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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. 34-04148    |
|                | ) |                         |
|                | ) | AMENDED IDWR REPORT RE: |
| Case No. 39576 | ) | OF STANDARD FORM 5      |
|                | ) |                         |
|                | ) |                         |

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#### 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

Under the "source element," the Standard Form 5 omits the tributary. It should be amended to include "TRIBUTARY: NEWMAN CANYON CREEK."

☐ Quantity

☐ Priority Date

☐ Point of Diversion

☒ Purpose of Use

Although no objection was filed to the description of the purpose of use of this water right in the director's report, the Standard Form 5 seeks to change the description of the purpose of use.

First, the Standard Form 5 seeks to change the purpose of use from "STOCKWATER" to "STOCKWATER" and "WILDLIFE." 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: 1) wildlife preservation is an appropriate use of public lands, and 2) 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 included in its recommendation a further description of non-irrigation uses that states:

"STOCKWATER, 4 HORSES, 100 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 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)(j), 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 for instream stockwater rights because a reasonable rate of flow (cfs) for such rights is capable of producing an annual diversion volume that is significantly in excess of the volume of water reasonably required for drinking by the stock for which the water was appropriated.

The omission of the further description of non-irrigation

uses from Standard Form 5s for water rights acquired under state law by the United States for stockwater purposes is currently the subject of further proceedings in subcase no. 34-04179.

☐ Period of Use

☒ Place of Use

There is a typographical error in the description of the place of use in the SF5. The SF5 states the range as "R24E." The correct range is "R25E."

☐ Consumptive Use

☒ Other Matters Necessary to Define or Administer the Right

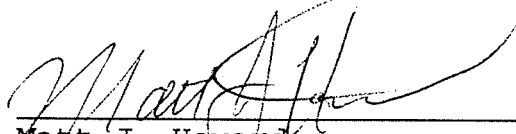
The Standard Form 5 omits the following statement, "THIS RIGHT AND OTHER RIGHTS COMMON TO THE SAME GRAZING ALLOTMENT SHALL BE LIMITED TO THE QUANTITY OF WATER BENEFICIALLY USED BY THE NUMBER OF STOCK WITHIN THE ALLOTMENT." This statement is necessary to limit the use of this water right in combination 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.

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

☐ Federal Reserved Water Right

☐ Other

DATED this 29 day of February, 1996.



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

# CERTIFICATE OF MAILING

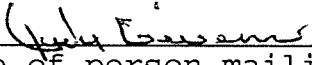
I certify that on February 14, 1996, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

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:

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

  
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Signature of person mailing form