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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. 36-11060
	)	
	)	IDWR REPORT RE: REVIEW
Case No. 39576	)	OF STANDARD FORM 5
	)	
_____	)	

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:

[X] Source

The source of water for water right no. 36-11060 should be shown as:

THREE SPRINGS TRIBUTARY TO: BILLINGSLEY CREEK
BIG SPRINGS TRIBUTARY TO: BILLINGSLEY CREEK

The director's report previously identified the source as springs tributary to Billingsley Creek. The springs are more accurately described as Three Springs, which corresponds to the point of diversion listed in section 30, and Big Springs, which corresponds to the point of diversion listed in section 18. The director's report also includes the body of water to which the source of the right is tributary for each right in the director's report, except for rights to ground water. IDWR adopted this standard for the description of the source of water rights because there are so many instances, sometimes in the same administrative basin, where different water sources bear the same name.

[X] Quantity

The description of the quantity of water used should include the following language:

USE OF THIS RIGHT IN COMBINATION WITH RIGHT NOS. 36-00046 AND 36-15462 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 3.5 CFS FROM 04/01 THROUGH 09/30, AND 4.0 CFS FROM 10/1 THROUGH 3/31.

The claimant has three water rights, right no. 36-00046, this right no. 36-11060, and right no. 36-15462. Pursuant to these three rights, the claimant may divert a total of either 3.5 cfs or 4.0 cfs depending on the time of year. This water is used for irrigation purposes pursuant to right 36-00046, for fish propagation purposes pursuant to right 36-15462, and for

a recreational pond pursuant to this right no. 36-11060. The claimant and the objector have submitted an SF5 for each of these rights, each with a diversion rate of 3.5 cfs or 4.0 cfs, depending on the time of year. Absent the additional language set forth above, the description of the water rights could create the erroneous impression that the total diversion rate under the three rights is 10.5 cfs or 12.0 cfs depending on the time of year.

In addition, IDWR does not have information which would support a recommendation that a quantity greater than 2.04 cfs is beneficially used in the recreational pond; nor does IDWR have information which would support a finding that the storage volume is 40 acre feet.

[X] Priority Date

The priority date of this water right should be described as 06/01/1977.

This right is for water used in a pond which was created when the claimant constructed a dike on the claimant's land in 1971. Water right no. 36-15462 describes a fish propagation use which was first made in this pond, but which was later transferred when the claimant constructed raceways in 1977. The continued use of water in the pond for recreational purposes after the fish propagation use was transferred to the raceways therefore constitutes an expansion in the use of right no. 36-15462 pursuant to the amnesty statutes, with a priority as of the date the expansion occurred. The recreational use for the pond is therefore properly described in this right no. 36-11060 with a 1977 priority.

The previous SF5 submitted by the parties described a priority date of February 17, 1896, the same as water right no. 36-00046; the current SF5 describes a priority date one day later. Because the use was first initiated in 1977, it cannot be deemed to be one of the

original purposes of use of previously decreed water right no. 36-00046; it cannot be deemed to be a change in use of that right because the diversion of water pursuant to a right for irrigation during the non-irrigation season would result in both injury to other rights and enlargement.

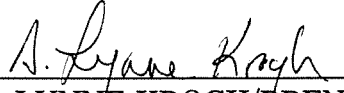
It is IDWR's understanding that the purpose of the SF5 is to subordinate the rights of Deloris D. and John W. Jones Jr. to water from Three Springs to the rights of the claimant to water from Three Springs. This result could be achieved without injury to the rights of other water users by describing the priority date of this right as 06/01/1977, and including the following additional language:

AS AMONG RIGHTS TO WATER WITH A SOURCE DESCRIBED AS THREE SPRINGS TRIBUTARY TO BILLINGSLEY CREEK, THIS RIGHT WILL BE ADMINISTERED AS IF THE PRIORITY DATE OF THE RIGHT WERE 02/18/1896.

Because the provision is limited to the administration of water "among rights to water from Three Springs," injury to holders of water rights from Big Springs, other sources tributary to Three Springs, or other sources to which Three Springs is tributary, is avoided. Administration "as if the priority date of the right were 02/18/1896" avoids injury to holders of other rights from Three Springs, because the only other holder of a water right from Three Springs is the Boyer family, who hold water right no. 36-00029A, with a senior priority date of 02/17/1896.

IDWR did not recommend a priority date of 02/18/1896 for this right because the facts and the law do not support such a recommendation. Nonetheless, IDWR is aware of no facts or law which would make an agreement of the parties to describe the priority date of

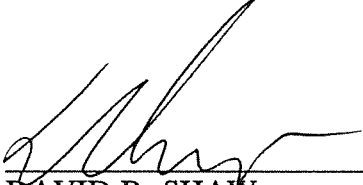
the water right as stated above inappropriate.


A. LYNNE KROGH/BRENT KING
Deputy Attorney General
Idaho Department of Water Resources

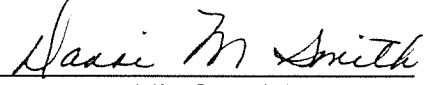
State of Idaho)
) ss.
County of Ada)

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 21st day of May, 1996.


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

CERTIFICATE OF MAILING

I certify that on May 21, 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:

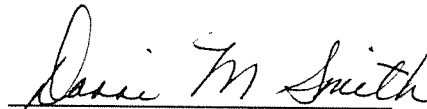
1. Original to:

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:

Gary D. Slette
P.O. Box 1906
Twin Falls, Idaho 83303-1906

Patrick D. Brown
P.O. Box 389
Twin Falls, Idaho 83303-0389



Signature of person or attorney mailing the form