DIVERSION: T07S R13E S11 SESENE Within Gooding County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	02-15 TO 11-30	0.08 CFS
	Stockwater	01-01 TO 12-31	0.01 CFS

PLACE OF USE: Irrigation
T07S R13E S11 NWSE 2.0 Within Gooding County
2.0 Acres Total

Stockwater Same as Other Use

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

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Barry Wood
Administrative District Judge
Presiding Judge of the
Snake River Basin Adjudication

RECOMMENDATION

DEC 15 1999

SPECIAL MASTER

1999 DEC 15 PM 2:33

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

Case No. 39576

)
)
)
)
)

Subcase No. 36-00039D

**ORDER ON THE MOTION OF
CRANNEY BROS.' TO ALTER OR
AMEND THE SPECIAL MASTER'S
RECOMMENDATION**

I. APPEARANCES

Fred J. and Susan K. Walmsley, claimants, *pro se*.
215 Willow Lane, P.O. Box 179, Hagerman, Idaho 83332-0179

Michael Creamer, Esq., Givens Pursley, LLP., for the respondents Cranney Bros.
P.O. Box 2720, Boise, Id. 83701-2720

II. PROCEDURAL BACKGROUND

This matter is before the Special Master on a *Motion to Alter or Amend the Special Master's Recommendation*. This claim is made by Fred J. and Susan K. Walmsley, who are also the objectors. The claim is a "split claim," i.e. a claim for only a portion of a water right [the Dilatush and Carey right] decreed in 1932 as part of *New International Mortgage Bank v. Idaho Power Company*, in Equity No. 1602, (D. Idaho, Mar. 22, 1932) (*International Mortgage Decree*). The respondent is Cranney Bros., Inc. This matter was tried on August 11, 1999. The only issue at trial was the quantity element. On August 31, 1999, his last day with the SRBA, Special Master Haemmerle issued *Findings of Fact and Conclusions of Law* which included his recommendation for the quantity element. On September 13, 1999, this Special Master was assigned to this subcase by the Court, replacing Special Master Haemmerle. On September 27, 1999, Cranney Bros. filed the pending motion. A hearing on the motion was held on November 2, 1999, and subsequently, this Special Master completed a review of the factual record of the trial.

III. STANDARD OF REVIEW

A motion to alter or amend is provided for in Paragraph 13 of *AOI* and it is similar to a motion to alter or amend as found in Rule 59(e) Idaho Rules of Civil Procedure ("I.R.C.P.") The Special Master believes that the case law concerning Rule 59 (e) is applicable to Paragraph 13, *AOI*. A motion to alter or amend is addressed to the discretion of the court. *Lowe v. Lyn*, 103 Idaho 259, 263, 646 P.2d 1030 (1982).

Rule 59(e) proceedings afford the trial court the opportunity to correct errors both of fact or law that occurred in its proceedings; it thereby provides a mechanism for corrective action short of an appeal. Such proceedings must of necessity, therefore, be directed to the status of the case as it existed when the court rendered its decision upon which the judgment is based.

Id. at 263 (citations omitted). This Special Master continues to adhere to the *Part III Standard of Review* found in the original *Findings of Fact*.

IV. AMENDED FINDINGS OF FACT

While the Special Master is constrained to the factual record as it existed on August 31, 1999, the *Findings of Fact* may be altered or amended to comport with this Special Master's current review of that record, and they are amended as follows:

1. Original Findings 1 through 4 are adopted without change.
2. Finding number 5 is modified as follows: Based upon a sprinkler delivery method, IDWR calculated the quantity of water used in the Hagerman area to be one-inch (0.02 cfs) per acre. Recognizing that small acreages (less than five acres) are less efficient, IDWR found the quantity of water in the Hagerman Valley to be an inch-and-a-half (0.03 cfs) per acre. For gravity irrigation, IDWR determined that the quantity should be two inches (0.04 cfs) per acre.
3. Findings number 6 and 7 are modified as follows: This water is now diverted from Billingsley Creek at the Buckeye Ditch. However, in 1932, the *International Mortgage Decree* indicated it was diverted from Billingsley Creek at the Granger Ditch, which no longer exists.¹ The portion of the "Dilatush/Carey" right in the 1932 decree which came from Billingsley Creek

