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DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
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SUPPLEMENTAL DIRECTOR'S REPORT

Subcase Nos. 55-10288B, 55-10289B, 55-10290B, 55-10292B, 55-10293B, 55-10295,
55-10296, 55-10297B, 55-10298, 55-10299B, 55-10300, 55-10301B, 55-10303B and 55-13451

RECEIVED
DECEMBER 8, 2003
Department of Water Resources

In Re SRBA

Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

Prepared by the Idaho Department of Water Resources
Karl J. Dreher, Director
David R. Tuthill, Jr., Adjudication Bureau Chief

December 4, 2003

DESCRIPTIVE SUMMARY

This is a Supplemental Director's Report submitted by the Director of the Idaho Department of Water Resources.

DISCUSSION

Pursuant to the court order issued verbally at the hearing held on July 31, 2003 and the *Order Granting LU Ranching's Unopposed Motion to Vacate and Reset Deadline to Respond to Supplemental IDWR Report and Setting Deadlines* issued by Special Master Cushman on November 13, 2003, IDWR submits for filing with the Court the following report.

NARRATIVE

The Bureau of Land Management (BLM) attached a "PROPOSED AMENDED SPECIAL MASTER'S REPORT AND RECOMMENDATION" (Proposed) to its "Memorandum in Support of United States' Motion to Alter or Amend the Special Master's Report and Recommendation, Findings of Fact and Conclusions of Law" dated April 10, 2003. The following analysis refers to the proposed amendment for each subcase. IDWR also considered, and refers to, LU Ranching's (LU) "Reply Memorandum in Support of LU Ranching's Motion to Alter or Amend the Special Master's Report and Recommendation, Findings of Fact and Conclusions of Law" dated May 29, 2003.

55-10288B

BLM's proposed changes are correct as to source. The Special Master's Report and Recommendation (SMRR) describes only one unnamed stream, tributary to Lone Tree Creek.

BLM's proposed changes are also correct as to the points of diversion and places of use under this right, with the possible exception of T07S, R06W, S35, SENE. IDWR has no opinion as to whether this reach should be included because it is either inside or outside BLM's South Mountain Grazing Allotment, that is an issue between BLM and LU. If this 40-acre tract is included in the SMRR, two additional points of diversions should also be added:

T07S R06W S35 SENE (Instream Beginning Point)

T07S R06W S35 SENE (Instream Ending Point)

BLM's proposed SMRR contains their own notations concerning beginning and ending points (B1, E1, etc.). Although this may be a helpful notation for BLM, IDWR does not consider these designations to be elements of the water right. IDWR suggests BLM's notations be removed from any SMRR.

LU's suggested language: "The use of water within the SENE, Section 35, T.07S, R.06W is limited to the South Mountain Allotment" is acceptable to IDWR, if it is necessary to clarify the use of this 40-acre tract in the description of 55-10288B.

55-10289B

BLM's proposed changes are correct as to source. The SMRR contains no descriptions of "Unnamed Streams" tributary to "Juniper Creek".

BLM is also correct when it suggests an additional point of diversion be added:

T08S R05W S28 NENW (Instream Beginning Point)

IDWR would not suggest the use of BLM's "B1, E1" notation in any description of this, or any, water right.

LU suggests both the Director's Report and SMRR include unnamed streams, draws and reaches flowing into Juniper Creek. IDWR does not support this assertion. If this is the case, beginning and ending points for each draw, reach or stream should be described on the SMRR, consistent with the description of the unnamed streams tributary to Cherry Creek shown on the SMRR.

55-10290B

BLM's proposed changes are correct as to source. The SMRR contains no descriptions of "Unnamed Streams" tributary to "Buck Creek" or "Buck Creek" tributary to "Juniper Creek".

BLM is also correct when it suggests the addition of two points of diversion:

T08S R05W S34	NENW (Instream Beginning Point)
T08S R05W S34	NESE (Instream Ending Point)

IDWR would not suggest the use of BLM's "B1, E1" notation in any description of this, or any, water right.

