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Department of Water Resources
Adjudication Bureau

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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED CL

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. 34-04068

)
) ORDER VACATING SETTLEMENT
) CONFERENCE and ORDER
) REQUIRING AMENDED
) STANDARD FORM 5

On January 5, 1995, a *Standard Form 5, Proposed Elements of a Water Right* was filed with the court for this water right. The signatories to the *Standard Form 5* are: the claimant/objector/respondent Ronald von Hagen, represented by James Speck; the objector United States Department of Justice for the Bureau of Land Management; and the respondent State of Idaho Department of Water Resources. Thus it appears that all parties to this subcase are signatories to the *Standard Form 5*.

Since all parties to this subcase appear to have reached an agreement as to this water right, as set forth in *Standard Form 5*, IT IS HEREBY ORDERED that the Settlement Conference previously scheduled for January 26, 1995 is **vacated**.

IT IS FURTHER ORDERED that the Deadlines for Initial Disclosures and Settlement Statements for this subcase are **vacated**.

The *Standard Form 5* which was submitted in this case, however, appears to be incomplete for the following reasons:

[X] A copy of the recommendation contained in the director's report for this water right was not attached.

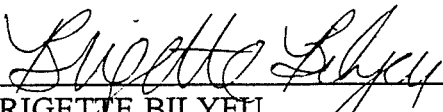
[] The parties failed to provide the court with a required statement for element _____.

- [X] The parties provided a mere conclusory statement for element 8 instead of a complete statement which fully describes all the stipulated facts, documents, expert opinions and law which support this element of the water right.
- [] The parties failed to provide the court with a required statement describing the stipulated facts, documents, expert opinions and law explaining why this claim is withdrawn.
- [X] The parties provided a mere conclusory statement for element 10 instead of fully describing why these matters are necessary to define this water right, and fully describing why these matters do not fall within the nine elements listed. The statement required for element 10 should include a full explanation of the stipulated facts, documents, expert opinions and law which support including this as a separate element of this water right.
- [X] The legal descriptions appear incomplete for elements 5 and 8.
- [X] Other: Element no. 9 is confusing because it does not indicate whether this element is as recommended in the director's report. If element no. 9 differs from what was recommended in the director's report, then a full statement should be included.

IT IS ORDERED that the parties to this subcase shall submit an *Amended Standard Form 5* which complies with all of the requirements of Standard Form 5 no later than February 14, 1995.

IT IS SO ORDERED.

DATED January 19, 1995.


BRIGETTE BILYEU
Special Master, Reporting Area 1
Snake River Basin Adjudication

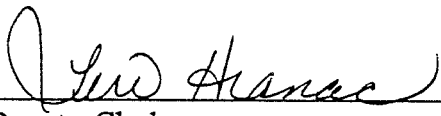
CERTIFICATE OF MAILING

I certify that a true and correct copy of the **ORDER VACATING SETTLEMENT CONFERENCE and ORDER REQUIRING AMENDED STANDARD FORM 5** was mailed on January 19, 1995, with sufficient first-class postage to the following:

James Speck
Hogue, Speck & Aanestad
PO Box 987
Ketchum, ID 83340

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

U.S. Department of Justice
550 West Fort Street, Box 033
Boise, ID 83724-0663



Deputy Clerk

✓
COPY

**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:
	)	
	)	
	)	PROPOSED ELEMENTS OF A
_____	)	WATER RIGHT

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

A copy of this water right as recommended in the director's report shall be submitted with this form. A statement shall accompany **each** element of a water right.

