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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 No. 57-11475   |
|                | ) |                        |
|                | ) | IDWR REPORT RE: REVIEW |
| Case No. 39576 | ) | OF STANDARD FORM 5     |
|                | ) |                        |
|                | ) |                        |

#### DESCRIPTIVE SUMMARY

IDWR submits this report to inform the Court and the parties that IDWR has reviewed the Standard Form 5 submitted by the parties in this subcase and that the Director has chosen not to sign the Standard Form 5.

#### DISCUSSION

The Director did not sign the Standard Form 5 for the reasons set forth below:

A. The description of the elements of the water right in the Standard Form 5 are not correct as stated below:

1. [ ] Name and Address
2. [ ] Source
3. [ ] Quantity
4. [ ] Priority Date

5. [ ] Point of Diversion

6. [X] Purpose of Use

The Standard Form 5 seeks to change the description of the purpose of use in two ways.

First, the Standard Form 5 seeks to change the purpose of use from "STOCKWATER" to "STOCKWATER" and "WILDLIFE." The United States did not claim wildlife as a purpose of use in its Notice of Claim. Even if it had, wildlife use cannot be included as a purpose of use for an instream stockwater water appropriation. Physical diversion is required for an appropriation unless an exception is established by statute. Idaho Code §§42-113 and 42-114 establish an exception to the diversion requirement for watering of domestic livestock, but no exception is provided for appropriations by the United States for wildlife purposes. However, IDWR recognizes that wildlife preservation is an appropriate use of public lands, and to the extent the United States has a right to water for instream stockwatering purposes, wildlife might also drink from the source. On this basis, IDWR is willing to include in its recommendation a further description of non-irrigation uses that states: "STOCKWATER, 2975 RANGE CATTLE; WILDLIFE, VARIABLE AMOUNT." This language recognizes wildlife use as incidental to stockwater use but does not recognize wildlife as a purpose of use of the water right independent from stockwater use.

Second, the Standard Form 5 omits the further description of non-irrigation use stated above. Further description of stockwater uses by the type and number of head is provided pursuant to Idaho

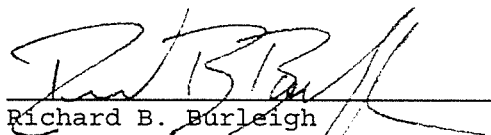


the use of this water right in combination with other rights claimed and recommended for the same use. In the case of BLM stockwater rights, combined use occurs where the BLM claims a separate right to each of a number of water sources, each for use by the full number of cattle on the allotment. Each right is quantified based on the total use for the allotment, to allow the grazing permittee to take the full amount of water needed from any combination of the sources within the allotment. Since each right is quantified based on the total use within the allotment, the combined use must also be limited to that same total, thereby avoiding the misconception that the rights are additive.

B. The Standard Form 5 was not signed by the Director for other reasons as stated below:

☐ Federal Reserved Water Right

☐ Other

  
\_\_\_\_\_  
Richard B. Burleigh  
Deputy Attorney General  
Idaho Department of Water Resources

CERTIFICATE OF MAILING

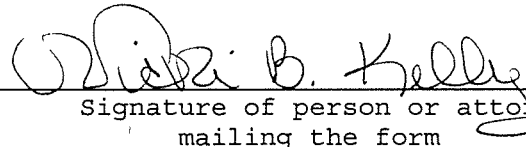
I certify that on February 23, 1996, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

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:

U.S. Department of Justice  
Environment and Natural Resources Division  
550 West Fort St., MSC 033  
Boise, ID 83724

  
\_\_\_\_\_  
Signature of person or attorney  
mailing the form