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ELEMENTS OF STOCKWATER RIGHTS (3rd)

57-2362 ext 2

96-08-0014

In Re SRBA  
Twin Falls County Civil Case No. 39576  
Subcase No.: See Attached Exhibit A

Report to the SRBA District Court

Prepared by the Idaho Department of Water Resources  
Karl J. Dreher, Director  
David R. Tuthill Jr., Acting Adjudication Bureau Chief

August 8, 1996

## ELEMENTS OF STOCKWATER RIGHTS (3rd)

The Director of the Idaho Department of Water Resources submits this third report regarding the elements of stockwater rights in response to the question of the Special Master at the hearing on the United States Motion for Reconsideration.

IDWR's recommendations in the director's report quantified all rights or portions of rights for "de minimis" stockwater uses in the same manner, including a diversion rate and including a further description of stockwater uses by type and number of head, as described in IDWR's Report Re: Elements of Small Stockwater Rights, which was previously submitted in this matter. At the hearing on Basin Wide Issue 12, the Special Master asked if an appropriate alternative would be to omit the description of type and number of head, and to instead include a 13,000 gallon per day "cap" pursuant to Idaho Code §42-1401A(12). David B. Shaw, then Adjudication Bureau Chief, indicated that this would be an acceptable alternative (so long as it was clear this was a cap and not a determination of actual historical beneficial use). The Special Master subsequently concluded that §42-1401A(12) applies only to stockwater rights with diversions, and does not apply to instream stockwater rights. At the hearing on the United States motion for reconsideration, the United States agreed that its "de minimis" instream stockwater rights should be quantified in the same manner as its "de minimis" stockwater rights with diversions. The Special Master asked whether "de minimis" instream livestock rights by other claimants should also be quantified in a similar manner.

Prior to its amendment in 1994, §42-1401A(12) defined stockwater as "the use of water solely for livestock or wildlife where the total use is not in excess of 13,000 gallons per day." (Emphasis added.) This definition of small stockwater purposes is relevant to the adjudication for two purposes, among others. First, IDWR used the definition to identify a large class of small claims for which a more summary review process would be employed. Secondly, it identified a class of small claims to which the \$25.00 filing fee applied. Pursuant to Idaho Code §42-1414, small domestic and stockwater claims are subject to a \$25.00 filing fee. Other claims are subject to a \$50.00 flat fee plus a variable fee based on the purpose(s) of use claimed. Thus, claims characterized as "de minimis" include all stockwater claims for which a \$25.00 filing fee was paid, whether instream or diverted, all of which were claimed subject to the 13,000 gallon per day limit.<sup>1</sup>

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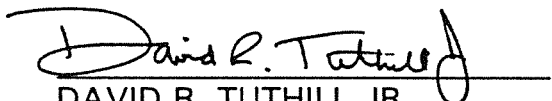
<sup>1</sup> Claim filing fees are further described in IDWR's Adjudication Rules, IDAPA 37.03.01 *et seq.* IDWR quantifies *portions* of claims for de minimis stockwater uses in a similar manner. Pursuant to the adjudication rules, no filing fee is required for *portions* of claims for de minimis stockwater uses.

ELEMENTS OF STOCKWATER RIGHTS (3rd)

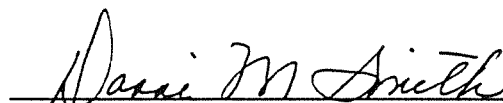
State of Idaho       )  
                              ) ss.  
County of Ada       )

David R. Tuthill Jr., being first duly sworn, upon oath, deposes and says:

That I am the Acting Adjudication Bureau Chief for IDWR, and 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 R. TUTHILL JR.  
Acting Adjudication Bureau Chief

Subscribed and sworn to before me this 8<sup>th</sup> day of August, 1996.

  
Notary Public for Idaho  
Residing at:  
My commission expires:

Certificate of Service

I certify that on the 8<sup>th</sup> day of August, 1996, I served copies of the foregoing document by FAX to the following persons at the following numbers:

Lee Leininger: 202-305-0274  
Shawn Del Ysursa: 208-389-7515  
Thane Twiggs/Matt McKeown: 208-334-2690

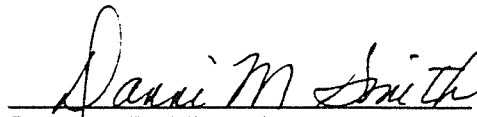
  
Person FAXing document(s)

**Exhibit A**

**Subcase Nos:**

57-02362      57-11335  
57-02365A    57-11337  
57-02379      57-11360  
57-02380      57-11367  
57-02382      57-11375  
57-02407      57-11376  
57-02419      57-11377  
57-02423      57-11379  
57-02429      57-11380  
57-07056      57-11382  
57-07298      57-11385  
57-07335      57-11398  
57-07417      57-11399  
57-07431      57-11422  
57-07442      57-11424  
57-10960      57-11449  
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