

RECEIVED

JUL 25 1996

Department of Water Resources
Adjudication Bureau

COF

RECEIVED

JUL 25 1996

OFFICE OF THE
ATTORNEY GENERAL

**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

Case No. 39576

STANDARD FORM 5

SUBCASE NO: 34-00970

STIPULATED ELEMENTS OF A
WATER RIGHT

**THIS FORM MAY ONLY BE USED IF ALL PARTIES HAVE STIPULATED TO ALL
ELEMENTS OF ONE WATER RIGHT AND MAY BE SUBMITTED AT ANY TIME
FOLLOWING THE CLOSE OF THE STATUTORY RESPONSE PERIOD.**

This form is used to report the stipulated elements of one water right acquired under state law and/or one federal reserved water right. Submission of this form will not automatically result in the issuance of a partial decree. The Presiding Judge or Special Master will conduct any hearing necessary to determine whether the facts, data, expert opinions and law support the issuance of a partial decree for the water right.

The parties agree that the Snake River Basin Adjudication Court has jurisdiction of the parties and subject matter to enter a partial decree for this water right; and they have been served with sufficient process, according to the law; and that they have appeared, prosecuted and defended their positions with regard to this water right dispute.

Instructions For Use

A copy of this water right as recommended in the director's report shall be submitted with this form. A statement shall accompany each element of a water right.

Elements where there has been no objection should be listed exactly as they appear in the director's report. The statement as to these uncontested elements shall state "as recommended in the director's report."

Contested elements that are the result of an objection filed with the court shall be accompanied by a statement fully describing all facts, documents, expert opinions and law which support the element of the water right (attach additional pages if necessary).

ELEMENTS

Required Statement: IDWR and the parties stipulate that the attached Idaho Department of Water Resources Recommended Water Rights Acquired Under State Law is the correct description of each element of water right No. 34-00970; provided, however, that the director's report recommended a season of use for irrigation of April 15 to October 15, and the director continues to recommend that the description of the right in this manner is appropriate and necessary to define and administer water rights with a purpose of use for irrigation. In the Memorandum Decision and Order Re: Basin-Wide Issue 5, the Presiding Judge concluded that "all decrees for irrigation in the SRBA shall set the period of use as the 'irrigation season'". Order, pp.15-16. Pending further proceedings in the decision of the SRBA District Court on Basin-Wide Issue 5, this Standard Form 5 describes the season of use for irrigation as "irrigation season".

The director's report included a further description on non-irrigation uses (stockwater) by type and number of head. This Standard Form 5 includes a refinement of the further description of non-irrigation uses developed as part of the proceedings in Basin-Wide Issue No. 12. On June 12, 1996, Special Master Haemmerle issued the Special Master's Recommendation Re: Basin-Wide Issue 12, which held that this further description was not necessary to define and/or administer de minimis stockwater rights; a motion for reconsideration is pending and efforts by the special master and the parties to identify an appropriate alternative to the further description of stockwater uses are currently underway. IDWR recommends portions of rights that meet the de minimis stockwater definition, such as the stockwater portion of this right, in the same manner as the de minimis stockwater rights. Pending the resolution of Basin-Wide Issue No. 12, this Standard Form 5 includes the refined description of stockwater uses by type and number of head mentioned above.

Review By IDWR

To speed up entry of a decree, the parties are encouraged to talk to the Idaho Department of Water Resources about their proposed settlement and have IDWR indicate its concurrence by signing the Standard Form 5.

Where all parties have signed, a Standard Form 5 may be filed with the court without the concurrence of IDWR. However, the parties must certify that they have served IDWR with a copy of the Standard Form 5 and that they have made a good faith attempt to resolve the matter with IDWR.

Within 14 days of filing a Standard Form 5 not containing an IDWR concurrence, IDWR shall file a statement of its position with the court.

If IDWR has not concurred by signing below, signing parties certify that they have served a copy of this document on the Idaho Department of Water Resources and have made a good faith attempt to obtain IDWR's concurrence, but have failed.

The stipulation of the parties is attached hereto and incorporated herein by reference.

