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ELEMENTS OF STOCKWATER RIGHTS (3rd)

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.¹

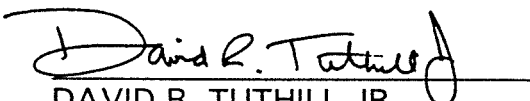
¹ Claim filing fees are further described in IDWR's Adjudication Rules, IDAPA 37.03.01 *et seq.* IDWR quantifies *portions* of claims for de minimis stockwater uses in a similar manner. Pursuant to the adjudication rules, no filing fee is required for *portions* of claims for de minimis stockwater uses.

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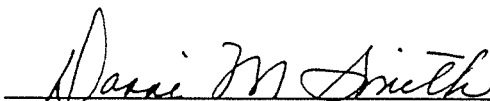
State of Idaho)
) ss.
County of Ada)

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 8th day of August, 1996.


Notary Public for Idaho
Residing at:
My commission expires:

Certificate of Service

I certify that on the 8th 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

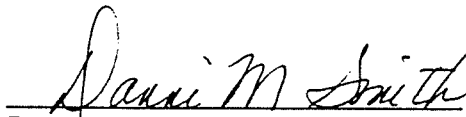

Person FAXing document(s)

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
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57-11201	
57-11246	
57-11284	
57-11286	
57-11287	
57-11304	
57-11317A	
57-11331	
57-11333	

(Order Setting SF5 Hearing)