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Department of Water Resources  
Adjudication Bureau

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OFFICE OF THE  
ATTORNEY GENERAL

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     | ) | STANDARD FORM 5          |
|                | ) |                          |
| CASE NO. 39576 | ) | SUBCASE NO: 34-11583     |
|                | ) |                          |
|                | ) |                          |
|                | ) | STIPULATED ELEMENTS OF A |
|                | ) | WATER RIGHT              |

THIS FORM MAY ONLY BE USED IF ALL PARTIES HAVE STIPULATED TO ALL ELEMENTS OF A WATER RIGHT AND MAY BE SUBMITTED AT ANY TIME FOLLOWING THE CLOSE OF THE STATUTORY RESPONSE PERIOD.

This form is used to report the proposed elements of one federal reserved water right or one water right acquired under state law. Submission of this form will not result in the automatic issuance of a partial decree. The Presiding Judge or Special Master will conduct any hearing necessary to determine whether the facts, data, expert opinions and law support the issuance of a partial decree for the water right.

The parties agree that the Snake River Basin Adjudication Court has jurisdiction of the parties and subject matter to enter a partial decree for this water right; and they have been served with sufficient process, according to the law, and have appeared, prosecuted and defended their positions with regard to this water right dispute.

Instructions For Use

Elements where there has been no objection should be listed exactly as they appear in the director's report. The statement as to an uncontested element shall state "as recommended in the director's report."

Contested elements that are the result of an objection filed with the court shall be accompanied by a statement fully describing all facts, documents, expert opinions and law which support the element of the water right (attach additional pages if necessary).

1. The name and address of the claimant is:

UNITED STATES OF AMERICA ACTING THROUGH  
USDA FOREST SERVICE  
324 25TH STREET  
ODGEN, UTAH 84401-2394

Required Statement: As recommended in the director's report.

2. The source of water is:

Source: ELKHORN CREEK                      Tributary: BIG LOST RIVER

Required Statement: As recommended in the director's report.

3. The quantity of water used in cubic feet per second (CFS) or the quantity of water stored in acre-feet per year (AFY) is:

STOCKWATER:                      0.02 CFS  
TOTAL QUANTITY:                  0.02 CFS

THIS RIGHT AND OTHER RIGHTS COMMON TO THE SAME GRAZING ALLOTMENT SHALL BE LIMITED TO THE QUANTITY OF WATER BENEFICIALLY USED BY THE NUMBER OF STOCK WITHIN THE ALLOTMENT.

Required Statement: As recommended in the director's report.

4. The priority date is: 05/02/1885.

Required Statement: IDWR and the parties stipulate that this is the correct priority date.

5. The legal description of the point(s) of diversion is; if the claim is for an instream flow, then a legal description of the beginning and ending points of the claimed instream flow:

THE BEGINNING POINT FOR THIS INSTREAM FLOW IS T09N R23E S19 NESWNW.  
THE ENDING POINT FOR THIS INSTREAM FLOW IS T09N R22E S25 SWSWNW.

Required Statement: As recommended in the director's report.

6. The purpose of use is: STOCKWATER

NON-IRRIGATION USES: STOCKWATER - 468 RANGE CATTLE

Required Statement: As recommended in the director's report.

7. The period of year when the water is to be used is:

STOCKWATER 05-01 to 10-31

Required Statement: As recommended in the director's report.

8. The legal description of the place of use or of the reservation is:

|               |      |      |      |      |
|---------------|------|------|------|------|
| T09N R22E S24 | NESE | SWSE | SESE |      |
| T09N R22E S25 | NWNE | NENW | SWNW | SENE |
| T09N R23E S19 | SWNW | NWSW |      |      |

FOREST SERVICE RECORD ID 04061704021815 9993.

Required Statement: As recommended in the director's report. They are in Custer County, Idaho.

9. The annual volume of consumptive use is: De Minimis.

Required Statement: As recommended in the director's report.

10. Other matters necessary to define this water right: Not applicable.

These matters are necessary because: Not applicable.

These matters do not fall within the 9 elements listed above because: Not applicable.

The stipulation of the parties is attached hereto and incorporated herein by reference.

Signature and Address of Parties and their Attorney of Record (attach additional page if necessary)

I have read this form and know its contents and that the statements are true to the best of my knowledge and belief.

