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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.: See Attached Exhibit A
	)	
Case No. 39576	)	IDWR'S REPORT RE: ELEMENTS OF
	)	SMALL STOCKWATER RIGHTS
_____	)	

57-2362
etal

DESCRIPTIVE SUMMARY

This document is IDWR's report regarding the elements of small stockwater rights submitted pursuant to Idaho Code §42-1412(4) at the request of the Special Master.

A. INTRODUCTION

Each water right recommended for stockwater use includes a further description of the purpose of use that includes the type and number of livestock.¹ Description of the number and type of head of livestock is the most convenient and effective means to define the water right with sufficient specificity to prevent future expansions in use that would enlarge the water right and cause injury to other water rights. This further description is provided pursuant to Idaho Code §42-1411(2)(f), which provides for IDWR to determine the purpose(s) of use of a water right to the extent the director deems appropriate to define and administer the water right, and 42-1411(2)(k), which further provides for IDWR to include such other matters as the director deems appropriate to define and administer the water right. This is particularly true for stockwater rights because a reasonable rate of diversion (cfs) for such rights is capable of producing an annual diversion volume that is significantly in excess of the volume of water required for drinking by the stock for which the water was appropriated.

¹ The following subcase nos. listed on Exhibit A involve abstracts of dual-based claims: 57-10960A, 57-10977A, 57-10980A, 57-10981A, 57-10984A, 57-10985A, 57-10994A, 57-11013A, 57-11049A, 57-11078A, 57-11085A, 57-11317A. The United States BLM submitted a number of claims which stated on a single claim form that the claimed water right was both appropriated under state law and reserved under federal law. Pursuant to Idaho Code §42-1411, IDWR was required to include a recommendation for claims to water rights appropriated under state law in Part I of the director's report, to include an abstract of claims to water rights reserved under federal law in Part II of the director's report, and to include the claims to water rights reserved under federal law in Part III of the director's report.

To meet the requirements of the statute, a dual-based claim is reported twice in the director's report. IDWR included a recommendation for the claim based on state law in Part I, and also included an abstract in Part II. The abstract has the same water right number as the recommendation except that an "A" suffix is added to the water right number on the abstract. Pursuant to Idaho Code §42-1411(3), the abstract "shall summarize the notices of claim ... for all rights reserved under federal law but shall not change in any substantive manner the claimed ... water right."

IDWR makes no recommendation as to the validity, nature or extent of the water right claim as described in the abstract. IDWR notes, however, that the claims and the abstracts include the type and number of livestock.

Because the propriety of describing the type and number of livestock in the water right is dependent, in part, on the manner in which small stockwater rights are investigated and quantified, this report begins by describing IDWR's methodology for the investigation and recommendation of claims generally, followed by a further description of IDWR's methodology for recommendation of small stockwater claims in particular. This report also addresses the "combined use" statement in the description of the right, which limits multiple rights for a single allotment to the quantity of water beneficially used by the number of stock within the allotment.

This report concludes with information as to the quantification of consumptive use for small domestic and stockwater rights.

B. INVESTIGATION AND RECOMMENDATION OF CLAIMS BY IDWR GENERALLY

1. Level of Investigation

Describing IDWR's investigation of claims in the most general terms, IDWR reviews each claim and the information already available to IDWR, and conducts such further investigation as it finds reasonable to determine whether there is sufficient information to support recommendation of the claimed water right. To make the most effective use of available resources, IDWR has employed two primary mechanisms to identify a reasonable level of further investigation. First, IDWR has developed standards for various types of uses, requiring less information to support a claim to water within those standards and more information to support a claim outside those standards. Standards for recommendation of claims are further discussed in subsequent sections of this report. Second, IDWR has adopted a "tier" approach, identifying

classes of claims which for various reasons merit further investigation. These classes are further described as follows:

- a. Generally, with claims based on beneficial use, IDWR conducts a "licensing type" field exam,² and contacts the claimant to obtain information supporting the priority date claimed. This level of effort is invested because there has been no prior administrative or judicial confirmation of the existence and extent of the water right.³
- b. Generally, with water rights that have been previously confirmed by license or decree, IDWR begins its examination by comparing the claim to information already available to IDWR. Other information includes, for example, IDWR's decree files; license, permit and transfer⁴ files; remote sensing, including Landsat Imagery of irrigated acres and aerial photography; water master reports; etc. If there are discrepancies⁵ between the claim and information already available to IDWR, IDWR conducts further investigation to resolve the discrepancy, which generally includes a field exam and/or contacting the claimant for further information. Thus, where there has been prior judicial or administrative confirmation of the existence and extent of the water rights, IDWR uses information already available to IDWR to limit its review to issues identified by its discrepancy analysis.
- c. For domestic and stockwater claims up to 0.24 cfs, IDWR employs a more summary review. Generally, where 1) information is available that confirms the claimed use, 2) the diversion rate claimed is within the range of what constitutes a reasonable diversion rate for the use claimed, and 3) the right is not otherwise inconsistent with information already available to IDWR (for example, licenses, decrees, statutes, etc.), then IDWR recommends the right with the claimed diversion rate. IDWR does not do a field exam including measurement of the diversion rate and evaluation of the delivery system for each D&S claim up to 0.24 cfs. The more summary review of such claims

² A licensing type field exam includes examination/confirmation of the source, point(s) of diversion, purpose(s) of use, place(s) of use, and an examination of the water delivery system. *See* Idaho Code §42-217.

³ A lesser investigation is made of beneficial use claims for D&S use up to 0.24 cfs, as described further below.

⁴ Transfer is a term commonly used to refer to changes in use pursuant to Idaho Code §42-222.

⁵ Typical discrepancies include, for example, an unapproved change in use, evidence of non-use which could give rise to an issue of forfeiture/abandonment, omission of elements in prior decrees or licenses that are required to be determined by the current adjudication statute, etc.

is reasonable because D&S uses are small and numerous, and seldom either contested or administered.⁶

d. Finally, IDWR uses both the court-ordered notice of error process and the statutory objection process to identify claims which merit further review. If this further review yields information that supports a different description of the water right, then IDWR will revise its recommendation (in the case of a notice of error) or enter into a stipulation (in the case of an objection), consistent with the further information.

2. Diversion Rate vs. Diversion Volume

The difference between diversion rate and diversion volume is perhaps best conceptualized by the images of a faucet and a bucket. Assume that you turned your garden faucet half open, let it run for one minute, and filled one ten-gallon bucket with water. The diversion rate, or the measure of the flow of water from the faucet, is ten gallons per minute. The diversion volume is the amount of water in the bucket, which is ten gallons. If you wanted twenty gallons of water, you would have two options. You could double the diversion rate, by turning the faucet wide open, and produce the twenty gallons in the same time of one minute. Or, you could keep the same diversion rate, by leaving the faucet turned half open, and double the time you leave the faucet running, producing the twenty gallons in two minutes.

IDWR, as well as the corresponding agencies from other states, use the terms "cubic feet per second" (cfs) and/or "acre feet per year" (afy) to quantify water rights.⁷ CFS represents diversion rate, also known as "instantaneous diversion rate." AFY represents annual diversion volume, sometimes simply referred to as "diversion volume" or just "volume."

⁶ Prior to commencement of the adjudication, the legislature devised a fee schedule intended to fund IDWR's services in the adjudication. Idaho Code §42-1414. A more limited review of D&S claims is consistent with this fee schedule, which sets forth a flat \$25 fee for such claims instead of the \$50 flat fee plus variable fee based on purpose of use that is provided for other types of claims.

⁷ See Idaho Code §42-102, 42-1409(1)(c), 42-1411(2)(c).

Both cfs and afy are measurements of the amount of water diverted. They are similar in the sense that both are a unit of volume (cubic foot and acre foot) per unit of time (second and year). Since both are based on a unit of volume, they could both be considered volume measurements;⁸ since both are based on a unit of time, they could both be considered measurements of a rate of flow. There are differences in these measures, however, that are significant for both the quantification of water rights and the distribution of water pursuant to those water rights.