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:

JOHN L POWERS
PO BOX 493
MACKAY ID 83251

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

2. The source of water is:

Source: SPRING

Tributary: BIG LOST RIVER

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

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

IRRIGATION 0.2 CFS
 33.0 AFY
TOTAL QUANTITY: 0.2 CFS

0.11 CFS OF THIS RIGHT IS LIMITED TO USE FOR CONVEYANCE LOSSES IN DELIVERY OF THIS RIGHT AND RIGHT NO. 34-00959.

Required Statement: The language in the director's report recommending a combined diversion rate of .20 cfs for this right and right no. 34-00959 has been deleted, with the result that this right and right no. 34-00959 total 0.30 cfs for the irrigation of 10 acres. Because the combined diversion rate is greater than .02 cfs per acre, language is added specifying that the amount in excess of .02 cfs per acre is for conveyance losses. IDWR and the claimant stipulate that this correctly describes the amount of this water right.

4. The priority date is: 12/22/1974

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

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:

T07N R24E S32 LOT 2 (NENWNE)

Required Statement: As recommended in the director's report. The claim is not for an instream flow. Where a point of diversion is identified by government lot no., the legal

description is the government lot; quarter-quarter section descriptions are also provided in parentheses for the convenience of those who do not have ready access to U.S. Government plat maps.

6. The purpose of use is: IRRIGATION

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

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

IRRIGATION 05-01 to 10-15

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

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

PLACE OF USE: IRRIGATION

T07N R24E S29 SESE 5.0 acres

S32 Lot 1 (NENE) 2.5 acres, Lot 2 (NWNE) 2.0 acres

9.5 ACRES TOTAL

USE OF THIS RIGHT WITH RIGHT NO. 34-00959 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 9.5 ACRES IN A SINGLE IRRIGATION SEASON.

Required Statement: As recommended in the director's report. Where all or part of the place of use is identified by government lot no., the legal description is the government lot; quarter-quarter section descriptions are also provided in parentheses for the convenience of those who do not have ready access to U.S. Government plat maps. The place of use is located in Custer County, Idaho.

9. The annual volume of consumptive use is:

USE OF THIS RIGHT WITH RIGHT NO. 34-00959 IS LIMITED TO A TOAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 23.7 AF.

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

10. Other matters necessary to define this water right.

A MEASURING DEVICE OF A TYPE APPROVED BY IDWR SHALL BE MAINTAINED AS A PART OF THE DIVERTING WORKS.

ANY CLEANING BY MECHANICALLY OR HYDRAULICALLY POWERED EQUIPMENT SHALL REQUIRE PRIOR APPROVAL BY THE DEPARTMENT.

NO CLEANING IS AUTHORIZED IF THE FLOW FROM THE SPRING IS 0.20 CFS OR GREATER AND MUST BE DISCONTINUED WHEN THE FLOW OF THE SPRING EXCEEDS THAT AMOUNT.

ANY RETAINING WALL CONSTRUCTED AROUND THE SPRING EXCAVATION MUST BE APPROVED BY THE DEPARTMENT PRIOR TO ITS CONSTRUCTION.

THE DEPTH AND DIMENSIONS OF THE SPRING EXCAVATION EXISTING IN 1982 SHALL NOT BE INCREASED BY MORE THAN SIX INCHES AT ANY POINT OR IN OVERALL LATERAL DIMENSION.

These matters are necessary because: These are conditions of the water right resulting from a stipulation of the parties upon remand of an appeal of IDWR's order approving the permit for this right.

These matters do not fall within the 9 elements listed above because: These are conditions of the water right resulting from a stipulation of the parties upon remand of an appeal of IDWR's order approving the permit for this right.

11. Other

Complete resolution of this matter will require revision of the description of water right no. 34-00959, which is used in combination with this right but is uncontested. A revised recommendation of water right no. 34-00959 is attached hereto. IDWR and the claimant agree that IDWR will file the appropriate motions with the court at a later date to revise the description of water right 34-00959.

