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REPORT ON 36-00082A

prepared by Brent King
Deputy Attorney General
Department of Water Resources
May 1, 1996

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FACTS: The original owners, Edward and Ruth Shokal, owned a piece of land and sold part of it Martin before filing in the SRBA. They then filed a notice of claim on the land they retained for 1.64 cfs for 37.8 acres. In the Director's report, IDWR numbered the water right that the Shokals retained as no. 36-00082A.

On the piece of property that the Shokals retained, IDWR's investigation found a total of 12 acres that has historically been irrigated by 36-00082A. IDWR currently is recommending 0.25 cfs for 12 acres.

The elements and issues that IDWR perceives as relevant to trial in 82A 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. Claimant, in her amended notice of claim, indicated that she beneficially uses 1.64 cfs for 37.8 acres. IDWR has recommended 0.25 cfs for 12 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 Claimant is now requesting new purposes of use be added to this right. IDWR would request that the Claimant quantify for the court the amount of water for each purpose of use she expects 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 and will not be an issue at trial.

PURPOSES OF USE: This element is not objected to, but it appears that it will be an issue at trial. In her Objection, the Claimant indicates that she is now requesting that stockwater be added as an additional purpose of use. IDWR does not know if stockwater is the only additional use now being claimed. IDWR requests that the Claimant clarify to the court what purposes of use she expects to prove at trial.

PERIOD OF YEAR: This element is objected to and will be an issue at trial if the Claimant intends to prove year around use on the stockwater use. Since the Claimant may assert additional purposes of use at trial, IDWR requests that she clarify to the

court what season of use she is 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.

PLACE OF USE: This element was not objected to. However, for irrigation, the Claimant claimed she irrigated 37.8 acres in her notice of claim, whereas IDWR's investigation found only 12 acres to be irrigated with this right. Therefore, the place of use will be an issue at trial. Since the Claimant has indicated that she may assert additional purposes of use, IDWR requests that she clarify to the court what place of use she is now claiming for each purpose of use.

CONSUMPTIVE USE: This element is not objected to. Although the Claimant may now be asserting additional new purposes of use, the consumptive use need not be listed for any use except irrigation. IDWR does not expect this element to be an issue at trial.

REMARKS: IDWR will stipulate to take out the conveyance loss remark. IDWR does not believe this will be an issue at trial.

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

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REPORT ON 36-00082C

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