Historically, water rights have been quantified in terms of diversion rate (cfs) because, historically, water right development occurred primarily from streams, and water right administration occurred primarily to resolve conflicts over the distribution of water from streams. Since the flow of water in the stream will likely change the next month, week, or day, the flow of water must be divided among the water users based on what is available "at that instant." Although a second is not "instantaneous" for some purposes, it is a sufficiently short period of time to be considered instantaneous for purposes of distribution of water from a public source.

Historically, most water rights have not been quantified in terms of annual diversion volume, because historically, quantification by diversion rate has been sufficient to resolve most conflicts over the distribution of water. Since measurement of annual diversion volume requires measurement over a substantial period of time, effective measurement can generally be accomplished only with the use of continuous recording meters, which require significant

⁸ One acre foot is the volume of water necessary to cover 1 acre of land to a depth of one foot, and equals 43, 560 cubic feet.

financial investment.⁹ As long as quantification by diversion rate was sufficient to resolve conflicts over the distribution of water, there was no incentive for the investment in the cost and effort required to quantify water rights and distribute water by annual diversion volume.

Annual diversion volume can nonetheless be an important measurement, for several reasons. First, water supply in Idaho is dependent on an annual cycle, in which winter precipitation provides a large share of both surface water flows and ground water recharge. Water demand is also dependent on an annual cycle, since irrigation is the largest consumptive use of water resources.

The need for quantification of water rights by annual diversion volume occurred initially with the development of surface water storage. Generally, surface water storage development sought to address the divergence between the annual water supply cycle and the annual water demand cycle. Since water supply was highest in the spring, but demand was highest in mid to late summer, surface water storage allowed the excess spring flows to be held for use later in the year. Quantification by diversion volume was needed to administer storage rights, since the amount of water stored is a volume, like the bucket in the illustration above. Quantification by annual diversion volume is needed since storage of water and its subsequent use is generally based on an annual cycle.

Ground water development has furthered the need to quantify water rights by annual diversion volume. Since ground water exhibits some of the properties of both surface streams (flow) and reservoirs (storage/volume), the modern trend throughout the western states is to

⁹ Measurement can be made less effectively with repeated "instantaneous" measurements, which are labor intensive and require assumptions as to the diversion rate between measurements. There are also some methods to estimate annual diversion volume instead of measuring it.

quantify ground water rights by both diversion rate (cfs) and annual diversion volume (afy). In addition, increasing competition for water and improvements in the technology available to measure or estimate diversion volume has created greater incentive for the quantification and administration of water rights in terms of annual diversion volume as well as diversion rate.

Diversion rates can be "converted" to diversion volumes by using simple formulas. For example, one cfs of water will produce about 1.984 acre feet of water in 24 hours. Generally, however, the recommended diversion volume for a water right is less than the full volume that can be produced by continuous diversion of the recommended diversion rate throughout the recommended season of use, because most systems are not operated at full capacity all of the time.

For example, a lawn sprinkler system is generally designed with a diversion rate sufficient to irrigate the entire lawn in a few hours. If such a system were operated 24 hours a day every day, it would produce a volume far greater than required to adequately water the lawn. As another example, household plumbing is designed with a diversion rate sufficiently high that showers, washing machines, sinks, etc. can be used at the same time with reasonable water pressure. Domestic uses, however, do not require the full diversion volume that the domestic diversion rate can produce, because people do not run all their showers, washing machines, sinks, etc. for 24 hours every day.

Representative numbers can be used to further illustrate these examples. A typical domestic well is designed to produce a diversion rate of about 18 gallons per minute, or 0.04 cfs. Continuous diversion would produce about 25,920 gallons per day, or about 28.97 af per

year. But the average diversion volume required for a typical single-family domestic use, including lawn and garden, is about 1100 gallons per day, or about 1.2 afy.

3. Quantification of Diversion Rate Generally

IDWR's recommendation of each right includes a diversion rate in cfs for each purpose of use as well as a total diversion rate, except for certain types of storage, which are quantified only by annual diversion volume in afy. IDWR quantifies water rights in this manner pursuant to Idaho Code 42-1411(2), which provides for the director's report of water rights acquired under state law to include a determination of the quantity of water used, describing the rate of diversion in cfs and/or the annual volume of diversion in afy as the director deems appropriate to define and administer the water rights.

Water rights acquired under state law are limited to the amount of water beneficially used.¹⁰ Generally, the diversion rate for a water right is determined by either measuring the actual diversion rate, or by applying standards as to the diversion rate required for a particular type of use, or some combination of both.

For example, a standard diversion rate of 0.02 cfs per acre for irrigation has been set by statute.¹¹ Where more than 0.02 cfs per acre is claimed, IDWR will examine conveyance losses between the point of diversion and place of use, the method of irrigation, and field conditions to determine if a greater amount is actually used and reasonably necessary due to those conditions.

¹⁰ Idaho Code §42-104, §42-1402.

¹¹ Idaho Code §§42-202, 42-220.

IDWR also has guidelines for diversion rates for domestic and stockwater uses. The typical diversion rate for a single-family domestic use is 0.04 cfs, which includes irrigation of up to one-half acre of land. This is a typical diversion rate for a single-family domestic use because it is generally sufficient to meet the instantaneous demand of typical residential plumbing systems. IDWR also has guidelines for multiple unit dwellings. A copy of the guidelines for multiple unit dwellings is included in Appendix IV, which is an appendix to IDWR's Idaho Water Law Handbook, a true and accurate copy of which is attached hereto.¹² A copy of the typical diversion rates for various types of stock is also included in Appendix IV, which are based on the daily volume requirements for different types of stock. These guidelines are simply that - guidelines. They represent typical diversion rates for these types of uses; higher diversion rates are common and reasonable for some small domestic and stockwater systems. Generally, with respect to small domestic and stockwater claims, IDWR will recommend the diversion rate claimed where it is consistent with the claimed uses and/or common delivery systems for the claimed uses.

4. Quantification of Diversion Volume Generally

As noted above, water rights are limited to the amount of water beneficially used. Generally, the diversion volume for a water right is determined by either measuring the actual diversion volume, or by applying standards as to the diversion volume required for a particular type of use, or some combination of both. As noted above, however, measurement of diversion volume is more difficult than measurement of diversion rate. Generally, there are few water

¹² These guidelines include up to one-half acre of irrigation per water right; irrigation in excess of one-half acre is recommended in the director's report as a separate purpose of use for irrigation.

rights (other than storage rights) for which historic diversion volume measurement data is available.

For example, IDWR has developed standards for annual diversion volume for irrigation for the various regions throughout the state based on climatic and other data, which are expressed in afy per acre. To determine the annual diversion volume for a water right or a portion of a water right used for irrigation, the total number of irrigated acres is multiplied by the standard. Where a diversion rate of more than 0.02 cfs per acre is recommended (due to conveyance losses, method of irrigation, or field conditions), IDWR generally increases the per acre diversion volume proportionately.

IDWR's recommendations of water rights appropriated under state law include diversion volumes for certain types of water rights. IDWR quantifies water rights in this manner pursuant to Idaho Code 42-1411(2), which provides for the director's report of water rights acquired under state law to include a determination of the quantity of water used, describing the rate of diversion in cfs and/or the annual volume of diversion in afy as the director deems appropriate to define and administer the water rights.

Diversion volume is generally stated for rights to ground water. An exception is that diversion volume is generally not stated for domestic and stockwater rights unless the right is based on a license or decree that previously determined the diversion volume of the right. Diversion volume is generally **not** stated for rights to water from surface sources, unless a) the use is for storage, b) diversion volume was previously determined by a decree, license, or order approving an application for change in use, or c) a diversion volume limit is necessary to prevent injury from an accomplished transfer.

