

11-2

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: 34-00959
	)	
	)	
	)	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:

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: CITY 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	0.1	CFS
RECREATION STORAGE	30.0	AFY
DIVERSION TO STORAGE	0.1	CFS
TOTAL QUANTITY:	0.1	CFS

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.

STORAGE CAPACITY OF THE POND IS 25 AF.

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.

Required Statement: The language in the director's report recommending a combined diversion rate of 0.20 cfs for this right and right no. 34-07088 has been deleted, with the result that this right and right no. 34-07088 total 0.30 cfs for the irrigation of 10 acres. Idaho Code §42-220 provides that a decree may not be issued confirming water rights for irrigation purposes in excess of 0.02 cfs per acre unless the claimant shows that a greater amount is beneficially used. Because the combined diversion rate is greater than 0.02 cfs per acre, language is added specifying that the amount in excess of 0.02 cfs per acre is for conveyance losses. IDWR and the parties stipulate that this is the correct description of the quantity of water.

4. The priority date is: 12/31/1901

Required Statement: IDWR and the claimant stipulate that this is the correct description of the 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:

T07N R24E S32 LOT 2 (NWNWNE)

RIGHT NO. 34-00960 IS ALSO DIVERTED THROUGH THE POINT OF DIVERSION DESCRIBED ABOVE.

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-quarter 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
RECREATION STORAGE
DIVERSION TO STORAGE

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
RECREATION STORAGE	01-01 TO 12-31
DIVERSION TO STORAGE	10-16 TO 04-30

Required Statement: IDWR and the claimant stipulate that this is the correct description of the period of use.

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
T07N R24E S32 Lot 1	(NENE)	2.5 ACRES
T07N R24E S32 Lot 2	(NWNE)	2.0 ACRES

9.5 ACRES TOTAL

PLACE OF USE: RECREATION STORAGE

T07N R24E S28	SWSW
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PLACE OF USE: DIVERSION TO STORAGE

SAME AS OTHER USE

USE OF THE IRRIGATION PORTION OF THIS RIGHT WITH RIGHT NO. 34-07088 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 9.5 ACRES IN A SINGLE IRRIGATION SEASON.

Required Statement: IDWR and the parties stipulate that this is the correct description of the place of use. Where all or part of the place of use is identified by government lot no., the legal description is the government lot; quarter-quarter 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 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.

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

10. Other matters necessary to define this water right.

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

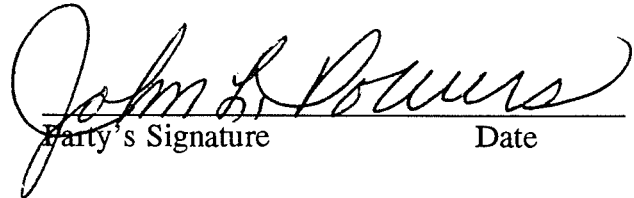
I have read this form and know its contents and that the statements are true to the best of my knowledge and belief.

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

Name: John L. Powers
Address: P.O. Box 493
City/State/Zip: Mackay ID 83251
Attorney of Record:



Attorney's Signature Date 10/31/95



Party's Signature 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 11/1/95, 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:

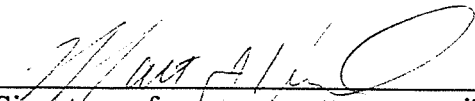
1. Original to:

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 44449
Boise, ID 83711-4449

John L. Powers
P.O. Box 493
Mackay, ID 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 83720
Boise, ID 83720-0098
Telephone: (208) 327-7900
Fax: (208) 327-5400

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. 34-00959
	)	
Case No. 39576	)	
	)	
	)	STIPULATION
	)	

DESCRIPTIVE SUMMARY

This is a stipulation to resolve the objection to water right number 34-00959.

STIPULATION

To resolve the dispute over the above-captioned water right, the Idaho Department of Water Resources (IDWR), and John L. Powers (the objector/claimant), stipulate and agree that:

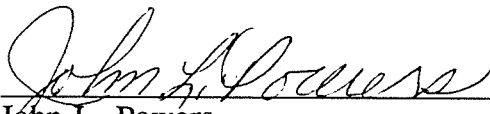
1. The Standard Form 5 for water right no. 34-00959, attached hereto and incorporated by reference herein, sets forth the description of the water right as agreed by IDWR and the parties. All decrees, whether partial or final, should describe the water right as shown in the Standard Form 5.

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 resolution, either through settlement or litigation, of 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.

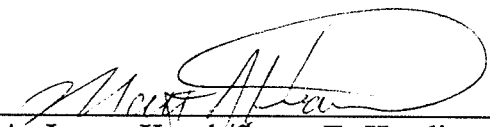
4. The Standard Form 5 and this stipulation were entered into and executed voluntarily by all parties in good faith, and without any fraud, misunderstanding, overreaching, misrepresentation, duress, or undue influence whatsoever.

Dated this 25th day of September, 1995.



John L. Powers
Claimant

Dated this 31 day of October, 1995



A. Lynne Krogh/Susan E. Hamlin
Deputy Attorney General
Idaho Department of Water Resources