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Attorney 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	)	Subcase Nos. 34-02474B,
	)	34-10615, and 34-10617
	)	
Case No. 39576	)	STATUS REPORT
	)	
	)	

DESCRIPTIVE SUMMARY

This document is the report of the Director of the Idaho Department of Water Resources (IDWR) regarding the status of the above-referenced subcases. This report is submitted to inform the Court and the parties of the changed status of these subcases.

DISCUSSION

The Court held a status conference on February 2, 1996, regarding the above-referenced subcases. At the conference, the parties and IDWR indicated they were close to settlement of the subcases. The United States had already prepared Standard Form

5s (SF5s). IDWR indicated that it would sign off on the SF5s after several typographical errors in the SF5s were corrected. IDWR agreed to inform the United States of the needed corrections, and the United States agreed to prepare corrected versions of the SF5s. The Court ordered SF5s be submitted by February 29, 1996.

Following the hearing, IDWR examined the SF5s more closely for typographical errors. In its review, however, IDWR discovered that more substantive revisions would be needed for the description of two of the water rights, nos. 34-10615 and 34-10617. The specific revisions made to each water right and the effect those revisions have had on the status of each subcase is set out below:

Subcase No. 34-02474B

Subcase no. 34-02474B is still close to settlement. The SF5 contained one typographical error in the legal description of the place of use. IDWR has forwarded the correct legal description to the United States. The United States indicated that it will prepare a corrected version of the SF5, obtain necessary signatures, and file it with the Court.

Subcase No. 34-10615

The Director has revised his recommendation for water right no. 34-10615. The new recommendation changes the description of the water right to include a change in the point of diversion and a change in the place of use. The revised recommendation also changes the combined use remarks to limit the total quantity of

water that can be used when right nos. 34-02474B, 34-10615, and 34-10617 are used in combination. A copy of the revised recommendation, which shows the specific revisions, is attached as Appendix A.

The current status of this subcase is uncertain. The changes in the revised recommendation involve Idaho Code § 42-1425, one of the amnesty statutes. Also, in light of these changes, the claimant, Tim Sayer, has indicated to IDWR that he wishes to consult an attorney before deciding how he should proceed in this subcase.

Subcase No. 34-10617

The Director has also revised his recommendation for water right no. 34-10617. The new recommendation significantly changes the description of the water right as originally recommended. Originally, IDWR recommended this right based on what the Director believed to be a valid appropriation of additional water based on beneficial use. However, during the Department's review of the SF5 for this right, it discovered that its original recommendation was in error. Right no. 34-10617 could not be recommended as a beneficial-use right for additional water because evidence on file at IDWR shows that irrigation of the place of use occurred after enactment of the mandatory permit statute for groundwater.¹

¹ The mandatory permit statute for groundwater appropriations took effect on March 25, 1963. Field exams for license nos. 34-02334 and 34-02355 (now recommended as 34-10615) were conducted in late July and early August 1963. The field exam reports indicate that as of that time only 167 acres were

Typically, this finding would result recommending disallowal of the entire claim. However, in this case, evidence on file at IDWR supported recommending this right as an enlargement of right no. 34-10615, pursuant to Idaho Code § 42-1426. The practical effect of this revised recommendation is that right no. 34-10617 will not be recommended additional water, but it will be recommended additional irrigated acreage as an enlargement of right no. 34-10615. The specific revisions made to right no. 34-10617 are set out in the revised recommendation attached as Appendix B.

The status of this subcase is uncertain. The revised recommendation implicates Idaho Code § 42-1426, which is part of the amnesty statutes. Also, Mr. Sayer indicated to IDWR that he wishes to consult an attorney before he decides how to proceed in this subcase.