IDWR generally does not include diversion volumes on domestic and stockwater rights because the determination of diversion volume for these rights is not reasonably necessary for the distribution of water in accordance with water rights. Since the individual and cumulative impact of such water rights is minimal in comparison to the total water supply, the limited resources available for the regulation of water rights is appropriately spent on the water rights that place substantial demands on the public waters of the state and that give rise to disputes among water users. In addition, quantification of the actual diversion volume for domestic and stockwater rights would be time-consuming and costly. For example, although 1.2 afy is typical for a single-family domestic use, the actual annual diversion volume will vary depending on such minute factors as the number and type of household plumbing fixtures, the number of people in the house, and the usual activities of the occupants. The cost and effort required to determine this element for the multitude of domestic and stockwater claims is unwarranted.

D. RECOMMENDATION OF SMALL STOCKWATER RIGHTS

1. Quantification of Small Stockwater Rights

IDWR bases its quantification of water requirements for stockwater use on the gallon per day per head standards published by the United States Environmental Protection Agency.¹³ The standard for range cattle, for example, is 12 gallons per day per head. But in both the notices of claims and the director's recommendations, diversion rate is required to be stated in cfs, not gpd.¹⁴ The diversion rate in cfs for stockwater rights is not properly determined by a simple

¹³ ENVIRONMENTAL PROTECTION AGENCY, U.S. DEPARTMENT OF INTERIOR, PUB. NO. epa-570/9-82-004, MANUAL OF INDIVIDUAL WATER SUPPLY SYSTEMS 485-487 (1982).

¹⁴ Idaho Code §§ 42-1409(1)(c) and 42-1411(2)(c).

conversion to the lowest diversion rate that is capable of producing 12 gallons per day per head.

A higher diversion rate is generally required, due to the following factors.

a. A reasonable diversion rate is one that allows delivery of the required volume in a reasonable period of time. Delivery systems vary from appropriator to appropriator, with the result that either the diversion rate, or the period of time each day that water is "on" will also vary. For example, one appropriator may pump groundwater to stock troughs, diverting water at full capacity to fill the troughs in a short period. Another appropriator might divert water continuously, at the lowest rate necessary to keep water in the troughs. Other appropriators use "demand systems;" water comes on automatically when a float in the trough drops and shuts off automatically when the float rises. In any event, the system must meet the needs of the livestock by providing the volume needed at the time it is needed, and cattle do not obtain their volume requirement by drinking continuously 24 hours a day.

b. A reasonable diversion rate includes reasonable conveyance losses in the delivery of water from the source to the cattle. Conveyance losses will also vary from appropriator to appropriator depending on the water delivery system. For example, an appropriator who pumps water directly from a well to stock troughs will have virtually no conveyance losses. Another appropriator whose stock drink from a ditch a quarter-mile in length may have substantial conveyance losses, and may require continuous diversion at a higher rate to maintain a flow of water in the ditch.

To allow for these differences and to meet the actual water demand for the livestock, IDWR has developed a method for the determining the maximum reasonable diversion rate for a given number of stock, commonly referred to as the "two-hour method." Based on this method, a diversion rate that will produce the daily volume requirement in a two-hour period is considered a reasonable rate of diversion for small domestic and stockwater rights. This method is consistent with the design of small water systems generally, and is reasonable to provide the water user with the flexibility to meet actual historical water demands so long as the use of the right is limited to the actual historical use (in this case, the type and number of livestock).

A sample calculation using this method to determine the diversion rate for 350 head of range cattle is shown below:

$$\frac{350 \text{ HEAD} \times 12 \text{ GPD/HEAD}}{2 \text{ HRS} \times 60 \text{ MIN/HR} \times 450 \text{ GPM/CFS}} = 0.08 \text{ CFS}$$

IDWR has prepared a chart showing diversion rates for range and dairy cattle, based on the number of head and the two-hour method, which shows the diversion rate rounded up to the nearest one-hundredth cfs. A copy of the chart is included in Appendix IV, which is an appendix to IDWR's Idaho Water Law Handbook and is attached hereto.

As noted above, this formula establishes a standard for determining a maximum reasonable diversion rate in cfs for a given number of stock. If the claimed diversion rate is within the maximum for the claimed use, then IDWR does not require further information to show the reasonableness of the diversion rate claimed. IDWR applies these same standards to instream stockwater rights based upon the premise that, if the diversion rate provides a reasonable flow of water for cattle to drink from a ditch or other structure, the same amount provides a reasonable flow of water for cattle to drink from a stream. As noted in the previous section, IDWR generally does not include an annual diversion volume for domestic and stockwater rights up to 0.24 cfs (small D&S).¹⁵ Instead, IDWR further describes the use by identifying the number and type of stock.

¹⁵ 0.24 cfs is the diversion rate that will produce 13,000 gallons per day in two hours. 13,000 gallons per day is the limit for small domestic and stockwater rights that meet the definitions of Idaho Code §42-111(1) and 42-1401A(12). See IDWR's Brief Re: Elements of Small Domestic and Stockwater Rights, and IDWR's Second Brief Re: Elements of Small Domestic and Stockwater Rights, Subcase Nos. 34-10807, 34-10717, 34-12425, 34-12429.

2. Further Description of Non-Irrigation Uses

Rather than determine annual diversion volume in afy for small D&S rights, IDWR includes a further description of non-irrigation uses in the director's report. For domestic rights, this includes the number of dwellings; for stockwater rights, it includes the type of stock and number of head. This further description is provided pursuant to Idaho Code §42-1411(2)(f), which provides for IDWR to determine the purpose(s) of use of a water right to the extent the director deems appropriate to define and administer the water right, and 42-1411(2)(k), which further provides for IDWR to include such other matters as the director deems appropriate to define and administer the water right.

The further description of non-irrigation uses defines the water right by describing the purpose of use with sufficient specificity to prevent future expansions in use that would enlarge the water right and cause injury to other water rights. This is particularly true with respect to water rights for which no diversion volume is specified.

For example, as noted above, the standard rate of diversion for 500 head of range cattle is 0.12 cfs. A diversion rate of 0.12 cfs, diverted continuously, is sufficient to provide a daily diversion volume of about 77,760 gallons per day. The daily diversion volume reasonably required for 500 range cattle, under standards published by the United States Environmental Protection Agency, is 6000 gallons per day. Quantification solely by diversion rate is insufficient because it could allow an increase in use more than 12 times the claimed and recommended use without exceeding the diversion rate of the water right.

Specifying the number of dwellings or the number and type of stock is a more convenient means to quantify diversion volume of domestic and stockwater uses, both for purposes of

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adjudication of water rights and distribution of water. It is much easier to measure the number of dwellings and the number and type of stock than to try to measure or estimate diversion volume in afy for these uses.

3. Appropriateness of Further Description of Stockwater Rights by Number and Type of Head

The director of IDWR has, pursuant to Idaho Code §42-1411, deemed the further description of small stockwater rights by type and number of head appropriate and proper to define and administer water rights, for the reasons summarized below and more fully explained in the preceding sections.¹⁶

- a. Water rights are limited to the amount of water beneficially used. The quantity of water beneficially used is the amount that is both actually used and is reasonably

¹⁶ The BLM has filed no notice of error, and no objection, to this or any other water right in the test basins, contesting the inclusion of the further description of non-irrigation uses or the combined use remark. (The BLM has filed objections as to other water rights asserting that the further description was inaccurate, but has not objected to inclusion of the further description generally.) IDWR has not signed the Standard Form 5 filed by the United States, because it omits the further description of non-irrigation uses and the combined use remark, which are necessary to define and/or administer the water right.

The Findings of Fact, Conclusions of Law, and Order Establishing Procedure for Adjudication of Domestic and Stock Water Claims, dated January 17, 1989, provides as follows:

* * * ; provided that if any such change is for the purpose of aggregating more than one individual domestic or stock water claim, the consumptive quantity of such right(s) to be aggregated may not exceed the lesser of that amount historically used or 13,000 gallons per day. There shall be no presumption that either the diversion requirement or the actual consumptive use for the water right to be changed was equal to 13,000 gallons per day or any other quantity greater than actual historical use. [Emphasis added.] Order, pp. 4-5.

