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DEPARTMENT OF WATER RESOURCES

**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. 36-00003G
	)	
Case No. 39576	)	IDWR REPORT RE: REVIEW
	)	OF PRELIMINARY SPECIAL
	)	MASTER'S REPORT
	)	

Descriptive Summary

This is a report to the Court and claimants-objectors Cleave and Betty Lloyd detailing IDWR's comments and suggestions regarding the Preliminary Special Master's Report and Recommendation for the above-referenced SRBA subcase.

Discussion

The comments of IDWR regarding the specific elements of the water right as described and discussed in the Preliminary Special Master's Report and Recommendation (hereinafter "Preliminary Report") are as follows:

1. QUANTITY

A. Duty of Water.

IDWR disagrees with the statement contained in section 7 of the Findings of Fact (Preliminary Report, p. 6) that ". . . Mr. Lloyd offered some evidence in support of a diversion quantity higher than recommended by IDWR" Mr. Lloyd offered no relevant evidence regarding the duty of water for the place of use of this water right as recommended by IDWR and found by the Special Master. Simply put, the duty of water was not a contested issue, nor was the matter tried in court.

Mr. Lloyd claimed one inch per acre for twenty acres and at no point during the pre-trial conference asserted that more was needed. Although Mr. Lloyd entered into evidence a report by the U.S. Department of Agriculture, Soil Conservation Service (SCS report), dated October 2, 1992, a review of the trial proceedings will show that Mr. Lloyd offered that report for purposes of showing seepage losses for ditches in the Hagerman valley and not to establish any particular duty of water. The part of the SCS report cited by the Special Master in section 7 of the Findings of Fact, (Preliminary Report, p. 6) addressed the Hagerman valley in general in regards to growing mint, since Mr. McFadden, the party for whom the report was prepared, grows mint. There was no evidence presented at trial to show that Mr. Lloyd's land ever grew mint, was of the same soil intake family, used furrow irrigation, or contained steep slopes as

mentioned in the SCS report. The SCS report never states that 28 gpm/ac. is the actual duty of water for the Hagerman valley, but merely states that, "*It can be argued...*" that 28 gpm/ac. could be used, without giving any factual basis for that conclusion. In summary, the SCS report does not give the kind of site-specific information needed in determining the duty of water necessary for Mr. Lloyd's place of use.

IDWR also disagrees with the statement contained in the Findings of Fact (Preliminary Report, p. 6) that "A supplement to the SCS report, dated October 7, 1992 more specifically described a farm near the Lloyd's property." This supplement addressed mint growing on property owned by Dan McFadden. No evidence in the record purports that Mr. McFadden's property is near the Lloyd property, nor that the climate, soil texture, topography, efficiencies of the irrigation systems, or any other factor mentioned in the supplement was similar to the Lloyd property. Indeed, a comparison shows that the McFadden property is on the opposite side of Hagerman from Mr. Lloyd's property. The SCS supplement is simply not relevant to the Lloyd property. Therefore, the prima facie presumption of correctness of IDWR's recommendation of the quantity element was not overcome by Mr. Lloyd and, accordingly, is the quantity that should be recommended by the Special Master¹.

Alternatively, if the Special Master believes that the presumption of correctness has been overcome by evidence that can be construed as suggesting that there are places in the Hagerman

¹ IDWR relies on the following for its conclusions: Graham v. Leek, 65 Idaho 279, 114 P.2d 475 (1943); Farmers Highline Canal and Reservoir Co. v. City of Golden, 129 Colo. 575, 272 P.2d 629 (1954); Lewis, Craig D., *Idaho Rule of Evidence 301 Needs Revision*, The Advocate, Vol. 39, No. 2, February 1996; Idaho Code § 42-1411 and § 42-1412.

Valley where the duty of water exceeds 0.03 cfs per acre, IDWR proposes that the proceedings be reopened to allow both Mr. Lloyd and IDWR to present evidence as to the duty of water for the actual three-acre place of use of this water right. IDWR has tried to complete a "Hubble" analysis for the Lloyd property, but has been unable to do so because of lack of information. IDWR suggests that the Special Master request IDWR to perform a Hubble analysis of Mr. Lloyd's property, with Mr. Lloyd's cooperation, and submit the results to the court and parties.

B. Conveyance Loss.

IDWR also would point out that the Special Master's computation for conveyance loss contained mathematical errors. Testimony at the trial by Steve Clelland and Alan Merritt shows that conveyance loss in the Buckeye ditch has a certain range of loss for *all* water contained in the ditch-- not for each water right. If a conveyance loss is calculated at 25% for each water right contained on the ditch, the amount of water decreed will exceed the capacity of the ditch, because all water users on the ditch share in the conveyance loss. Also, testimony at the trial showed that if the conveyance loss is changed for one water right, it could affect the conveyance loss of other water rights. IDWR has a computer program that estimates the conveyance loss for all water rights on a ditch, using the Worstell method. IDWR suggests that at the same time it does the Hubble analysis for the Lloyd's place of use (assuming that the Special Master requests one) IDWR will also calculate the conveyance loss using the Worstell method and likewise submit it to the Court and parties.



Brent King
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CERTIFICATE OF MAILING

I certify that on July 15, 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:

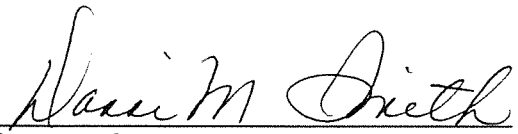
1. Original to:

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