¹ While not admitted into evidence, Exhibit 43 indicates that the change of diversion likely occurred in 1948.

and became the subcase number 36-00039 ("39") in the SRBA was for 2.4 cfs.² There is no evidence of what portion of this 2.4 cfs was for conveyance loss from the decreed point of diversion through Granger Ditch to the point of use, nor which portion was to be applied to the land as and for irrigation. The 1932 decree included no conveyance loss in the Buckeye ditch for the "39" claim. The total conveyance loss for all water running in the Buckeye Ditch is 0.35 cfs, none of which was for "39" claimed water in the 1932 decree. Currently, the water claimed in this subcase runs 1400 feet down the Buckeye Ditch to Willowbrook Creek where it runs approximately 300 feet to claimants' place of use. IDWR determined that the conveyance loss was for 0.002 cfs, an amount too small to administer. Thus, they truncated it from their recommendation.

Having considered the evidence produced at trial, this Special Master also finds that the prior decree has little, if any, weight as to the quantity element. Even if the quantity element could be traced from the 1932 decree to the instant "39" claims, the Special Master can not, from the evidence, discern what portion of the original Dilatush/Carey decreed right is appurtenant to this subcase. The right decreed in 1932 has been split a number of different times and the point of diversion has been changed. None of the parties has disputed the priority date as assigned by the Director's Report to claim number 36-00039D.

4. The Special Master finds that the claimant Fred Walmsley, by his education and experience,³ is an expert as to the amount of water needed to irrigate his property to provide for a healthy crop. His testimony was that he used sprinkler irrigation and he used and needed 0.081 cfs to maintain a healthy pasture crop during the warmest part of the summer. The Special Master finds that his testimony as to the actual amount needed to maintain a healthy crop using sprinklers has overcome the presumption of the *prima facie* effect of the Director's Report. The Director's conclusions were based upon general data applied to a scientific formula. The Special

² While the Condit/Dilatush/Carey right was for more than 2.4 cfs, some of that water was from springs on the property and not diverted from Billingsley Creek. The claims in 36-00039 are for the portion of the 1932 decreed right diverted from Billingsley Creek.

³ He has both a bachelor's and master's degree in agriculture and taught vocational agriculture at the high school level.

Master finds the more specific testimony of the claimant to be more persuasive. The claimants are entitled to a quantity of 0.081 cfs to apply on their field plus a conveyance loss of 0.002 cfs.

5. Pursuant to Idaho Code § 42-220, the Special Master finds that although this claim is for more than 0.02 cfs per acre, it does constitute a beneficial use. Even the Director's Report recognized that the Hagerman Valley had extremely sandy soil, that the Hagerman Valley is generally hotter than most of the state, and it recommended more than 0.02 cfs for this claim. The objector did not dispute this issue.

6. IDWR employs a weighted pro-rata method of determining conveyance loss in the case of a right that has been split, pro-rating the conveyance loss to the various split portions. In those rare cases where one or some of the split rights are abandoned or forfeited, IDWR would consider the conveyance loss portion of the lost right as remaining in the ditch. This is the same methodology used by IDWR in a transfer of a water right out of a ditch, i.e. the conveyance loss portion of the right may not be transferred out of a ditch.

V. CONCLUSIONS OF LAW

1. The original Director's Report for subcase 36-00039D recommended a quantity of 0.06 cfs. That recommendation was based upon a sprinkler irrigation system. At trial, IDWR amended its recommendation to 0.08 cfs. That amount was based upon gravity irrigation, the method used at the time the water was originally appropriated. Cranney alleges that a gravity based recommendation is erroneous because the claimants have irrigated the vast majority of their property by sprinkler since 1981. However, in light of findings of fact numbers 4 and 5, above, this argument is irrelevant. The claimants are beneficially using 0.083 cfs by a sprinkler method of irrigation. The Special Master has found that there is insufficient proof that the claimants have a right to any particular quantity of water by virtue of the prior private decree. That is, there is no proof as to what portion of the 2.4 cfs was being applied to their parcel in 1932. However, the Special Master concurs with the claimants' trial testimony that the amount the claimants need and have been beneficially using since they have owned the parcel related to claim 36-00039D is 0.081 cfs (plus some conveyance loss). There is, thus, no forfeiture issue before the Special Master.