Signature and Address of Parties and their Attorney of Record

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

A. Lynne Krogh 1/17/95
Attorney's Signature Date

Name: John L. Powers

Address: P.O. Box 493

City/State/Zip: Mackay, ID 83251

Attorney of Record:

John L. Powers 1-17-95
Party's Signature Date

Attorney's Signature

Date

Court Representative (if necessary)

Date

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 Jan 17, 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:

John L. Powers
P.O. Box 493
Mackay, ID 83521

A. Lyane Krogh
Signature of person or attorney mailing the form

AJ5856NP

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

DATE: JAN-17-1995
PAGE: A-1

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
34-00959	JOHN L. POWERS PO BOX 493 MACKAY ID 83251	12/31/1901	IRRIGATION	05-01 10-15	0.1	CFS DECREED
		04/04/1912	RECREATION STORAGE	01-01 12-31	30.0	AFY
			DIVERSION TO STORAGE	10-16 04-30	0.1	CFS
			TOTAL QUANTITY:		0.1	CFS
SOURCE: CITY SPRING						
TRIBUTARY: BIG LOST RIVER						
NON-IRRIGATION USES:						
RECREATION POND - PRIVATE USE						
POINT OF DIVERSION:						
T07N R24E S32 LOT 2(NMNMNE)						
PLACE OF USE: IRRIGATION						
T07N R24E S29 SESE 5.0						
S32 Lot 1 (NENE) 2.5 Lot 2 (NMNE) 2.0						
9.5 ACRES TOTAL						
PLACE OF USE: RECREATION STORAGE						
T07N R24E S28 SMSW						
PLACE OF USE: DIVERSION TO STORAGE						
SAME AS OTHER USE						
REMARKS: THIS RIGHT INCLUDES AN EXPANSION IN IRRIGATED ACRES PURSUANT TO IDAHO CODE 42-1416(1).						
USE OF THE IRRIGATION PORTION OF THIS RIGHT WITH RIGHT NO. 34-07088 IS LIMITED TO A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 23.8 AF, AND TO THE IRRIGATION OF A COMBINED TOTAL OF 9.5 ACRES IN A SINGLE IRRIGATION SEASON.						
34-07088 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 0.120 CFS, A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 23.8 AF, AND TO THE IRRIGATION OF A COMBINED TOTAL OF 9.5 ACRES IN A SINGLE IRRIGATION SEASON.						
USE OF THE RECREATIONAL STORAGE PORTION OF THIS RIGHT WITH RIGHT NO. 34-00961 IS LIMITED TO A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 30 AF.						
RIGHT NO. 34-00960 IS ALSO DIVERTED THROUGH THE POINT OF DIVERSION DESCRIBED ABOVE.						
0.11 CFS OF RIGHT NO. 34-07088 IS LIMITED TO USE FOR CONVEYANCE LOSSES IN DELIVERY OF THIS RIGHT AND RIGHT NO. 34-07088.						

AJ5856NP

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

DATE: JAN-17-1995
PAGE: A-1

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE		MAXIMUM QUANTITY	BASIS OF CLAIM
				FROM	TO		
34-07088	JOHN L POWERS PO BOX 493 MACKAY ID 83251	12/22/1974	IRRIGATION	05-01	10-15	0.2 33.0 AFY	CFS LICENSE
SOURCE: SPRING							
POINT OF DIVERSION:							
TOTN R24E S32 LOT 2 (NENWNE)							
PLACE OF USE: IRRIGATION							
TOTN R24E S29 SESE 5.0							
S32 Lot 1 (NENE) 2.5 Lot 2 (NWNE) 2.0							
9.5 ACRES TOTAL							
REMARKS:							
A MEASURING DEVICE OF A TYPE APPROVED BY IDWR SHALL BE MAINTAINED AS A PART OF THE DIVERTING WORKS.							
A MEASURING DEVICE AND WORKABLE CONTROLLING WORKS OF A TYPE ACCEPTABLE TO IDWR SHALL BE PERMANENTLY INSTALLED AND MAINTAINED AS A PART OF THE DIVERTING WORKS.							
USE OF THIS RIGHT WITH RIGHT NO. 34-00959 IS LIMITED TO A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 23.7 AF, AND TO THE IRRIGATION OF A COMBINED TOTAL OF 9.5 ACRES IN A SINGLE IRRIGATION SEASON.							
0.11 CFS OF THIS RIGHT IS LIMITED TO USE FOR CONVEYANCE LOSSES IN DELIVERY OF THIS RIGHT AND RIGHT NO. 34-00959.							
ANY CLEANING BY MECHANICALLY OR HYDRAULICALLY POWERED EQUIPMENT SHALL REQUIRE PRIOR APPROVAL BY THE DEPARTMENT.							
NO CLEANING IS AUTHORIZED IF THE FLOW FROM THE SPRING IS 0.20 CFS OR GREATER AND MUST BE DISCONTINUED WHEN THE FLOW OF THE SPRING EXCEEDS THAT AMOUNT.							
ANY RETAINING WALL CONSTRUCTED AROUND THE SPRING EXCAVATION MUST BE APPROVED BY THE DEPARTMENT PRIOR TO ITS CONSTRUCTION.							
THE DEPTH AND DIMENSIONS OF THE SPRING EXCAVATION EXISTING IN 1982 SHALL NOT BE INCREASED BY MORE THAN SIX INCHES AT ANY POINT OR IN OVERALL LATERAL DIMENSION.							
USE OF THIS RIGHT WITH RIGHT NO. 34-00959 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 0.120 CFS, A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 23.7 AF, AND TO THE IRRIGATION OF A COMBINED TOTAL OF 9.5 ACRES IN A SINGLE IRRIGATION SEASON.							