This language was taken from the Stipulation for Establishment of Procedure for the Adjudication of Domestic and Stock Water Claims, signed by the United States and the State of Idaho. This language was included in the stipulation at the request of counsel for the United States, to address the United States' concern regarding the need to limit small domestic and stockwater rights to actual historical use to prevent injury to other water rights. IDWR concurs with counsel for the United States as to the need to limit small domestic and stockwater rights to their actual and historic use. IDWR concludes that the further description of non-irrigation rights and the combined use limitation are the most appropriate means to achieve this objective, and are therefore necessary to define and administer small domestic and stockwater rights.

required for the purpose for which water is appropriated. Determination of the quantity reasonably required for stockwater use depends on the type and number of stock.

b. To make the most effective and efficient use of the resources available for the investigation of claims, IDWR does not conduct a field examination to verify the actual diversion rate or annual diversion volume of claims for D&S use up to 0.24 cfs.

c. A reasonable diversion rate for stockwater use is capable of producing an annual diversion volume that is significantly greater than the annual diversion volume reasonably required for that use. Quantification by diversion rate alone could therefore allow enlargements in use that would significantly increase annual diversion volume, resulting in expansion of the right and injury to other water users.

d. Description of small stockwater rights by the type and number of head is the most convenient and effective means to define and administer water rights with sufficient specificity to prevent future expansions in use that would enlarge the water right and cause injury to other water rights.

4. Proposed Changes to Description of Stockwater Rights

On December 18, 1995, IDWR submitted an Amended Director's Report for Reporting Area 2, which amended the preamble to the director's report for Basin 57. The purpose of the amended report was to address concerns expressed by the court and claimants as to general provisions. The Amended Report included an Attachment 2, which described the changes to the preamble, and which noted that certain changes, particularly changes to the general provisions, would also require changes to the description of individual water rights recommended in the director's report. The Amended Report also included additional attachments, describing uncontested water rights recommended in the director's report, setting forth the manner in which IDWR proposed to revise the form and content of individual water rights in the director's report. IDWR's proposed revisions to the director's reports for the test basins is further described in IDWR's Report for September 19, 1995 Status Conference, which has been a topic of discussion

at the Global Scheduling Conferences conducted by the Presiding Judge and attended by the Director of IDWR and any interested parties.

One of the proposed revisions to the description of the individual water rights is of particular relevance to this report. Specifically, IDWR proposes to change the further description of non-irrigation uses. In place of the current language, the description of the individual water right would provide:

THE QUANTITY FOR NON-IRRIGATION USE IS LIMITED TO THE AMOUNT BENEFICIALLY USED FOR: (type of livestock) (number of livestock).

This change was proposed to address the concern raised by the United States and others that the current description of non-irrigation uses could be interpreted as limiting a water user to using the water right only for that type of stock, requiring a claimant to obtain approval from IDWR of a change in use pursuant to Idaho Code §42-222 to use the water right for a different type of stock. IDWR proposed this change to clarify that the purpose of the further description of non-irrigation uses is to limit the right to the quantity of historic beneficial use, not to dictate the type of livestock the water user could raise.

As noted above, it is IDWR's conclusion that the further description of non-irrigation use is the most convenient and effective means to define the water right with sufficient specificity to prevent future expansions in use that would enlarge the water right and cause injury to other water rights. IDWR nonetheless continues its commitment to work with the court and the parties to resolve disputes through settlement, and would consider proposals as to alternative methods to accomplish the same result with similar convenience and effectiveness, for inclusion in its revised reports in the test basins.

D. COMBINED USE LIMITATION

"Combined use" refers to the use of multiple water rights for the same use. In the case of BLM stockwater rights, combined use occurs where the BLM claims a separate right to each of a number of water sources, each for use by the full number of cattle on the allotment.

For example, assume one BLM allotment that may be used for grazing 500 head of stock. Within that allotment, there are 3 springs and two streams. BLM files five claims, one for each of the springs and each of the streams within the allotment. Each claim sets forth a quantity of 0.12 cfs, for use by 500 head.

Since 0.12 cfs is a reasonable diversion rate for 500 head of cattle under IDWR standards, IDWR would recommend each of the claims for 0.12 cfs for 500 head. This would allow the grazing permittee to take the full amount of water needed from any combination of the sources within the allotment. IDWR would not attempt to divide the total among each of the water rights, for two reasons. First, quantification of the rights in this manner would require an unreasonable amount of effort. More importantly, quantification in this manner would in most instances be inaccurate, since in most instances the cattle would not actually use the sources in accordance with any assumed proportions.

If, however, each water right for an allotment is to be quantified based on the total number of stock within the allotment, the water rights must be limited to prevent an inaccurate "total" of multiple water rights for a single allotment. In the example above, each water right should be limited to clearly establish that the total of the water rights is not .60 cfs (five rights times 0.12 cfs per right) for the use of 2500 head of cattle (five rights times 500 head).

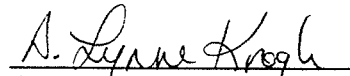
IDWR therefore included a limitation in the recommendation of each BLM stockwater right that multiple rights for the same allotment are limited to the quantity beneficially used by the number of stock in the allotment. This limitation was included pursuant to Idaho Code §42-1411(2)(f), which provides for IDWR to determine the purpose(s) of use of a water right to the extent the director deems appropriate to define and administer the water right, and 42-1411(2)(k), which further provides for IDWR to include such other matters as the director deems appropriate to define and administer the water right.

IDWR did not require the claimant to identify each water right by the allotment for which it was claimed, on the basis that providing and verifying this information would require an unreasonable effort on the part of the claimant and IDWR, and was not necessary to define or administer the water rights at the present time. Although such information may become necessary in the event of a future change in use of the water right, such information could be provided as to the water rights for which it is necessary at the time it is necessary.

E. QUANTIFICATION OF CONSUMPTIVE USE FOR SMALL STOCKWATER RIGHTS

The propriety of quantifying the annual volume of consumptive use as "de minimis" for small stockwater rights has been previously addressed in IDWR's Brief Re: Elements of Small Domestic and Stockwater Rights, and IDWR's Second Brief Re: Elements of Small Domestic and Stockwater Rights, of record with the court in subcase nos. 34-10807, 34-10717, 34-12425, 34-12429. The issue may be rendered moot by the enactment of legislation currently pending before the Idaho Legislature. A copy of the bill currently under consideration is attached hereto.

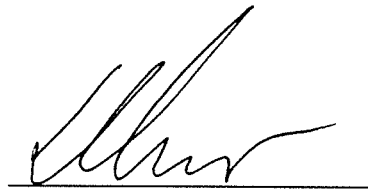
DATED this 16th day of February, 1996.


A. LYNNE KROGH
Deputy Attorney General

State of Idaho)
) ss.
County of ADA)

David B. Shaw, being first duly sworn, upon oath, deposes and says:

That I am the Adjudication Bureau Chief for IDWR, and that I have read the foregoing report, know its contents, and that the statements contained therein are true to the best of my knowledge and belief.


DAVID B. SHAW
Adjudication Bureau Chief

Subscribed and sworn to before me this 16th day of February, 1996.