2. In measuring quantity, the rule is "waters appropriated will be measured for their sufficiency from the point of diversion, not the place of use." *Glen Dale Ranches, Inc. v. Shaub*, 94 Idaho 585, 588, 494 P.2d 1029 (1972). Since the right is measured from the point of diversion, the quantity decreed must include conveyance loss. Conveyance loss is that amount of water necessary to deliver the water from the point of diversion to the place of use. In this subcase, the issue is how the conveyance loss is allocated between users. IDWR's weighted pro-rata method of determining conveyance loss with a split right is reasonable and consistent with its treatment of transferred rights. As the prior Special Master noted in footnote 2, on page 4 of the

Findings of Fact:

[A]n agency's determination regarding a statute is entitled to great weight if: "(1) the agency has been entrusted with the responsibility to administer the statute at issue; (2) the agency's construction of the statute is reasonable; (3) the statutory language at issue does not expressly treat the precise question at issue; and (4) any of the rationales underlying the rule of deference are present."

Findings of Fact and Conclusions of Law (Aug. 31, 1999) fn 2, citing *State v. Hagerman Water Right Owners (Basin-Wide Issue 10, Partial Forfeiture)*, 130 Idaho 727, 947 P.2d 400 (1997).

The Director of IDWR is responsible for administering the delivery of water. It is not for any Special Master to substitute his or her preference on how to administer the allocation of the conveyance loss portion of a water right, when the right is split. The claimants have received the water they testified they needed using IDWR's method of allocation. It is not for the Special Master to delve into speculation of what might happen in some improbable situations in the future when determining what a right now is. Moreover, IDWR's method would protect the claimants under the speculative situation posed by the prior Special Master. The claimants are entitled to a conveyance loss of 0.002 cfs.

3. IDWR does not administer a right in thousands of a cfs (0.001 cfs). The claimants 0.083 cfs must be brought to an amount which can be administered by IDWR. Whether the amount is rounded to the nearest hundredths of a cfs or truncated, 0.083 cfs must be decreed as 0.08 cfs.

4. The Special Master continues to adhere to *Conclusion of Law D* (Prior Decree) in the original *Findings of Fact*.

5. It is not necessary to the decision of this subcase whether IDWR's policy concerning recommending gravity versus sprinkler irrigation is appropriate or not and that portion of the original *Findings* is vacated.

6. It is not necessary for the Special Master to make any finding of forfeiture regarding the entire original 39-00039 right as it was decreed in 1932. There is insufficient evidence to determine what portion of the 1932 decreed right was for the parcel in subcase 36-00039D. When the last of the "39" subcases is before the court, it may then be able to determine if any forfeiture has *de facto* occurred.

VI. CONCLUSIONS

The Respondents *Motion to Alter or Amend Specials Master's Recommendation* is granted, in part; denied, in part; and is deemed moot, in part. Therefore, IT IS RECOMMENDED that claim number 36-00039D be decreed as 0.08 cfs.

DATED December 15, 1999.



THOMAS R. CUSHMAN
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of ORDER ON CRANNEY BROS.' MOTION TO ALTER OR AMEND was mailed on December 15, 1999, with sufficient first-class postage prepaid to the following:

Director of IDWR
PO Box 83720
Boise, ID 83720-0098

Fred & Susan Walmsley
PO Box 179
Hagerman, ID 83332

Michael C. Creamer
Givens Pursley
PO Box 2720
Boise, ID 83701-2720


Deputy Clerk

RECEIVED

FEB 09 1999

Department of Water Resources
Southern Region

1999 FEB 01 PM 03:08
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	)	NOTICE SETTING SUBCASE
	)	FOR SCHEDULING CONFERENCE
Case No. 39576	)	
	)	SUBCASE NO: 36-00039D

The Scheduling Conference for this subcase will be held as follows:

WEDNESDAY, MARCH 10, 1999 at 10:30 AM
SRBA
DISTRICT COURT
253 3RD AVENUE NORTH
TWIN FALLS, ID

Parties and their attorneys, if any, shall attend the Scheduling Conference and shall be prepared to discuss the following matters:

1. Claimant representation and alignment of the parties;
2. Identification of the issues;
3. Admissions of facts and documents;
4. Amendment of pleadings, if required;
5. Discovery and discovery cut-off dates;
6. Expert witnesses, if planned;
7. Pre-trial conference dates;
8. Motions;
9. Settlement/alternative dispute resolution; and
10. Firm trial date.