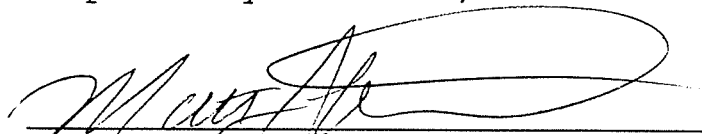
being irrigated; the 337 acres now claimed in 34-10617 were not being irrigated. Consequently, the acres now claimed in 34-10617 were irrigated after the effective date of the mandatory permit statute. Evidence from a later field exam conducted in 1970 for license no. 34-02474 (the predecessor of 34-02474B) shows that the land claimed in 34-10617 was being irrigated as of 1970. This evidence, therefore, supports recommending 34-10617 as an enlargement of right no. 34-10615. However, because the additional irrigation took place after the mandatory permit statute, 34-10617 cannot be recommended as a valid appropriation of additional water under state law.

CONCLUSION

Based on the above information, IDWR proposes that a status conference for these subcases be scheduled to take place in approximately 30 days. This should allow time for Mr. Sayer to consult an attorney and for that attorney to request and receive additional information from IDWR.

DATED this 22th day of February, 1996.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Matt J. Howard", is written over a horizontal line.

Matt J. Howard
Deputy Attorney General
Idaho Department of Water Resources

CERTIFICATE OF MAILING

I certify that on February 22, 1996, I served a true and correct copy of this document, including all attachments, by placing a true and correct copy thereof by the method indicated below, 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

☒ U.S. Mail
☐ Overnight Mail
☐ Facsimile
☐ Hand Delivered

2. Copies to:

William M. Ferry
U.S. Department of Justice
Env't. & Nat. Resources Div.
550 W. Fort St., MSC 033
Boise, ID 83724-0663

☒ U.S. Mail
☐ Overnight Mail
☐ Facsimile
☐ Hand Delivered

Tim & Connie Sayer
P.O. Box 66
Mackay, ID 83251

☒ U.S. Mail
☐ Overnight Mail
☐ Facsimile
☐ Hand Delivered

Shirley B. Kelly
Signature of person mailing form

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
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SOURCE: GROUNDWATER

34-10615	CONNIE SAYER TIMOTHY SAYER PO BOX 66 RT 1 BOX 67 MACKEY ID 83251 MODE RE ID 83238	10/17/1955	IRRIGATION	04-15 10-15	3.34	CFS LICENSE
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BETTY L SCHMARTZ
WAYNE G SCHMARTZ
PO BOX 903
MODE RE ID 83238

POINT OF DIVERSION:

T05N R25E S01
PLACE OF USE: IRRIGATION
T05N R25E S01
R26E S06

MANUSE

TOTAL QUANTITY: 3.34 CFS

NESE 39.0	MANUSE 37.0	SUSE 40.0	SESE 39.0
NESE 40.0	LOT 6 (MANUSE) 34.0	LOT 7 (SUSE) 34.0	SESE 40.0
SESE 20.0			
S07 Lot 1 (NENE) 18.0	Lot 2 (MANUSE) 43.0	Lot 3 (NENE) 41.0	Lot 4 (MANUSE) 39.0
MANUSE 20.0			

504.0 ACRES TOTAL
//32410 ACRES TOTAL
REMARKS: RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION
PURSUANT TO IDAHO CODE 42-1425.
RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO
IDAHO CODE 42-1425.

THIS RIGHT IS A COMBINATION OF OLD RIGHT NOS. 34-02334 AND
THIS RIGHT IS A COMBINATION OF OLD RIGHT NOS. 34-02334 AND
34-02335.

USE OF THIS RIGHT WITH RIGHT NOS. 34-02474B AND 34-10617 IS
LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 11.20 CFS. A TOTAL
COMBINED ANNUAL DIVERSION VOLUME OF 1960 AF. A TOTAL COMBINED
ANNUAL CONSUMPTIVE USE VOLUME OF 1260 AF, AND TO THE IRRIGATION
OF A COMBINED TOTAL OF 504 ACRES IN A SINGLE IRRIGATION SEASON.
THIS RIGHT IS LIMITED TO THE IRRIGATION OF 167 ACRES WITHIN
THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.
USE OF THIS RIGHT WITH RIGHT NO. 34-10617 IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 3.34 CFS AND A TOTAL COMBINED
ANNUAL DIVERSION VOLUME OF 1219 AF.
RIGHT NO. 34-10617 IS ALSO DIVERTED THROUGH POINT OF
DIVERSION DESCRIBED ABOVE.