Notary Public for Idaho
Residing at: Boise ID
My commission expires: 11-14-1998

Certificate of Mailing

I certify that on the 16th day of February, 1996, I mailed copies of the foregoing document, including all attachments, with sufficient first class postage, to the following:

U.S. Dept. of Justice
Env't & Natural Resources Div.
550 West Fort St., Box 33
Boise, ID 83724


A. Lynne Krogh

Exhibit A

Subcase Nos:

57-02362	57-11335
57-02365A	57-11337
57-02379	57-11360
57-02380	57-11367
57-02382	57-11375
57-02407	57-11376
57-02419	57-11377
57-02423	57-11379
57-02429	57-11380
57-07056	57-11382
57-07298	57-11385
57-07335	57-11398
57-07417	57-11399
57-07431	57-11422
57-07442	57-11424
57-10960	57-11449
57-10960A	57-11450
57-10977	57-11452
57-10977A	57-11453
57-10980	57-11454
57-10980A	57-11463
57-10981	57-11464
57-10981A	57-11465
57-10984	57-11469
57-10984A	57-11471
57-10985	57-11473
57-10985A	57-11475
57-10994	57-11476
57-10994A	57-11477
57-11013A	57-11480
57-11048	57-11482
57-11049A	57-11483
57-11078A	57-11484
57-11085	57-11486
57-11085A	57-11487
57-11108	57-11488
57-11150	57-11489
57-11154	57-11490
57-11155	57-11494
57-11171	
57-11195	
57-11201	
57-11246	
57-11284	
57-11286	
57-11287	
57-11304	
57-11317A	
57-11331	
57-11333	

(Order Setting SF5 Hearing)

APPENDIX IV

TYPICAL AMOUNTS OF WATER FOR TYPICAL USES OF WATER

DOMESTIC

The following table shows diversion rates based on number of households served. The figure for one household includes domestic stockwater and irrigation of up to 1/2 acre of land. The figures for multiple households do not, and any water for irrigation or stock watering in connection therewith should be claimed in addition to the domestic use. The following table was prepared based upon the graph set forth at the end of this appendix.

Households Served	C.F.S.
1	0.04
2	0.06
3	0.08
4	0.10
5-6	0.11
7	0.12
8	0.13
9	0.14
10	0.15
15	0.18
20	0.20
30	0.25
40	0.30
50	0.33

IRRIGATION

0.02 c.f.s. per acre (See Idaho Code § 42-202.)

APPENDIX IV (cont.)

STOCK WATERING

The following table shows use in gallons per day.

Type	Gallons per day per animal*
Cattle (other than dairy)	12
Dairy cattle	35
Horse	12
Mule	12
Hog	4
Goat	2
Sheep	2
Chickens (per 100)	5-10
Turkeys (per 100)	10-18

The following table shows the diversion rate for cattle (other than dairy) and dairy cattle.

No. of Head	C.F.S. Cattle	C.F.S. Dairy Cattle
0 - 25	0.02	0.02
26 - 50	0.02	0.04
51 - 100	0.03	0.07
101 - 200	0.05	0.13
201 - 300	0.07	0.20
301 - 400	0.09	0.26
401 - 500	0.12	0.33
501 - 600	0.14	0.39
601 - 700	0.16	0.46
701 - 800	0.19	0.52
801 - 900	0.20	0.58
901 - 1000	0.23	0.65

APPENDIX IV (cont.)

OTHER USES	Gallons per day*
Camps:	
Construction, semipermanent (per worker)	50
Day, with no meals served (per camper)	15
Luxury (per camper)	100-150
Resorts, day and night, with limited plumbing (per camper)	50
Tourist with central bath and toilet facilities (per person)	35
Picnic grounds:	
With bathhouses, showers and flush toilets (per person)	20
With toilet facilities only	10
Parks:	
Overnight with flush toilets (per camper)	25
Trailers with individual bath units, no sewer connection (per trailer)	25
Trailers with individual bath units, connected to sewer (per person)	50
Highway rest area (per person)	5
Hotel - with private bath (two persons per room)	60
without private bath (per person)	50
Motel - with bath and kitchenette (per bed space)	50
with bath (per bed space)	40
Boardinghouse (per resident)	50
- additional use for nonresident boarders (per person)	10
Roominghouse (per resident)	60
Restaurants:	
With toilet facilities (per patron)	7-10
Without toilet facilities (per patron)	2 1/2-3
With bar/lounge (additional quantity per patron)	2
Schools:	
Boarding (per student)	75-100
Day with cafeteria, gym and showers (per student)	25
Day with cafeteria, without gym and showers (per student)	20
Day without cafeteria, gym or showers (per student)	15
Hospitals (per bed)	250-400
Other Institutions (per person)	75-125
Airports (per passenger)	3-5
Churches (per person)	5
Laundries, self-service (per customer)	50
Service stations (per vehicle)	10
Stores (per restroom)	400
Swimming pools (per swimmer)	10
Theatres - drive in (per car space)	5
- movie (per seat)	5

APPENDIX IV (cont.)

*CONVERSION OF GALLONS PER DAY TO C.F.S.

Generally, small water systems are designed with a maximum rate of flow which can produce the full peak daily requirement in two hour times. To convert gallons used per day to c.f.s. use the formula in the following example:

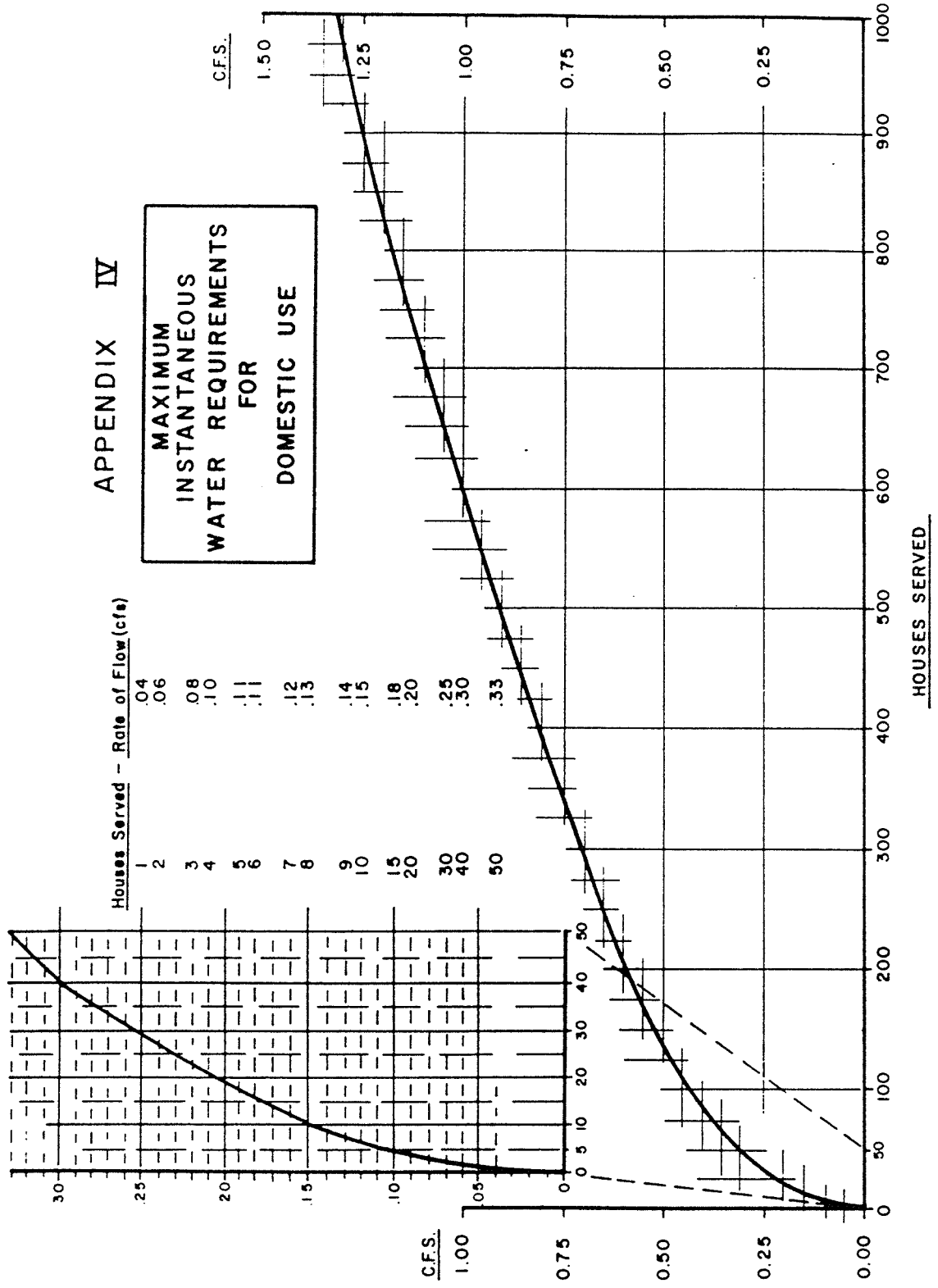
1,000 head of cattle, at 12 gallons per day per head,
use 12,000 gallons per day.