MAIL



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NATURAL RESOURCES
DEP AG OFFICE OF ATTY GEN
STATEHOUSE MAIL
BOISE, ID 83720-0010

(continued)

The date for the scheduling conference will not be changed unless a Stipulation to Reset is received by the court fourteen (14) days before the date of the scheduling conference. Parties who wish to change the date of the scheduling conference must do the following:

1. Contact the clerk of the SRBA Court and obtain alternative dates and times (208-736-3011).
2. Contact each party to the subcase(s) or their attorney, if any, and reach an agreement on the alternative date(s) and time(s) provided by the clerk.
3. Prepare a Stipulation to Reset the hearing. The hearing must be reset on one of the dates and times provided by the clerk. The stipulation must specify the date(s) and time(s) agreed to and must contain a statement that you have contacted each party or their attorney and that all have agreed on the alternative date(s) and time(s). The court will send a notice resetting the hearing.
4. If the parties cannot agree on one of the alternative dates and times provided by the clerk, the party wishing to change the date and time must file an Expedited Motion to Reset with the court at least 21 days prior to the scheduled hearing.

Dated: FEBRUARY 01, 1999

/s/ TERI HRANAC
Deputy Clerk
Snake River Basin Adjudication

(continued)

The date for the scheduling conference will not be changed unless a Stipulation to Reset is received by the court fourteen (14) days before the date of the scheduling conference. Parties who wish to change the date of the scheduling conference must do the following:

1. Contact the clerk of the SRBA Court and obtain alternative dates and times (208-736-3011).
2. Contact each party to the subcase(s) or their attorney, if any, and reach an agreement on the alternative date(s) and time(s) provided by the clerk.
3. Prepare a Stipulation to Reset the hearing. The hearing must be reset on one of the dates and times provided by the clerk. The stipulation must specify the date(s) and time(s) agreed to and must contain a statement that you have contacted each party or their attorney and that all have agreed on the alternative date(s) and time(s). The court will send a notice resetting the hearing.
4. If the parties cannot agree on one of the alternative dates and times provided by the clerk, the party wishing to change the date and time must file an Expedited Motion to Reset with the court at least 21 days prior to the scheduled hearing.

Dated: FEBRUARY 01, 1999

/S/ TERI HRANAC
Deputy Clerk
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I Certify that a true and correct copy of the NOTICE SETTING
SUBCASE FOR SCHEDULING CONFERENCE was mailed on FEBRUARY 01, 1999,
with sufficient first-class postage to the following:

STATE OF IDAHO

Represented by:

CLIVE STRONG

NATURAL RESOURCES

DEP AG OFFICE OF ATTY GEN

STATEHOUSE MAIL

BOISE, ID 83720-0010

Phone: 208-334-2400

CRANNEY BROS.

Represented by:

MICHAEL C. CREAMER

PO BOX 2720

BOISE, ID 83701

Phone: 208-388-1200

DIRECTOR OF IDWR

PO BOX 83720

BOISE, ID 83720-0098

FRED J. WALMSLEY

WALMSLEY, SUSAN K.

P.O. BOX 179

HAGERMAN, ID 83332

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 36-39D V2

WATER RIGHT NUMBER: 36-39D V2

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	SUSAN K WALMSLEY PO BOX 179 HAGERMAN, ID 83332 (208)837-6551
Attorney	PATRICK D BROWN HEPWORTH LEZAMIZ & HOHNHORST 133 SHOSHONE ST N PO BOX 389 TWIN FALLS, ID 833030389 (208)734-7510
Current Owner	FRED J WALMSLEY PO BOX 179 HAGERMAN, ID 83332 (208)837-6551

Priority Date: 01/02/1891

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
BILLINGSLEY CREEK	SNAKE RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
STOCKWATER	1/01 to 12/31	0.010 CFS	
IRRIGATION	2/15 to 11/30	0.060 CFS	
	<u>Total Diversion:</u>	0.060 CFS	

Location of Point(s) of Diversion

BILLINGSLEY CREEK	SE1/4SE1/4NE1/4	Sec. 11, Twp 07S, Rge 13E, B.M.
GOODING County		

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
07S	13E	11														2.0			2.0

Total Acres: 2

STOCKWATER same as IRRIGATIONConditions of Approval:

1. N01 THE APPROPRIATOR IS ENTITLED TO THE QUANTITY OF WATER DESCRIBED FOR STOCK WATER PURPOSES AT A POINT OF MEASUREMENT WHERE THE DELIVERY DITCH ENTERS THE PLACE OF USE DESCRIBED, SO LONG AS THE QUANTITY DIVERTED AT THE POINT OF DIVERSION DOES NOT CONSTITUTE UNREASONABLE WASTE.