55-10292B

BLM's proposed changes to the point of diversion element are not correct. IDWR provides the following description for this element:

T08S R05W S23	NWSE (Instream Beginning Point)
T08S R05W S23	NWSE (Instream Ending Point)
T08S R05W S35	NWNW (Instream Beginning Point)
T08S R05W S35	NWNW (Instream Ending Point)
T08S R05W S35	SENE (Instream Beginning Point)
T08S R05W S35	NESE (Instream Beginning Point)
T08S R05W S35	Lot 1 (SESE) (Instream Ending Point)
T08S R05W S02	SENE (Instream Beginning Point)
T08S R05W S02	SENE (Instream Ending Point)

BLM proposes the addition of T08S R05W S35 NESW and T08S R05W S35 Lot 2 (SWSE). IDWR determines beginning and ending points using USGS topographic maps and GIS technology. The stream reach in this area may or may not flow through an adjacent 40-acre tract at this location; it is simply too close to call. IDWR does not agree the addition of these additional points will clarify this right.

BLM also proposes the addition of T08S R05W S02 Lot 1 (NENE) as a point of diversion. This description is not consistent with the place of use description. Either the proposed addition is wrong, or the SMRR should also include this description as a place of use. It is assumed the SMRR is correct as to place of use; IDWR proposes the point of diversion should be T08S R05W S02 SENE (Beginning Point) as noted above.

Again, IDWR would not suggest the use of BLM's "B1, E1" notation in any description of this, or any, water right.

55-10293B

BLM proposes the SMRR is incorrect because the recommendation describes private land and should describe public land. IDWR does not have sufficient information to determine whether this is correct.

55-10295

BLM proposes the addition of two points of diversion. IDWR determines beginning and ending points using USGS topographic maps and GIS technology. The stream reach in this area may or may not flow through an adjacent 40-acre tract at this location; it is simply too close to call. IDWR does not agree the addition of these additional points will clarify this right. Again, IDWR would not suggest the use of BLM's "B1, E1" notation in any description of this, or any, water right.

55-10296

BLM's proposed changes to the point of diversion are correct, with the exception of the use of "B1, E1" notation, as previously noted.

LU's proposal to include T05S R06W S23 NWNE as a place of use would eliminate the need for the additional points of diversion proposed by BLM. It is a matter for the parties to decide whether this place of use should be included.

BLM's proposed changes are correct as to source. The SMRR does not describe an unnamed stream tributary to Jordan Creek.

BLM also proposes the elimination of three points of diversion because they lie outside the Cow Creek Allotment. IDWR has no opinion as to whether these points of diversion should be included because they are either inside or outside BLM's Cow Creek Allotment; that is an issue between BLM and LU. However, if the SMRR is accurate as to these points of diversion, corresponding places of use should be added. (As noted by LU in its discussion of T05S R06W S13 SWSW) If the points of diversion are to be deleted, as proposed by BLM, they correctly propose the addition of points of diversion which would more accurately describe this water right. IDWR does not agree with the addition of BLM's "B1, E1" notation, as previously noted.

LU proposes the draws and reaches flowing into Jordan Creek are somehow described by both the Director's Report and SMRR. As noted above in 55-10289B, IDWR does not support this assertion. If this is the case, beginning and ending points for each draw, reach or stream should be described on the SMRR.

LU also disagrees with BLM's proposal that T05S R06W S14 NESE and T05S R06W S23 SWNE be eliminated as places of use. IDWR believes BLM describes the place of use accurately when it requests these places of use be removed from the SMRR. No stream appears to run in these two 40-acre tracts. The SMRR does not refer to a spring source. Hence, IDWR would not expect a spring source to be described in either the point of diversion or place of use descriptions of this water right.

LU also suggests that T05S R06W S24 NESW and SWSE should be described as points of diversion and places of use, either on the “A” or “B” portion of this right, or on some other right. This appears to be based on whether stock at these locations are ranged on the Cow Creek Allotment, or the Lowry Federal Fenced Range Allotment. IDWR has no opinion as to these points of diversion and places of use; this is a matter between BLM and LU.

