



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

June 5, 2006

VIA FACSIMILE AND U.S. MAIL

Special Master Theodore Booth
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, Idaho 83303-2707

Re: SRBA Subcase 84-10794 SF5

Dear Special Master Booth:

I am writing this letter in response to your questions regarding the above subcase and contained in your *Notice of Hearing for Clarification on SF-5 prior to Issuance of Special Master's Report* ("Notice") dated May 3, 2006. The intent of this letter is to answer the questions set forth in your Notice in order to assist the Court and the parties prior to the hearing set in this matter for June 13, 2006. The Idaho Department of Water Resources' responses to your questions are found immediately following your questions as set forth in full below:

- 1) *What is the purpose of the 220.00 AFY limitation, where continuous flow of the 0.04 water right would provide only a fraction of that amount?*

The 0.04 cfs quantity included in the SF5 for this water right is an error and should be deleted. This water right is for storage and from storage uses only, and thus, the 220.00 AFY is the only relevant quantity.

- 2) *Given the typical irrigation duty of water of 0.02 CFS per acre, is it possible to irrigate 20 acres from a 0.04 CFS water right?*

See answer to 1) above.

- 3) *Is the recreation purpose of use intended to be incidental to the other purposes of use? Put differently, if irrigation ceased to be a purpose of use (e.g. transfer, abandonment, or forfeiture of the irrigation right), would the recreation purpose survive independently? If not, should some limiting language be included in the face of the decree that changes to the irrigation right would result in the recreation right being subject to review by IDWR?*

No, the recreation purpose of use is not intended to be incidental to the other purposes of use but is intended to exist independently.

- 4) *What objection guidelines and criteria does IDWR employ when recommending a recreation right?*

This was a water right based on beneficial use. IDWR investigates a water right claimed for recreation much like it does other water rights based on beneficial use. Primarily, is there satisfactory evidence that the beneficial use, in this case, recreation in part, was commenced on the date of priority? In this case the priority date claimed and settled on is January 1, 1962. It is not uncommon for there to be a recreation purpose of use included in an on-stream storage reservoir as is found here.

- 5) *Is there a particular measurable duty of water with respect to a recreation purpose of use?*

No. And, as stated in 1) above, the 0.04 diversion rate in this case is an error. The amount of water recommended for this water right is based on the size of the on-stream storage reservoir.

- 6) *Is there a means for measuring the extent of beneficial use of a recreation right to distinguish between beneficial use and waste, including turnover rates for ponds, size of ponds, streams etc. Are there any parameters or limitations on the size of a recreation right?*

The extent of beneficial use is limited by evidence showing that the pond, for example, was used for recreation purposes such as swimming, boating and fishing as of the date of priority. The size of the right depends on the size of the reservoir, which in this case is spring fed and on-stream and can hold 220 AFY with the spring flowing continuously into the reservoir.

I hope this helps clarify some of the questions the court and the parties may have on this matter. Any additional questions can be discussed at the June 13, 1006 hearing or you may call me directly at (208) 287-4810.

Very Truly Yours,

A handwritten signature in cursive script, appearing to read "Candice M. McHugh".

Candice M. McHugh
Deputy Attorney General, IDWR

cc: James and Barbara Bowman
Ken Knoblock
Carter Fritschle