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 36-39D V2

2. N05 THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE SHALL NOT EXCEED 13,000 GALLONS PER DAY.
3. N08 THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

Remarks:

1. Explanatory WATER IS DELIVERED THROUGH THE BUCKEYE DITCH.
PROPERTY IS ALSO KNOWN AS LOTS 8 & 9, BLK 02, WILLOWBROOK SUBDIVISION.
STOCKWATER, 10 RANGE CATTLE & HORSES

Comments:

1. SCHULTZ 9/28/1992 NOTICE OF ERROR (NOE)
Comment: NOE RECEIVED 9/25/92. CHANGED NOE FLAG FROM BLANK TO A. CLAIM VERIFIED 8/5/92. DID NOT REVERIFY ANY PART OF CLAIM.
2. WORSTELL 10/14/1992 NOTICE OF ERROR RECORD
Comment: PERIOD OF USE CHANGED TO 3/15 TO 11/15
3. CHRISTEN 10/20/1992 CHANGE TO RECORD 10-20-92
Comment: ADDED CONDITION CODES N01 AND N02. KKC.
4. SCHULTZ 2/19/1993 ADDED NEW ATTORNEY
Comment: RECEIVED NOTICE OF APPEARANCE FROM HEPWORTH NUNGESTER LEZAMIZ 2/10/93. CLAIM VERIFIED 10/20/92. DID NOT REVERIFY CLAIM.

Dates and Other Information:

Decreed Date:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
Defendant:
Plaintiff:
Civil Case Number:
Judicial District:
Notice of Error Flag: RECEIVED - RECOMMENDATION CHANGED
State or Federal:
Owner Name Connector: 0
Water District Number: 36A
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Swan Falls Trust or Nontrust: False
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: AND

36-00039D

RECEIVED

RECEIVED

FEB 03 1999

FEB 09 1999

Department of Water Resources
Southern Region

Department of Water Resources

1999 FEB 01 PM 03:08
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	)	NOTICE SETTING SUBCASE
	)	FOR SCHEDULING CONFERENCE
Case No. 39576	)	
	)	SUBCASE NO: 36-00039D

The Scheduling Conference for this subcase will be
held as follows:

WEDNESDAY, MARCH 10, 1999 at 10:30 AM
SRBA
DISTRICT COURT
253 3RD AVENUE NORTH
TWIN FALLS, ID

Parties and their attorneys, if any, shall attend the
Scheduling Conference and shall be prepared to discuss the
following matters:

1. Claimant representation and alignment of the parties;
2. Identification of the issues;
3. Admissions of facts and documents;
4. Amendment of pleadings, if required;
5. Discovery and discovery cut-off dates;
6. Expert witnesses, if planned;
7. Pre-trial conference dates;
8. Motions;
9. Settlement/alternative dispute resolution; and
10. Firm trial date.

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

(continued)

The date for the scheduling conference will not be changed unless a Stipulation to Reset is received by the court fourteen (14) days before the date of the scheduling conference. Parties who wish to change the date of the scheduling conference must do the following:

1. Contact the clerk of the SRBA Court and obtain alternative dates and times (208-736-3011).
2. Contact each party to the subcase(s) or their attorney, if any, and reach an agreement on the alternative date(s) and time(s) provided by the clerk.
3. Prepare a Stipulation to Reset the hearing. The hearing must be reset on one of the dates and times provided by the clerk. The stipulation must specify the date(s) and time(s) agreed to and must contain a statement that you have contacted each party or their attorney and that all have agreed on the alternative date(s) and time(s). The court will send a notice resetting the hearing.
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Dated: FEBRUARY 01, 1999

/S/ TERI HRANAC

Deputy Clerk

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