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UNITED STATES OF AMERICA

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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	)	Subcase Nos.: See Attached Exhibit A
	)	
Case No. 39576	)	LIST OF ISSUES REGARDING FORM AND
	)	CONTENT OF STOCKWATERING RIGHTS
	)	

DESCRIPTIVE SUMMARY

This is the United States' list of issues regarding the form and content of stockwatering rights and decrees.

DISCUSSION

Pursuant to the Special Master of Basin 57's February 23, 1996 Order Denying Stipulation to Reset Hearing, the United States submits the following list on the issues that require resolution regarding the Standard Forms 5 for the above referenced subcases:

1. What constitutes a de minimis stockwater right and may the annual consumptive volume for such rights be described as "de minimis"? *Lyons*
2. Is a remark on combined usage necessary for the definition or administration of a de minimis water right and, if so, where should the remark appear in the decree?¹
3. Is it necessary to include a number of head of cattle to describe or administer a de minimis water right and, if so, where should the remark appear in the decree?
4. Should the quantity used in cubic feet per second for a de minimis water right be based on a 24-hour rate, a two-hour rate or a set constant based on a 13,000 gallons per day flow rate? *invited* *for depend on methodology*
5. Does a claim to water for stockwatering purposes include use for wildlife? - semantics *different from including wildlife as a purpose of use*

¹ IDWR's "combined use" statement appears in remarks to the Director's recommendations for state-law based stockwater claims on the public lands. The remark states:

This right and other rights common to the same grazing allotment shall be limited to the quantity of water beneficially used by the number of stock within the allotment.

These issues are identical to the sub-issues raised in the United States' Motion to Designate Basin-Wide Issue No. 12, filed February 14, 1996. In that motion, the United States argued that the sub-issues are broadly significant and appropriate for basin-wide designation because they affect numerous active subcases across the test basins. Equally important, the United States noted that IDWR is proposing changes in the form and content of its recommendations to all claims for stockwater rights in the test basins. See Amended Director's Reports for Reporting Areas 1, 2, and 3. Thus, these issues affect the above referenced rights and all claims to stockwater rights by the BLM in basin 57.

The United States filed a motion to designate the stockwatering form and content issues as a basin-wide issue to expedite the resolution of this matter. Basin-wide issue procedures appear to be the most efficient and effective means to answer the various questions on form and content, quickly and decisively. A basin-wide decision would be law of the case that may be applied to the large number of stockwatering claims by private parties and the United States in basin 57 and throughout the adjudication.

While the United States feels that for reasons of judicial economy it is appropriate to address these issues in a basin-wide setting, the issues may be comprehensively briefed before the Special Master in basin 57. However, because a number of the form and content issues are currently pending before the

Special Master in basin 34, the United States is concerned about duplicative litigation and the possibility of inconsistent decisions in basins 34 and 57. This concern may be ameliorated by consolidation of subcases regarding stockwatering claims in basins 34 and 57 for the purpose of ruling on form and content issues. Administrative Order No. 1, subparagraph 9, allows for the consolidation of issues "in any proceeding in the adjudication ...[with] any other matter at issue in the adjudication."

A second potential means of resolving these issues across the test basins in an efficient and expedient manner is to await the designation of basin-wide issue number 12 following the March 27 hearing on the United States' motion. The basin-wide issue may then be referenced to the Special Master in basin 57 for judicial determination. The Special Master may consider consolidation of subcases as necessary.

The United States believes that resolution of the sub-issues identified supra, will resolve all form and content issues regarding stockwatering rights. Should the Special Master order that all the identified form and content issues be addressed in briefing on the above referenced subcases, the United States will respectfully request an extension on the current March 8 filing deadline. The United States anticipates extensive briefing to comprehensively address all of these issues, and will require more time in which to do so.

CONCLUSION

The United States has identified a comprehensive list of issues for the resolution of the above referenced subcases and respectfully requests that the Court establish procedures for the efficient and expedited resolution of these issues.

Respectfully submitted this 26th day of February, 1996.


R. Lee Leininger
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General Litigation Sec.
U.S. Dept. of Justice

CERTIFICATE OF SERVICE

I certify that on the ____ day of February, 1996, I served a true and correct copy of the United States' List of Issues Regarding Form and Content of Stockwatering Rights by facsimile transmission upon the following individual:

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List of Subcases

57-02362	57-11013A	57-11379
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COMMENTS:

