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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

) Subcase No. 34-10717

Case No. 39576

)
) ORDER SETTING HEARING AND
) BRIEFING SCHEDULE
)

On February 6, 1995, the parties to this subcase submitted a *Standard Form 5, Proposed Elements of a Water Right*. The signatories to the *Standard Form 5* are M.B. Hiller and Mr. Smith for Smith Ranches, Inc., the United States, and the State of Idaho Department of Water Resources.

After reviewing the contents of the *Standard Form 5*, the court held a telephone conference call with the parties on February 22, 1995 to discuss the amount of detail needed in a *Master's Report and Recommendation* for several elements of this water right. During the conference call, the parties discussed several issues regarding the requirements for de minimis water rights. The Special Master proposed an immediate hearing on the issues.

IT IS ORDERED that the parties to this subcase shall submit briefs no later than March 10, 1995. The parties may wish to address the following issues and any others issues which need explanation in order for the court to issue a *Master's Report and Recommendation* for this water right:

1. How should the element "quantity" be reported and decreed for de minimis water rights? Can "quantity" be measured in cubic feet per second (cfs) for de minimis water rights and still adequately and accurately describe this element?

2. Idaho Code § 42-111 defines the phrases "domestic purposes" or "domestic use" as use of water for homes, organization camps, public campgrounds, livestock and other purposes in connection with those uses, including irrigation of up to one-half acre of land if the total use does not exceed 13,000 gallons per day. Can the quantity of water expressed in volume terms of 13,000 gallons per day be converted into an expression of cubic feet per second? How?
3. When the "quantity" of water is expressed in cubic feet per second, such as .23 cfs, does that description accurately limit the total volume of water or the time during which water can be diverted at this rate? If not, how can the element "quantity" be adequately and accurately described?
4. What is the "diversion rate" for this water right? How is it expressed? How is it calculated? Is it necessary to include the "diversion rate" to adequately and accurately describe a de minimis water right such as this?
5. What is the "diversion volume" for this water right? How is it expressed? How is it calculated? Is it necessary to include the "diversion volume" to adequately and accurately describe a de minimis water right such as this?
6. What is meant by the term "instantaneous diversion rate"? Is it necessary to include the "instantaneous diversion rate" to adequately and accurately describe a de minimis water right such as this?
7. What is meant by "consumptive use"? How is the element "consumptive use" calculated for water rights in the SRBA? How should the element "consumptive use" be reported and decreed for de minimis water rights? How is the element "consumptive use" related to the concept of "injury"?
8. Are the elements "quantity" and "consumptive use" related in such a way that it is possible to calculate the "consumptive use" for a water right if the "quantity" is known? Why?
9. Where a water right is claimed for stock watering, should the report and decree include the number of animals to be watered in order to adequately and accurately describe a de minimis water right such as this? If so, under which element of the water right does this information properly belong?
10. What is the definition of "de minimis" when that phrase is used to describe the element "annual volume of consumptive use"? What is the maximum annual volume of consumptive use which is considered "de minimis"?

IT IS FURTHER ORDERED that a hearing on this water right shall be held March 17, 1995 at 1:00 p.m. at the Snake River Basin Adjudication Courthouse, 253 Third Avenue North,

Twin Falls, Idaho. Any party wishing to present oral testimony of a witness shall be personally present for the hearing. Parties wishing to participate, but who do not intend to present witnesses may participate by telephone. Those parties wishing to participate by telephone shall contact the clerk of the court to make arrangements for a telephonic hook up prior to March 15, 1995.

IT IS SO ORDERED.

DATED February 27, 1995.


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

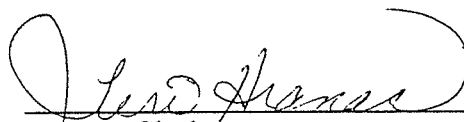
CERTIFICATE OF MAILING

I certify that a true and correct copy of the **ORDER SETTING HEARING AND BRIEFING SCHEDULE** was mailed on February 27, 1995, with sufficient first-class postage to the following:

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