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REPORT ON 36-00080C

prepared by Brent King
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Department of Water Resources
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REPORT ON 36-00080C

FACTS: The original claimants, Edward and Ruth Shokal, filed a notice of claim for 2.0 cfs for the irrigation of 46.8 acres under right number 36-00080B. Afterwards, the Shokals sold a portion of their property to claimants Martin and King. In the Director's report, IDWR recommended this right as a split water right; 36-00080B as the Shokal's retained portion of the water right, and 36-00082C as the portion of the water right transferred to Martin and King.

Martin and King filed an amended notice of claim for 36-00080C for 0.38 cfs for 9 acres. IDWR's investigation found a total of 11 acres that has historically been irrigated by 36-00080C. IDWR is currently recommending 0.24 cfs for 11 acres.

Claimants Martin and King also claimed a second water right, no. 36-00081C, for the same 11 acre parcel. IDWR recommended this claim for disallowal on the basis that all water beneficially used for irrigation on this field was supplied by water right no. 36-00080C.

The elements and issues that IDWR perceives as relevant to trial in 80C are as follows:

NAME AND ADDRESS: This element is not objected to, nor does IDWR expect ownership to be an issue at trial.

SOURCE: This element is not objected to, nor does IDWR expect the source to be an issue at trial.

QUANTITY: This element is objected to and will be an issue at trial. Claimants, in their amended notice of claim, indicated that they beneficially use 0.38 cfs for 9 acres. IDWR has recommended 0.24 cfs for 11 acres. In addition, IDWR has re-worked its excess irrigation flow analysis (Hubble analysis) for this parcel, the results of which IDWR is planning to present at trial.

It also appears that the Claimants are now requesting new purposes of use be added to this right. IDWR would request that the Claimants quantify for the court the amount of water for each purpose of use they expect to prove at trial.

PRIORITY DATE: This element is not objected to, nor does IDWR expect it to be an issue at trial.

POINT OF DIVERSION: This element is not objected to, nor does IDWR expect the diversion to be an issue at trial.

PURPOSES OF USE: This element is objected to and will be an issue at trial. In their Objection, Claimants indicate that they are now requesting that stockwater and domestic be added as additional purposes of use. Although it does not appear in the Objection, claimant Martin indicated in the Notice of Error that

frost protection be added as an additional use. IDWR does not know if stockwater, domestic, or frost protection are the only additional uses now being claimed or if frost protection is even being claimed as an additional use at all. IDWR requests that the Claimants clarify to the court what purposes of use they expect to prove at trial.

PERIOD OF YEAR: This element is objected to and will be an issue at trial if the Claimants intend to prove year around use on any additional purposes of use. Since the Claimants may be asserting additional purposes of use, IDWR requests that they clarify to the court what season of use they are now claiming for each purpose of use.

In regards to irrigation, IDWR has recommended a greater irrigation season than was claimed. Therefore, IDWR believes that irrigation season of use will not be an issue at trial.

PLACE OF USE: This element was not objected to. However, for irrigation, the Claimants originally claimed they irrigated 9 acres, whereas IDWR's investigation found 11 acres to be irrigated with this right. Therefore, the place of use will be an issue at trial.

Since the Claimants have indicated that they may be asserting additional purposes of use, IDWR requests that they clarify to the court what place of use they are now claiming for each purpose of use.

CONSUMPTIVE USE: This element is objected to. The Claimants are ambiguous in what consumptive use they are now claiming. In their Objection, the Claimants state they want a consumptive use, "to reflect maximum quantity." IDWR now requests the Claimants quantify for the court what consumptive use they are now claiming for each purpose of use.

REMARKS: This element is objected to and will be an issue at trial. Claimants want all remarks, including those that IDWR feels are necessary to administer and describe the water right to be stricken, "except for source and point of diversion." Since the source and point of diversion are elements of a water right and not remarks, IDWR is unsure what the Claimants are objecting to. IDWR would ask the Claimants to clarify to the court whether they are objecting to remarks or to certain elements of the water right.