The rate of diversion necessary to produce 12,000
gallons in a 2 hour period is:

$$\frac{12,000 \text{ gallons}}{2 \text{ hrs} \times 60 \text{ min/hr} \times 450 \text{ gpm/cfs}} = 0.23 \text{ cfs}$$

APPENDIX IV

MAXIMUM INSTANTANEOUS WATER REQUIREMENTS FOR DOMESTIC USE



IN THE SENATE

SENATE BILL NO. 1480

BY RESOURCES AND ENVIRONMENT COMMITTEE

AN ACT

RELATING TO THE ADJUDICATION OF WATER RIGHTS; AMENDING SECTION 42-1401A, IDAHO CODE, TO ESTABLISH WHEN CONSUMPTIVE USE MUST BE DECREED; AMENDING SECTION 42-1411, IDAHO CODE, TO PROVIDE A STATUTORY CITATION FOR THE ANNUAL VOLUME OF CONSUMPTIVE USE; AMENDING SECTION 42-1411A, IDAHO CODE, TO PROVIDE A CORRECT REFERENCE; AMENDING SECTION 42-1414, IDAHO CODE, TO PROVIDE A CORRECT REFERENCE; AMENDING SECTION 42-1420, IDAHO CODE, TO PROVIDE A CORRECT REFERENCE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 42-1421, IDAHO CODE, TO PROVIDE A CORRECT REFERENCE; AMENDING SECTION 42-1425, IDAHO CODE, TO CLARIFY THAT PURPOSE OF USE AND NATURE OF USE REFER TO THE SAME WATER RIGHT ELEMENT; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 42-1401A, Idaho Code, be, and the same is hereby amended to read as follows:

42-1401A. DEFINITIONS. The following terms are defined for purposes of this chapter as follows:

(1) "Claimant" means any person asserting ownership of rights to the use of water within the state of Idaho or on whose behalf ownership of rights to the use of water is asserted.

(2) "Consumptive use" means the amount of water that does not remain in the water system after use or is not returned to the water system through return flows or seepage, whether or not treatment for purposes of maintaining water quality is required before the water may be returned to the water system. "Consumptive use" for an irrigation water right shall be based upon the most water consumptive crop that can be grown in the area during the period of the year when water is used for irrigation. "Consumptive use" is included as a rebuttable presumption in a decree only for the purpose of transfers pursuant to section 42-222, Idaho Code. The determination of the annual volume of "consumptive use" for all uses of water other than irrigation need not be decreed unless reported in the director's report. "Consumptive use" amounts not decreed may be quantified, when quantification is necessary, as part of any future transfer proceedings pursuant to section 42-222, Idaho Code.

(3) "Department" means the Idaho department of water resources.

(4) "Director" means collectively the director of the Idaho department of water resources and the Idaho department of water resources.

(5) "Domestic use" is defined in section 42-111, Idaho Code.

(6) "General adjudication" means an action both for the judicial determination of the extent and priority of the rights of all persons to use water from any water system within the state of Idaho that is conclusive as to the nature of all rights to the use of water in the adjudicated water system, except as provided in section 42-1420, Idaho Code, and for the administration of those rights.

(7) "Party" means any person who is a claimant or any person who is

served or joined.

(8) "Person" means an individual, a partnership, a trust, an estate, a corporation, a municipal corporation, the state of Idaho or any political subdivision, the United States, an Indian tribe, or any other public or private entity, except that "person" does not include the director of the department or the department.

(9) "Private adjudication" means an action commenced in accordance with section 42-1404, Idaho Code, for the judicial determination of both the extent and priority of the rights of named persons to the use of water from any water system within the state of Idaho, for which a general adjudication has not been commenced or completed, that binds only those persons joined in the action and for the administration of such rights.

(10) "Purchaser" means any successor in interest of a claimant, whether the interest is acquired by purchase, gift, inheritance, or other means.

(11) "Supplemental adjudication" means an action commenced in accordance with section 42-1424, Idaho Code, for the judicial determination of both the extent and priority of the rights of a person to the use of water from any water system within the state of Idaho which has been adjudicated in a general adjudication or in a private adjudication.

(12) "Stock watering use" means the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen thousand (13,000) gallons per day.

(13) "Water system" includes all rivers, streams, lakes, springs, ground waters, or other sources within this state, including any river system or other source, as used in 43 U.S.C. section 666.

SECTION 2. That Section 42-1411, Idaho Code, be, and the same is hereby amended to read as follows:

42-1411. REPORT OF THE DIRECTOR. (1) The director shall prepare a director's report on the water system. The director may file the director's report in parts as the director deems appropriate. The director may include such explanatory material as he deems appropriate in the director's report. Such explanatory material shall not impose any conditions or restrictions on the rights reported and shall not be subject to objection. This explanatory material shall not be used to support any notice of claim, objection to a notice of claim, or response to an objection.

(2) The director shall determine the following elements, to the extent the director deems appropriate and proper, to define and administer the water rights acquired under state law:

(a) the name and address of the claimant;

(b) the source of water;

(c) the quantity of water used describing the rate of water diversion or, in the case of an instream flow right, the rate of water flow in cubic feet per second or annual volume of diversion of water for use or storage in acre-feet per year as necessary for the proper administration of the water right;

(d) the date of priority;

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

(f) the purpose of use;

(g) the period of the year when water is used for such purposes;

(h) a legal description of the place of use; if one (1) of the purposes of use is irrigation, then the number of irrigated acres within each forty

1 (40) acre subdivision, except as provided in section 42-219, Idaho Code;
2 (i) the annual volume of consumptive use as provided in section
3 42-1401A(2), Idaho Code;

4 (j) conditions on the exercise of any water right included in any decree,
5 license, or approved transfer application; and

6 (k) such remarks and other matters as are necessary for definition of the
7 right, for clarification of any element of a right, or for administration
8 of the right by the director.

9 (3) The director may include such general provisions in the director's
10 report, as the director deems appropriate and proper, to define and to admin-
11 ister all water rights.

12 (4) The director shall file the director's report with the district
13 court, and the director's report shall be a part of the record. Upon filing
14 with the court, the director's report, except for the explanatory material
15 referred to in subsection (1) of this section, shall constitute prima facie
16 evidence of the nature and extent of the water rights acquired under state
17 law. The unobjected to portions of the director's report shall be decreed as
18 reported.

19 (5) Each claimant of a water right acquired under state law has the ulti-
20 mate burden of persuasion for each element of a water right. Since the
21 director's report is prima facie evidence of the nature and extent of the
22 water rights acquired under state law, a claimant of a water right acquired
23 under state law has the burden of going forward with the evidence to establish
24 any element of a water right which is in addition to or inconsistent with the
25 description in a director's report. Any party filing an objection to any por-
26 tion of the director's report shall have the burden of going forward with the
27 evidence to rebut the director's report as to all issues raised by the objec-
28 tion. Any other party to the proceeding may submit evidence in opposition to
29 the objector's position and in support of the director's report. All such pro-
30 ceedings shall be governed by the Idaho rules of civil procedure and Idaho
31 rules of evidence.

