

318
57-2362

ELEMENTS OF STOCKWATER RIGHTS (2nd)

In Re SRBA

Twin Falls County Civil Case No. 39576

Sub-Case No.: See Attached Exhibit A

Report to the SRBA District Court

Prepared by the Idaho Department of Water Resources

Karl J. Dreher, Director

David B. Shaw, Adjudication Bureau Chief

March 18, 1996

The Director of the Idaho Department of Water Resources (IDWR) submits this second report regarding elements of stockwater rights in response to the request of the Special Master, pursuant to Idaho Code §42-1412(4) and the court's I.R.E. 706 Order Appointing Expert. This report was prepared by Karl J. Dreher, Director, and David B. Shaw, the Adjudication Bureau Chief for IDWR. Mr. Shaw is the director's designee who will be available at the hearing in this subcase.

A. COMBINED USE LIMITATION

IDWR included a limitation in the recommendation of each BLM stockwater right that multiple rights for the same allotment are limited to the quantity beneficially used by the number of stock in the allotment. This limitation 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)(k), which further provides for IDWR to include such other matters as the director deems appropriate to define and administer the water right. Such a limitation is appropriate and necessary for the reasons set forth in IDWR'S Report Re: Elements of Small Stockwater Rights (IDWR's First Report), at pages 19-20, which was previously filed in these subcases.

As to where the limitation should appear in the decree, the decree would sufficiently define the water right if the limitation were included anywhere in the description of the water right. If the limitation is to be included under a particular element in the description of the water right, the language may most appropriately be

included under the quantity element, because this limitation serves to limit the total quantity of the combined water rights. It could also appropriately be included under the purpose of use element, since it also limits the total use of the combined water rights.

B. QUANTITY IN CFS

The United States' phrases the question as:

Should the quantity used in cfs for a *de minimus* water right be based on a 24-hour rate, a 2-hour rate, or set constant based on a 13,000 gallons per day flow rate?

The United States' question misses the point. The quantity used in cfs for any water right is the actual, historical, and beneficial diversion rate. Thus, if the claimant's actual historical diversion rate is 0.20 cfs, and that diversion rate is reasonable for the actual, historical uses for which water was appropriated, then the diversion rate for that right is 0.20 cfs.

As explained in IDWR's previous report, with respect to its investigation and recommendation of claims to small domestic and stockwater rights, IDWR uses the "two-hour method" described in the report for the purpose of determining whether a claimed diversion rate is reasonable for the claimed purposes of use. Thus, where a claimant claims a stockwater right for 350 head of cattle, then a claimed diversion rate of up to 0.08 cfs would be reasonable, because it would provide the volume of water required by the cattle (12 gallons per day per head), it would provide that

volume in a reasonable period of time, and it would allow for reasonable conveyance losses.

The United States' question suggests that a "24-hour rate" would be a reasonable alternative. To the extent that this is the actual, historical, and beneficial diversion rate for the United States' water rights, then this is the diversion rate that the United States should claim and that the court should decree. However, a "24-hour rate" would not provide a workable standard for IDWR's evaluation of a claimed diversion rate for small domestic and stockwater rights. The minimum diversion rate which, if diverted continuously, would provide the required diversion volume would not be a sufficient diversion rate for many small domestic and stockwater uses. This minimum diversion rate does not allow for delivery of the necessary diversion volume in a reasonable period of time, nor does it allow for reasonable conveyance losses. IDWR's First Report, pp. 12-13, also pp. 2-12.

The United States' question also suggests that a "set constant based on a 13,000 gallons per day flow rate" would be a reasonable alternative. IDWR is unable to determine what the United States intends by this other than the 24-hour alternative already discussed above. IDWR can report further once the proposed method of quantification is identified.

ELEMENTS OF STOCKWATER RIGHTS (2nd)

State of Idaho)
) ss.
County of Ada)

David B. Shaw, being first duly sworn, upon oath, deposes and says:

That I am the Adjudication Bureau Chief for IDWR, that I have read the foregoing report, know its contents, and that the statements contained therein are true to the best of my knowledge and belief.



David B. Shaw

Subscribed and sworn to before me this 15th day of March, 1996.

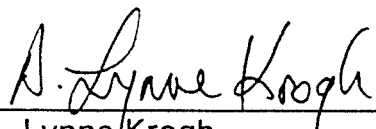


Notary Public for Idaho
Residing at: BOISE ID
My commission expires: 12/5/2000

Certificate of Mailing

I certify that on the 15th day of February, 1996, I mailed copies of the foregoing document, including all attachments, with sufficient first class postage, to the following:

U.S. Dept. of Justice
Env't & Natural Resources Div.
550 West Fort St., Box 33
Boise, ID 83724



A. Lynne Krogh