EXHIBITS AT TRIAL,

IDWR expects to present the Claim file, a copy of which has been presented to the Claimant.

IDWR requests that the court follow the same procedure as was used in the trial of subcase no. 36-10664 (claimant Perry Patterson); of allowing a copy of the claim file and any pertinent maps to be substituted for the originals after the

originals have been admitted into evidence. As the court may remember, this was done because IDWR has only one original of the claim file and maps and may use the information contained in the claim file and maps in more than one subcase. Moreover, the originals are public records which IDWR must retain and keep available for public inspection.

IDWR may present general information in regards to what the Hubble analysis is and how it is computed. IDWR has a slide presentation which outlines and clarifies some of this general information. IDWR will submit a photocopy of the slides to the Claimant.

IDWR has undertaken a new excess irrigation requirements analysis and will be presenting the results of that analysis. The results of that analysis have been presented to the Claimant, and copies of the original worksheets used will be presented to her as soon as possible.

IDWR may present the Hubble Report into evidence. A copy has been provided to the Claimant.

Maps, overlays, and aerial photos may be offered into evidence. A copy of any maps or aerial photos should be in the Claimant's copy of the claim file. The original maps and photos may be inspected at either the state office or the Southern office.

IDWR may also offer into evidence memorandum from Jeff Peppersack entitled "Reference Maps for Consumptive Irrigation Requirement, Irrigation Headgate Requirement, and Irrigation Season of Use," as well as adjudication memorandums 42 and 43. These documents are available at the State Office.

WITNESSES

IDWR may call one or more of the following employees to testify.

Steve Clelland: Idaho Department of Water Resources, 222 Shoshone St. East, Twin Falls, ID 83301, (208) 736-3033. May testify as to the facts that his investigation found. IDWR reserves the right to lay foundation to call Mr. Clelland as an expert in water rights investigation.

Helen Harrington-Thorton: Idaho Department of Water Resources, 1301 N. Orchard, Boise, ID 83720, (208) 327-7900. May testify as to the facts that her investigation found. IDWR reserves the right to lay foundation to call Mrs. Harrington-Thorton as an expert in water rights investigation.

Alan Merritt: Idaho Department of Water Resources, 222 Shoshone St. East, Twin Falls, ID 83301, (208) 736-3033. May be called by the Department as an expert in engineering and on IDWR policy and procedure.

Jeff Peppersack: Idaho Department of Water Resources, 1301 N. Orchard, Boise, ID 83720, (208) 327-7900. May be called by IDWR

as an engineering expert. His expected testimony would be on the topic of the Hubble analysis and/or season of use and/or the Department's methodology for determining place of use.

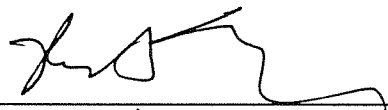
Marci Sterling: Idaho Department of Water Resources, 1301 N. Orchard, Boise, ID 83720, (208) 327-7900. May be called as an engineering expert. Her expected testimony may be on the Hubble analysis in general, and as applied in this subcase and/or the Department's methodology for determining place of use.

Dave Shaw: Idaho Department of Water Resources, 1301 N. Orchard, Boise, ID 83720, (208) 327-7900. May be called as an engineering expert. His testimony may be on IDWR policy and procedure in general and as applied to the Hubble analysis.

Scott King: Idaho Department of Water Resources, 1301 N. Orchard, Boise, ID 83720, (208) 327-7900. May be called as an expert in water measurement.

Don Shaff/Carter Fritschle: Idaho Department of Water Resources, 1301 N. Orchard, Boise, ID 83720, (208) 327-7900. May be called to testify about adjudication procedures, including the examination and recommendation of claims.

As the subcase progresses, IDWR may become aware of additional relevant information and, accordingly, it reserves the right to supplement this report as necessary.



Brent King