32 (6) The director shall file an original of the director's report with the
33 district court. The director shall also distribute for display and review at
34 least one (1) copy of the director's report to the office of the clerk of the
35 district court for each county in which any part of the water system is
36 located. The director shall also serve on each claimant or the claimant's
37 attorney whose water right is listed in the director's report a notice of fil-
38 ing of the director's report. Notice shall be sent to the last known address
39 of the claimant or the claimant's attorney. The notice shall be prepared by
40 the director using plain and concise language and shall include:

41 (a) a statement that the director's report of the various water rights
42 acquired under state law has been filed with the district court, naming
43 the district court(s) to which the report was filed;

44 (b) a copy of that portion of the report setting forth the claimant's
45 water right;

46 (c) a statement that a complete copy of the director's report is avail-
47 able for inspection, listing the locations at which the director's report
48 is available, which shall include the office of the clerk of the district
49 court for each county in which any part of the water system is located,
50 the offices of the department, and any other locations the director may
51 designate;

52 (d) a statement that all or a portion of the director's report is avail-
53 able upon request at the offices of the department, subject to payment of
54 a reasonable fee to cover costs of reproduction and mailing;

55 (e) a statement that any claimant may file objections to any portion of

the director's report with the district court specified in the notice and must mail a copy of the objection to the director, and to the claimant of each claimed right objected to, if the objector is not also the claimant of the right for which the objection is filed;

(f) the date prior to which all objections must be filed, which shall not be less than sixty (60) days for any director's report containing five hundred (500) claims or less, one hundred twenty (120) days for any director's report containing more than five hundred (500) claims and not more than five thousand (5,000) claims, and one hundred eighty (180) days for any director's report containing more than five thousand (5,000) claims; the above-stated periods of time shall commence on the date of service by mail of the notice of filing;

(g) a statement that claimants may file responses with the court to objections filed against their claims, and that a copy of any response must be mailed to the director and to the objector;

(h) the date prior to which all responses to objections must be filed with the court, which shall not be less than one hundred twenty (120) days following receipt of a copy of the objection; and

(i) a statement that any part of the report to which no objections are filed shall be decreed by the district court and the time and location set for the hearing at which the unobjected parts of the report will be decreed, which time shall not be less than sixty (60) days following the expiration of the period for filing responses to objections.

(7) The director shall file an affidavit with the district court demonstrating compliance with the notice requirements of subsection (6) of this section.

SECTION 3. That Section 42-1411A, Idaho Code, be, and the same is hereby amended to read as follows:

42-1411A. SERVICE OF NOTICE OF AND DETERMINATION OF WATER RIGHTS ESTABLISHED UNDER FEDERAL LAW. (1) The district court shall determine the water rights established under federal law in accordance with the procedures established in this section.

(2) The district court shall determine the following procedures for water rights established under federal law:

(a) The contents of a notice of water right claims established under federal law;

(b) The method of service of the notice of water right claims established under federal law;

(c) The location of any depositories of notices of claim for water rights established under federal law, if the district court determines that claim depositories are necessary to provide other claimants reasonable access to the notices of claims established under federal law.

(3) The district court shall be guided by the following three (3) principles in establishing the procedures required in this section:

(a) The purpose of this notice is to provide notice to other claimants of the filing of water rights established under federal law comparable to the notice of filing for water rights acquired under state law;

(b) The procedures shall not impose any burden greater than the burden placed upon the director to prepare, file, and serve the notice of filing for a director's report; and

(c) The procedure shall comply with the McCarran amendment, 43 USC 666.

(4) Any claimant of a water right established under federal law shall serve all such notices of claim on the other claimants in accordance with the

1 procedures established by the district court.

2 (5) Any claimant may contract with the director to perform all or any
3 portion of the service required in this section. The director shall require in
4 any contract that the cost of the services provided by the director are reim-
5 bursed by the claimant of a water right established under federal law.

6 (6) The United States, if it filed any notices of claim for a water right
7 established under federal law, and any other claimants of such water rights,
8 shall file an affidavit demonstrating proof of service in compliance with this
9 section.

10 (7) The district court shall provide at least sixty (60) days for filing
11 objections to water rights established under federal law where the number of
12 those water rights are five hundred (500) or less, at least one hundred twenty
13 (120) days where the number of these water rights are more than five hundred
14 (500) and not more than five thousand (5,000), and at least one hundred eighty
15 (180) days where the number of these water rights are more than five thousand
16 (5,000).

17 (8) Any claimant who desires to object to a claim established under fed-
18 eral law shall file an objection with the district court within the time spec-
19 ified in the notice of water right claims established under federal law. The
20 claimant shall also send a copy of the objection to the claimant whose claim
21 is the subject of the objection and to the director. Any claimant may file a
22 response to an objection.

23 (9) The notice of claim, objection, and responses to an objection shall
24 identify the issues to be litigated.

25 (10) If a claimant of a water right established under federal law has
26 filed notices of claim for one (1) water use based upon state and federal law,
27 the district court shall develop procedures, after an opportunity for hearing,
28 for coordination of the determination of such claims based upon state and fed-
29 eral law.

30 (11) The district court shall conduct the trial without a jury on an
31 objection or any group of objections in accordance with the Idaho rules of
32 civil procedure.

33 (12) Each claimant of a water right established under federal law has the
34 ultimate burden of persuasion for each element of a water right. Since no
35 independent review of the notice of claim has occurred as provided for water
36 rights acquired under state law in a director's report, a claimant of a water
37 right established under federal law has the burden of going forward with the
38 evidence to establish a prima facie case for the water right established under
39 federal law. All such proceedings shall be governed by the Idaho rules of
40 civil procedure and Idaho rules of evidence.

41 (13) The district court shall enter a partial decree that contains or
42 incorporates a statement of each element of a water right as stated in subsec-
43 tion (21) of section 42-1409, Idaho Code, as applicable, and that contains
44 such general provisions, remarks, and other matters as are necessary for defi-
45 nition of the right, for clarification of any element of a right, or for
46 administration of the right by the director.

47 (14) If no objections are filed to a notice of claim for a water right
48 established under federal law, the claimant shall appear at a hearing sched-
49 uled by the district court and shall demonstrate a prima facie case of the
50 existence of the water right established under federal law prior to entry of a
51 decree for such claimed water right established under federal law. If the
52 claimant fails to present a prima facie case of the existence of the water
53 right established under federal law, then the district court shall enter an
54 order determining that the claimed water right does not exist.

55 (15) Any party may appeal in accordance with the Idaho rules of civil pro-

cedure.

(16) The attorney general shall represent the state of Idaho in all matters regarding claims to water rights established under federal law, including, but not limited to, filing objections to water right claims established under federal law.

SECTION 4. That Section 42-1414, Idaho Code, be, and the same is hereby amended to read as follows:

42-1414. FEES FOR FILING NOTICE OF CLAIMS WITH THE DIRECTOR. (1) In order to provide an adequate and equitable cost-sharing formula for financing the costs of adjudicating water rights the department of water resources shall accept no notice of claim required under the provisions of section 42-1409, Idaho Code, unless such notice of claim is submitted with a filing fee based upon the fee schedule set forth below. Failure to pay the variable water use fee in accordance with the timetable provided shall be cause for the department to reject and return the notice of claim to the claimant. The fee schedule set forth below applies to adjudication proceedings commenced or enlarged on or after January 1, 1985.

(a) Flat fee per claim filed:

(i) Claims for domestic and/or ~~stockwatering~~ stock watering rights \$25.00

(ii) Claims for all other rights \$50.00

(b) Additional variable water use fee for claims filed based upon acreage, power generating capacity, c.f.s., or equivalent volume of water:

(i) Irrigation use (one fee irrespective of number of claims): \$ 1.00 per acre

(ii) Power: \$ 3.50 per kilowatt of capacity (manufacturer's nameplate rating)

(iii) Aquaculture: \$ 10.00 per c.f.s.

(iv) Municipal, industrial, commercial, mining, heating, cooling: \$100.00 per c.f.s.

