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3-12

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. 57-07335   |
|                | ) |                        |
|                | ) | IDWR REPORT RE: REVIEW |
| 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:

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

The quantity shown on the Standard Form 5 is not the same as the recommendation in the director's report. The quantity should be shown as recommended in the director's report, including diversion rate and diversion volume for each use:

|                |         |         |
|----------------|---------|---------|
| STOCKWATER     | .10 CFS | 6.0 AFY |
| WILDLIFE       | .01 CFS | 6.0 AFY |
| TOTAL QUANTITY | .11 CFS | 6.0 AFY |

4. ☐ Priority Date

5. ☐ Point of Diversion

6. ☒ Purpose of Use

The Standard Form 5 omits the further description of non-irrigation use. IDWR included in its recommendation a further description of non-irrigation uses that states: "STOCKWATER, 450 RANGE CATTLE; WILDLIFE, VARIABLE AMOUNT". This language was included 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 description of stockwater uses by the type and number of head defines the water right 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 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 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 before the Special Master.

7. [ ] Period of Use

8. [X] Place of Use

There is a typographical error in the description of the place of use in the SF5. The SF5 states the township for sections 16, 21 and 32 as "T01S". The correct township is "T01N".

9. [X] Consumptive Use

Consumptive use should be described as "de minimis". The Standard Form 5 indicates that the entire diversion volume recommended (6.0 AFY) is consumed by stock and wildlife. The director's report did not recommend 6.0 AFY as the consumptive use.

10. [X] 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.

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

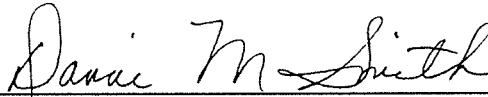
I certify that on March 11, 1996, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

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



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Signature of person or attorney  
mailing the form