Signatures and Addresses of Parties and their Attorney of Record (attach additional page if necessary):

I have read this form and know its contents and that the statements are true to the best of my knowledge and belief.

Name: Robert Spraker

Address: Rt. 1, Box 438

City/State/Zip: Arco, ID 83213

Attorney of Record: Peter Ampe

Robert Spraker 7-22-96
Party's Signature Date

Name: Idaho Dept. of Water Resources

Address: P.O. Box 83720

City/State/Zip: Boise, ID 83720-0098

Attorney of Record: Matt Howard

Matt Howard 7/12/96
Attorney's Signature Date

Josephine Spraker 7-22-96
Party's Signature Date

Peter Ampe 7/27/96
Attorney's Signature Date

Name: Lewis & Olive Rothwell

Address: Rt. 1, Box 550

City/State/Zip: Arco, ID 83213

Attorney of Record: Peter Ampe

Lewis Rothwell 7-22-96
Party's Signature Date

Olive D. Rothwell
Party's Signature Date

P. Ampe 7/24/96
Attorney's Signature Date

INSTRUCTIONS FOR MAILING

You must mail this form, including all attachments, to the Clerk of the SRBA Court and to the parties identified in the Certificate of Mailing. FAX filings will not be accepted by the SRBA Clerk of the Court.

You must sign the Certificate of Mailing to show that you followed these steps.

CERTIFICATE OF MAILING

I certify that on July 23, 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:

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 83720
Boise, ID 83720-0098

Peter Ampe
P.O. Box 66
Twin Falls, ID 83303



Signature of person or attorney mailing the form

AJ5856NP

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

DATE: JUL-11-1996

PAGE: A-1

RIGHTS FROM: SOURCE: CHAMPAGNE CREEK TRIBUTARY: SINKS

RIGHT NUMBER: 34-00970

NAME AND ADDRESS: ROBERT SPRAKER
RT 1 BOX 438
ARCO ID 83213

~~KEVIN ROTHWECK~~
~~PAUL ROTHWECK~~
~~RT 1 BOX 330~~
~~ARCO ID 83213~~

SOURCE: CHAMPAGNE CREEK TRIBUTARY: SINKS

QUANTITY: 4.49 CFS
5.4 AFY

THE QUANTITY FOR NON-IRRIGATION USE IS LIMITED TO THE AMOUNT BENEFICIALLY
USED FOR: STOCKWATER, 400 CATTLE
USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 4.49 CFS. COMBINED RIGHT NOS.:
34-10454 AND 34-10868A.

PRIORITY DATE: 03/12/1912

POINT OF DIVERSION: T03N R24E S26 NENWNW Within BUTTE County

PURPOSE AND

PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	<u>IRRIGATION</u>	<u>Irrigation Season</u>	<u>0.21 CFS</u>
	<u>STOCKWATER</u>	<u>04-01 07-15</u>	<u>0.13 CFS</u>
	<u>DIVERSION TO STORAGE</u>	<u>04-01 07-15</u>	<u>4.49 CFS</u>
	<u>STOCKWATER STORAGE</u>	<u>01-01 12-31</u>	<u>5.4 AFY</u>
	<u>STOCKWATER FROM STORAGE</u>	<u>01-01 12-31</u>	<u>5.4 AFY</u>

PLACE OF USE: IRRIGATION Within BUTTE County
T03N R25E S21 SWNE 5.0
5.0 ACRES TOTAL
111/910 ACRES TOTAL

STOCKWATER Within BUTTE County
T03N R25E S21 NWNE SWNE

DIVERSION TO STORAGE
SAME AS OTHER USE

STOCKWATER STORAGE

AJ5856NP

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

DATE: JUL-11-1996

PAGE: A-2

34-00970 (CONT.)

SAME AS OTHER USESTOCKWATER FROM STORAGE Within BUTTE CountyT03N R25E S15SWSWS22NWNWCONSUMPTIVE USE: 12.5 AFYEXPLANATORY MATERIAL: BASIS OF CLAIM - DECREE