(v) Public instream flow, public lake level maintenance, wildlife: \$100.00 per c.f.s.

(c) Payment of a variable water use fee of more than one thousand dollars (\$1,000) may be spread out over as many as five (5) annual equal payments with ten percent (10%) interest accruing on the unpaid balance. All fees collected by the department pursuant to this section shall be placed in the water resources adjudication account established in section 42-1777, Idaho Code.

(2) If a claimant increases in an amended notice of claim the amount of water claimed, the amount of land irrigated, or the kilowatt capacity of the generating facility, the claimant shall pay upon filing the amended notice of claim an additional variable fee in accordance with the rates set forth in subsection (1) of this section. Claimants shall be entitled to a return of filing fees or late fees only where the fee was miscalculated at the time the original or amended notice of claim was filed.

(3) If a claimant files a notice of claim after the date set by the director in the notice mailed or served in accordance with subsections (2), (3), or (4) of section 42-1408, Idaho Code, or with subsection (97) of section 42-1409, Idaho Code; the claimant shall pay the fee set forth in subsection (1) of this section, and in addition, the amount of fifty dollars (\$50.00) or fifteen percent (15%) of the original filing fee, whichever is greater. The director may waive the late processing fee or a portion thereof for good cause.

1 SECTION 5. That Section 42-1420, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 42-1420. BINDING EFFECT OF DECREE -- EXCEPTIONS. (1) The decree entered
4 in a general adjudication shall be conclusive as to the nature and extent of
5 all water rights in the adjudicated water system except that the following
6 described water rights shall not be lost by failure to file a notice of claim:

7 (a) a water right for domestic use or stock watering use, specifically
8 excluded from the general adjudication by court order;

9 (b) a water right application for permit filed under chapters 2 or 15,
10 title 42, Idaho Code;

11 (c) a water right permit issued under chapters 2 or 15, title 42, Idaho
12 Code, unless the director required the permit holder to file a notice of
13 claim in accordance with subsection (97) of section 42-1409, Idaho Code;

14 (d) a water right license issued under chapter 2 or 15, title 42, Idaho
15 Code, if proof of beneficial use had not been filed on the date of com-
16 mencement of the general adjudication, unless the director required the
17 license holder to file a notice of claim in accordance with subsection (7)
18 of section 42-1409, Idaho Code; and

19 (e) a claim to a water right established under federal law, if the prior-
20 ity of the right claimed is later than and junior to the date of entry of
21 the order commencing the general adjudication.

22 (2) The exceptions from the conclusive effect of a decree in a general
23 adjudication stated in subsection (1) above shall not apply to any water right
24 for which a notice of claim or negotiated agreement is filed.

25 SECTION 6. That Section 42-1421, Idaho Code, be, and the same is hereby
26 amended to read as follows:

27 42-1421. PROCEDURES FOR ADJUDICATION OF UNPERFECTED WATER RIGHTS INITI-
28 ATED UNDER STATE LAW -- DIRECTOR'S JURISDICTION. (1) All persons claiming a
29 water right based on an application or permit on the date of entry of the
30 order commencing a general adjudication are not required to file a notice of
31 claim unless required in accordance with subsection (97) of section 42-1409,
32 Idaho Code. If the director approves the application in whole or in part dur-
33 ing the pendency of a general adjudication and prior to filing the director's
34 report, the director shall notify the permit holder of the pendency of the
35 general adjudication. A permit holder who is not required by the director to
36 file a notice of claim in accordance with subsection (97) of section 42-1409,
37 Idaho Code, may file a notice of claim at any time prior to filing the
38 director's report.

39 (2) All persons claiming a water right based on a water right license
40 existing on the date of entry of the order commencing a general adjudication
41 shall file a notice of claim.

42 (3) The district court shall decree any claimed water right for which
43 proof of beneficial use has not been filed, but shall state that the right is
44 conditioned upon completion of the appropriation in accordance with the laws
45 of the state governing the appropriation of water and that the decreed right
46 shall be subject to the terms of the license to appropriate water that is
47 ultimately issued.

48 (4) The director retains jurisdiction of all applications, permits and
49 licenses under chapter 2, 3, 6 or 15, title 42, Idaho Code, to take action
50 authorized by the conditions contained in any permit or license or by applica-
51 ble law and action on any application for transfer under section 42-222, Idaho
52 Code.

(5) The director retains jurisdiction of all decreed water rights under chapters 2, 3 and 6, title 42, Idaho Code, to take action authorized by the conditions of any decree or by applicable law, including action on any application for transfer under section 42-222, Idaho Code.

(6) The director retains jurisdiction of all beneficial use water rights under chapters 2, 3 and 6, title 42, Idaho Code, to take action authorized by applicable law.

SECTION 7. That Section 42-1425, Idaho Code, be, and the same is hereby amended to read as follows:

42-1425. ACCOMPLISHED TRANSFERS. (1) Legislative findings regarding accomplished transfers and the public interest.

(a) The legislature finds and declares that prior to the commencement of the Snake River basin adjudication, many persons entitled to the use of water or owning land to which water has been made appurtenant either by decree of the court or under provisions of the constitution and statutes of this state changed the place of use, ~~purpose-of-use~~, point of diversion, nature or purpose of use, or period of use of their water rights without compliance with the transfer provisions of sections 42-108 and 42-222, Idaho Code.

(b) The legislature finds that many of these changes occurred with the knowledge of other water users and that the water has been distributed to the right as changed. The legislature further finds and declares that the continuation of the historic water use patterns resulting from these changes is in the local public interest provided no other existing water right was injured at the time of the change. Denial of a claim based solely upon a failure to comply with sections 42-108 and 42-222, Idaho Code, where no injury or enlargement exists, would cause significant undue financial impact to a claimant and the local economy. Approval of the accomplished transfer through the procedure set forth in this section avoids the harsh economic impacts that would result from a denial of the claim.

(c) The legislature further finds and declares that examination of these changes by the director through the procedures of section 42-222, Idaho Code, would be impractical and unduly burdensome. The more limited examination of these changes provided for in this section, constitutes a reasonable procedure for an expeditious review by the director while ensuring that the changes do not injure other existing water rights or constitute an enlargement of use of the original right.

(2) Any change of place of use, ~~purpose--of--use~~, point of diversion, nature or purpose of use or period of use of a water right by any person entitled to use of water or owning any land to which water has been made appurtenant either by decree of the court or under the provisions of the constitution and statutes of this state, prior to November 19, 1987, the date of commencement of the Snake River basin adjudication, may be claimed in a general adjudication even though the person has not complied with sections 42-108 and 42-222, Idaho Code, provided no other water rights existing on the date of the change were injured and the change did not result in an enlargement of the original right. Except for the consent requirements of section 42-108, Idaho Code, all requirements of sections 42-108 and 42-222, Idaho Code, are hereby waived in accordance with the following procedures:

(a) If an objection is filed to a claim for accomplished change of place of use, ~~purpose--of--use~~, point of diversion, nature or purpose of use or period of use, the district court shall remand the water right to the

1 director for further hearing to determine whether the change injured a
2 water right existing on the date of the change or constituted an enlarge-
3 ment of the original right. After a hearing, the director shall submit a
4 supplemental report to the district court setting forth his findings and
5 conclusions. If the claimant or any person who filed an objection to the
6 accomplished transfer is aggrieved by the director's determination, they
7 may seek review before the district court. If the change is disallowed,
8 the claimant shall be entitled to resume use of the original water right,
9 provided such resumption of use will not cause injury or can be mitigated
10 to prevent injury to existing water rights. The unapproved change shall
11 not be deemed a forfeiture or abandonment of the original water right.

12 (b) This section is not applicable to any claim based upon an enlargement
13 of use.

14 SECTION 8. An emergency existing therefor, which emergency is hereby
15 declared to exist, this act shall be in full force and effect on and after its
16 passage and approval.