55-10298

BLM proposes the addition of 10-acre tract information to the points of diversion. IDWR does not agree. The points of diversion are accurate as described in the SMRR. In addition, IDWR does not suggest the use of BLM’s “B1, E1” notation.

BLM also suggests the use of a remark to clarify that the right is used in the Cow Creek Allotment. IDWR would support the inclusion of such a remark if the parties or the Court feel it is necessary to clarify the water right.

55-10299B

Again, BLM proposes the addition of 10-acre tract information to the points of diversion. IDWR does not agree. The points of diversion are accurate as described in the SMRR. BLM also suggests the addition of three points of diversion. IDWR believes the following points of diversion accurately describe this right:

T04S R05W S31	NWNE (Instream Ending Point)
T04S R05W S31	SENE (Instream Beginning Point)
T04S R05W S31	SENE (Instream Ending Point)

T04S R05W S31	NENW (Instream Beginning Point)
T04S R05W S32	SWNE (Instream Beginning Point)
T04S R05W S32	SENE (Instream Ending Point)
T04S R05W S32	SESW (Instream Beginning Point)
T04S R05W S32	NWSE (Instream Ending Point)

IDWR does not support the use of BLM's "B1, E1" notation.

55-10300

BLM is correct in its proposed addition of points of diversion to the description of this right. The addition of 10-acre tract information is unnecessary; the points of diversion are accurately described on the SMRR. In addition, IDWR does not support the use of BLM's "B1, E1" notation as this is unnecessary to accurately describe the point of diversion element of this, or any, water right.

55-10301B

Neither BLM nor LU disputes the SMRR for this water right.

55-10303B

BLM's proposed changes are correct as to source. LU asserts the SMRR is correct because "numerous draws and reaches extend into Corral Creek" The SMRR contains only one description of an unnamed stream tributary to Corral Creek. If the other draws and reaches should be described on the SMRR, additional points of diversion would be required to accurately describe these unnamed streams.

BLM proposes the deletion of T09S R04W S18 Lot 3 (NWSW) from both the point of diversion and place of use because the legal description lies outside the Cliffs Allotment. IDWR holds no opinion in this matter; it is an issue between the parties.

BLM is correct in its proposal to remove T09S R05W S33 NWNW from the place of use. LU asserts the stream appears to “touch” on this 40-1cre tract. IDWR uses USGS topographic maps and GIS technology to determine the location of water sources, and this information is clear. The stream does not run through this tract.

LU also proposes T09S R05W S28 NWSW be added to the place of use description. It does appear the stream runs through this 40-acre tract. IDWR agrees with the addition of this place of use.

BLM is correct in its proposed additions to the points of diversion, with the exception that the 10-acre tract information is not required, and not necessary, to describe a point of diversion.

IDWR does not agree with BLM’s assertion that its “B1, E1” notation should be included in the description of this, or any, water right.

55-13451

Neither BLM nor LU disputes the SMRR for this water right.

Respectfully submitted this 4TH day of December ~~4~~, 2003.

A handwritten signature in cursive script, reading "Roxanne Brown", is written over a horizontal line.

ROXANNE BROWN

Senior Water Rights Agent

CERTIFICATE OF SERVICE

I certify that on December 4, 2003, I served the original and/or copies of this form, including all attachments, to the following persons by delivering the original and/or copies, as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

☐ Overnight Mail
☐ Regular Mail
☐ Hand-Delivered
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2. Copies to:

U.S. Dept. of Justice
Environment & Natural Resources Division
550 West Fort Street, MSC 033
Boise, ID 83724

Office of the Attorney General
Chief, Natural Resources Division
State of Idaho
c/o David J. Barber
P.O. Box 83720
Boise, ID 83720-0010

Richard Harris
P.O. Box 1438
1023 Arthur Street
Caldwell, ID 83606

Craig Pridgen
221 Main Street, 16th Floor
San Francisco, CA 94015

IDWR Repository
P.O. Box 83720
Boise, ID 83720



Signature of person delivering form