RIGHT NO. 34-10617 IS AN ENLARGEMENT OF THIS RIGHT PURSUANT TO
IDAHO CODE 42-1426.
USE OF THIS RIGHT WITH RIGHT NO. 34-02474B
IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 11.64 CFS, A
TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 2037.0 AF,
A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 1310
AF, AND TO THE IRRIGATION OF A COMBINED TOTAL OF 324 ACRES IN A

AJ5856NP

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW
SINGLE IRRIGATION SEASON/
THIS RIGHT IS LIMITED TO THE IRRIGATION OF 167 ACRES WITHIN THE
PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON/

DATE: FEB-16-1996
PAGE: A-2

AJ5856NP

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

DATE: FEB-16-1996
PAGE: A-1

RIGHT
NUMBER

NAME & ADDRESS

PRIORITY
DATE

PURPOSE OF USE

PERIOD OF USE
FROM TO

MAXIMUM
QUANTITY

BASIS OF CLAIM

SOURCE: GROUNDWATER

TRIBUTARY:

34-10617

CONNIE SAYER
TIMOTHY SAYER
PO BOX 66
RT 1 BOX 67
MACKAY ID 83251
MORE ID 83253

06/01/1970 IRRIGATION
06/01/1967

04-15 10-15

2.23 CFS
2178 CFS BENEFICIAL USE

WAYNE R. SCHMARTZ
BETTY K. SCHMARTZ
PO BOX 903
MORE ID 83253

POINT OF DIVERSION:
T05N R25E S01

/// ///

NNNNSE

TOTAL QUANTITY:

2.23 CFS
2178 CFS

PLACE OF USE: IRRIGATION

T05N R25E S01
R26E S06

NESE 39.0
NESM 40.0
SESE 20.0

Lot 6 (NMSM)34.0
Lot 7 (WSM)34.0

SWSE 40.0
SESE 39.0
SESM 40.0

SWSE 40.0

S07 Lot 1 (NENE)18.0
S06 MORE 2018

Lot 2 (NNNE)43.0
Lot 3 (NENM)41.0

Lot 4 (NNNM)39.0

504.0 ACRES TOTAL
7792410 ACRES TOTAL

REMARKS:

USE OF THIS RIGHT WITH RIGHT NOS. 34-024748 AND 34-10615 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 11.20 CFS. A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 1960 AF, A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 1260 AF, AND TO THE IRRIGATION OF A COMBINED TOTAL OF 504 ACRES IN A SINGLE IRRIGATION SEASON. USE OF THIS RIGHT WITH RIGHT NO. 34-10615 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 3.34 CFS AND A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 1219 AF. RIGHT NO. 34-10615 IS ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE. THIS RIGHT, WHEN NOT USED IN COMBINATION WITH A SUPPLEMENTAL WATER SUPPLY, IS LIMITED TO THE IRRIGATION OF 167 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON. THIS RIGHT, WHEN USED IN COMBINATION WITH A SUPPLEMENTAL WATER SUPPLY, MAY BE USED TO IRRIGATE 337 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON. THIS RIGHT IS AN ENLARGEMENT OF RIGHT NO. 34-10615 PURSUANT TO IDAHO CODE 42-1426. USE OF THIS RIGHT WITH RIGHT NO. 34-024748 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 11.64 CFS, A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 1937 AF, A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 1310 AF AND TO THE IRRIGATION OF A COMBINED TOTAL OF 524 ACRES IN A SINGLE IRRIGATION SEASON.

AJ5856NP

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

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 397 ACRES WITHIN THE
PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

DATE: FEB-16-1996
PAGE: A-2