

**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     | ) | STANDARD FORM 5          |
|                | ) | AMENDED MAY 14, 1996     |
| Case No. 39576 | ) |                          |
|                | ) | SUBCASE NO: 36-00051E    |
|                | ) |                          |
|                | ) | STIPULATED ELEMENTS OF A |
|                | ) | WATER RIGHT              |

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**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

1. The name and address of the claimant is:

CARMEN M ZABALA  
IGNACIO NICK ZABALA  
17876 US HWY 30  
BLISS ID 83314

Required Statement: As recommended in the director's report.

2. The source of water is:

Source: BILLINGSLEY CREEK                      Tributary: SNAKE RIVER

Required Statement: As recommended in the director's report.

3. The quantity of water used in cubic feet per second or the quantity of water stored in acre-feet per year is:

|                 |          |
|-----------------|----------|
| IRRIGATION      | 0.05 CFS |
| STOCKWATER      | 0.01 CFS |
| TOTAL QUANTITY: | 0.05 CFS |

THE APPROPRIATOR IS ENTITLED TO THE QUANTITY OF WATER DESCRIBED FOR STOCKWATER PURPOSES AT A POINT OF MEASUREMENT WHERE THE DELIVERY DITCH ENTERS THE PLACE OF USE, SO LONG AS THE QUANTITY DIVERTED AT THE POINT OF DIVERSION DOES NOT CONSTITUTE UNREASONABLE WASTE.

Required Statement: As recommended in the director's report, except that this SF5 provides for measurement of the quantity for stockwater at the place of use instead of the point of diversion. The description of the right in the director's report previously sought to quantify stockwater use outside the irrigation season at the point of diversion.

4. The priority date is: 06/26/1881

Required Statement: As recommended in the director's report.

5. The legal description of the point(s) of diversion is;

T07S R13E S11 NESENE                      Within GOODING County

Required Statement: As recommended in the director's report.

6. The purpose of use is:

IRRIGATION

NON-IRRIGATION USES: STOCKWATER, 5 BEEF

Required Statement: As recommended in the director's report. The director's report included a further description on non-irrigation uses (stockwater) by type and number of head. 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 description of stockwater uses by type and number of head above.

7. The period of year when the water is to be used is:

IRRIGATION

Irrigation Season

STOCKWATER

01-01 TO 12-31

Required Statement: As recommended in the director's report, except that the period of use for irrigation is described per the Court's decision on Basin-Wide Issue 5.

8. The legal description of the place of use or of the reservation is:

PLACE OF USE: IRRIGATION

Within GOODING County

T07S R13E S02 NWSE (1.0 ACRES TOTAL)

PLACE OF USE: STOCKWATER

Within GOODING County

T07S R13E S02 NWSE

Required Statement: As recommended in the director's report.

9. The annual volume of consumptive use is:

3.0 AFY

THE CONSUMPTIVE USE VOLUME IS ONLY FOR THE IRRIGATION PORTION OF THIS RIGHT.

Required Statement: As recommended in the director's report. The sentence as to consumptive use was previously located in a general provision.

10. Other matters necessary to define this water right. NOT APPLICABLE

These matters are necessary because: NOT APPLICABLE

These matters do not fall within the 9 elements listed above because: NOT APPLICABLE

### 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.

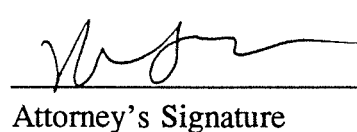
**Signatures and Addresses of Parties and their Attorney of Record** (attach additional page if necessary):

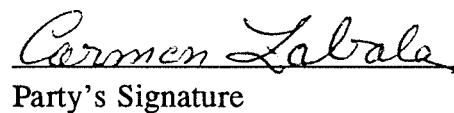
I have read this form and know its contents and that the statements are true to the best of my knowledge and belief.

Name: Ignacio and Carmen Zabala  
Address: Rt. 1 Box 368  
City/State/Zip: Hagerman, ID 83332  
Attorney of Record: Pat Brown

Name: Idaho Dept. of Water Resources  
Address: P.O. Box 83720  
City/State/Zip: Boise, ID 83720-0098  
Attorney of Record: Brent King

 8/5/96  
Party's Signature Date

 7/31/96  
Attorney's Signature Date

 8-5-96  
Party'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 August 7, 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

U.S. Department of Justice  
Environment and Natural  
Resources Division  
550 West Fort Street, Box 33  
Boise, ID 83724-0663

Ignacio Nick Zabala  
Carmen M. Zabala  
17876 US Hwy 30  
Bliss ID 83314

  
Signature of person or attorney mailing the form

BRENT KING  
Deputy Attorney General  
Idaho Department of Water Resources  
P.O. Box 83720  
Boise, ID 83720-0098  
Telephone: (208) 327-7900  
Fax: (208) 327-5400

Attorney for IDWR

RECEIVED

AUG 07 1996

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     | ) | Sub-case No. 36-00051E |
|                | ) |                        |
| Case No. 39576 | ) |                        |
|                | ) |                        |
|                | ) | STIPULATION            |
|                | ) |                        |

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**DESCRIPTIVE SUMMARY**

This is a stipulation to resolve the objection to water right number 36-00051E.

**STIPULATION**

To resolve the dispute over the above-captioned water right, the Idaho Department of Water Resources (IDWR) and Ignacio Nick and Carmen M. Zabala (the objectors/claimants), stipulate and agree that:

1. The Standard Form 5 for water right no. 36-00051E, attached hereto and incorporated by reference herein, sets forth the description of the water right as described in the director's report. All decrees, whether partial or final, should describe the water right as shown in the director's report.

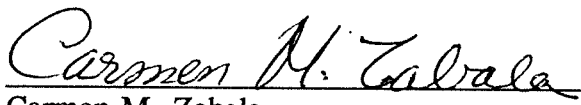
2. The Standard Form 5 and this stipulation have been reached through good faith negotiations for the purpose of resolving legal disputes, including pending litigation, and all parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal proceeding, and that this agreement is not and shall not be used as precedent for resolution, either through settlement or litigation, of any other claim to a water right.

3. All parties agree to bear their own costs and attorney's fees in connection with this matter.

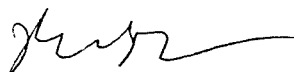
4. The Standard Form 5 and this stipulation were entered into and executed voluntarily by all parties in good faith, and without any fraud, misunderstanding, overreaching, misrepresentation, duress, or undue influence whatsoever.

Dated this 8 day of August, 1996.

  
\_\_\_\_\_  
Ignacio Nick Zabala

  
\_\_\_\_\_  
Carmen M. Zabala

Dated this 31 day of July, 1996.

  
\_\_\_\_\_  
Brent King  
Deputy Attorney General  
Idaho Department of Water Resources