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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 No. 34-11583
	)	
	)	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.

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

☐ Name and Address

☐ Source

☐ Quantity

☒ Priority Date

The Standard Form 5 incorrectly states that IDWR and the parties stipulate to a priority date of 05/02/1885. IDWR's response to the objection notes that there is an error in the description of the priority date of this water right in the director's report.

As noted in IDWR's response, rights to the use of surface water from the Big Lost River and tributaries were adjudicated in Utah Construction Co. v. Abbott, Equity No. 222 (D.E.Id 1923). The source of water for this right is tributary to the Big Lost River, and the United States was a party to that case. The United States is therefore precluded by the doctrine of res judicata from asserting a beneficial use priority date the same as or earlier than the date of the decree, March 15, 1923.

☐ Point of Diversion

☐ Purpose of Use

☒ Period of Use

The Standard Form 5 incorrectly identifies the period of use as "05-01 to 10-31." This element should be corrected to read "06-01 to 10-31."

☐ Place of Use

☐ Consumptive Use

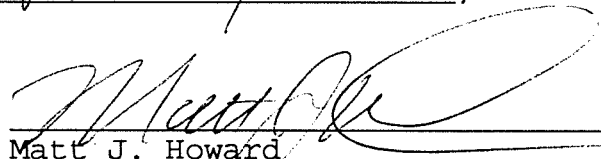
☐ Other Matters Necessary to Define or Administer the Right

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

☐ Federal Reserved Water Right

☐ Other

DATED this 26 day of February, 1996.


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

CERTIFICATE OF MAILING

I certify that on February 26, 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:

Randall J. Bramer
USDA Forest Service
380 E. Parkcenter, Ste. 330
Boise, ID 83706

Herb Whitworth, Jr.
Star Route
Mackay, ID 83251

Patrick Brown
HEPWORTH, LEZAMIZ & HOHNHORST
P.O. Box 389
Twin Falls, ID 83303

Walter B. Kelly
Signature of person mailing form