Name: Idaho Dept. of Water Resources  
Address: P.O. Box 83720  
City/State/Zip: Boise, ID 83720-0098  
Attorney of Record: Susan E. Hamlin/  
A. Lynne Krogh

\_\_\_\_\_  
Attorney's Signature Date

Name: Lola Coates  
Address: P.O. Box 146  
City/State/Zip: Mackay, Idaho 83251  
Attorney of Record:

Lola L. Coates 05-01-95  
\_\_\_\_\_  
Party's Signature Date

[Signature] May 1995  
\_\_\_\_\_  
Attorney's Signature Date

Name: United States on behalf of the  
USDA Forest Service through the  
Department of Justice  
Address: 380 E. Parkcenter, Suite 330  
City/State: Boise, Idaho 83706  
Attorney of Record: Randall J. Bramer

\_\_\_\_\_  
Party's Signature Date

Randall J. Bramer 7/18/95  
\_\_\_\_\_  
Attorney's Signature Date

Name: Herb Whitworth, Jr.  
Address: Star Route  
City/State/Zip: Mackay, Idaho 83251

Herb Whitworth 5/2/95  
\_\_\_\_\_  
Party's Signature

\_\_\_\_\_  
Attorney's Signature

## INSTRUCTIONS FOR MAILING

You must mail the form, including all attachments, to the Clerk of the SRBA Court and to the parties identified in the Certificate of Mailing. FAX filings will not be accepted by the SRBA Clerk of the Court.

You must sign the Certificate of Mailing to show that you followed these steps.

## CERTIFICATE OF MAILING

I certify that on July 18<sup>TH</sup>, 1995, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed 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

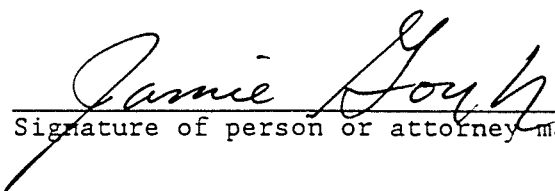
2. Copies to:

Chief, Natural Resources Division  
Office of the Attorney General  
State of Idaho  
P.O. Box 83702  
Boise, ID 83720-0098

United States on behalf of the  
USDA Forest Service through the  
Department of Justice  
380 E. Parkcenter, Suite 330  
Boise, ID 83706

Lola Coates  
P.O. Box 146  
Mackay, Idaho 83251

Herb Whitworth, Jr.  
Star Route  
Mackay, Idaho 83251

  
\_\_\_\_\_  
Signature of person or attorney mailing the form

A. LYNNE KROGH  
SUSAN E. HAMLIN  
Deputy Attorneys General  
Idaho Department of Water Resources  
P.O. Box 44449  
Boise, ID 83711-4449  
Telephone: (208) 327-7920  
Fax: (208) 327-7866

Attorneys for IDWR

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     | ) | Sub-case No. 34-11583 |
|                | ) |                       |
|                | ) |                       |
| Case No. 39576 | ) |                       |
|                | ) |                       |
|                | ) | STIPULATION           |
|                | ) |                       |

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DESCRIPTIVE SUMMARY

This is a stipulation to resolve the objection to water right number 34-11583.

STIPULATION

To resolve the dispute over the above-captioned water rights, the Idaho Department of Water Resources (IDWR), the United States of America (the claimant), and Lola Coates and Herb Whitworth, Jr. (the objectors), stipulate and agree that:

1. The Standard Form 5 for water right number listed above, attached hereto and incorporated by reference herein, sets forth the description of the water right as agreed by IDWR and the parties. All decrees, whether partial or final, should describe the water right agreed to by IDWR and the parties.

2. The Standard Form 5 and this stipulation have been reached through good faith negotiations for the purpose of resolving legal disputes, including pending litigation, and all parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal proceeding, and that this agreement is not and shall not be used as precedent for any other claim to a water right.

3. All parties agree to bear their own costs and attorney's fees in connection with this matter.

4. The Standard Form 5 and the stipulation were entered into and executed voluntarily by all parties in good faith, and without any fraud, misunderstanding, overreaching, misrepresentation, duress, or undue influence whatsoever.

Dated this 1<sup>st</sup> day of May, 1995.

Lola L. Coates  
Lola Coates  
Objector

Dated this 2 day of May, 1995.

Herb Whitworth, Jr.  
Herb Whitworth, Jr.  
Objector

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1995.

Randall J. Bramer  
Randall J. Bramer  
Attorney  
United States Department of Agriculture  
United States of behalf  
of the USDA Forest Service  
through the Department of Justice

Dated this 17 day of July, 1995.

\_\_\_\_\_  
A. Lynne Krogh  
Deputy Attorney General  
Idaho Department of Water Resources

\_\_\_\_\_  
Susan E. Hamlin  
Deputy Attorney General  
Idaho Department of Water Resources