TOTAL QUANTITY: 0.2 CFS

AJ5856NP

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

DATE: MAY-27-1992
PAGE: A-1650

RIGHT
NUMBER

NAME & ADDRESS

PRIORITY
DATE

PURPOSE OF USE
FROM TO

MAXIMUM
QUANTITY

BASIS OF CLAIM

SOURCE: SPRING

TRIBUTARY: BIG LOST RIVER

34-10035

MT. MC CALER INC.
C/O OTTO HIGBEE
BOX 4244
POCATELLO ID 83205

06/01/1970 RECREATION

01-01 12-31

.04 CFS

BENEFICIAL USE

NON-IRRIGATION-USES:

RECREATION POND-APPROX 15' BY 30'

POINT OF DIVERSION:

107N R24E S18

SWNESE

PLACE OF USE: RECREATION

107N R24E S18

NESE

TOTAL QUANTITY:

.04 CFS

34-07088

JOHN L POWERS
PO BOX 493
MACKAY ID 83251

12/22/1974 IRRIGATION

05-01 10-15

.2 CFS
33.0 AFY

LICENSE

POINT OF DIVERSION:

107N R24E S32

LOT 2 (NENWNE)

PLACE OF USE: IRRIGATION

TOTAL QUANTITY:

.2 CFS

107N R24E S29

SESE 5.0

S32

Lot 1 (NENE) 2.5

Lot 2 (NWNE) 2.0

9.5 ACRES TOTAL

REMARKS: A MEASURING DEVICE AND LOCKABLE CONTROLLING WORKS OF A TYPE
ACCEPTABLE TO IDWR SHALL BE PERMANENTLY INSTALLED AND MAINTAINED
AS A PART OF THE DIVERTING WORKS.

USE OF THIS RIGHT WITH RIGHT NO. 34-00959 IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 0.20 CFS, A TOTAL COMBINED
ANNUAL CONSUMPTIVE USE VOLUME OF 23.7 AF, AND TO THE IRRIGATION
OF A COMBINED TOTAL OF 9.5 ACRES IN A SINGLE IRRIGATION SEASON.

*** ACTIVITY REPORT ***

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State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

TRANSMITTAL COVER SHEET

FAX NUMBER: (208) 327-7866

DATE: 1/17/95

TO: Diana Delaney
- Clerk of Court
Brianne Bilyeu
- Special Master

FROM: Lynne Krogh
- Deputy Attorney
General / IDWR

DOCUMENT DESCRIPTION: standard form 5 for
filing with the court

COVER SHEET + 8 PAGES

CONTACT: JJ IF YOU DO NOT RECEIVE ALL THE PAGES