

REPORT REGARDING BRAILSFORD DITCH STOCKWATER

In Re SRBA

Twin Falls County Civil Case No. 39576

Subcase Nos. 36-00012, 36-00030, 36-00043A, 36-00084,
36-00104A and 36-00104B

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

September 5, 1996

REPORT REGARDING BRAILSFORD DITCH STOCKWATER

The Director of the Idaho Department of Water Resources (IDWR) submits this report regarding Brailsford Ditch stockwater in response to the request of Special Master Haemmerle at the August 14, 1996, status conference involving subcase nos. 36-00012, 36-00030, 36-00043A, 36-00084, 36-00104A and 36-00104B, and pursuant to Idaho Code §42-1412(4). At that time the Special Master requested IDWR to prepare a report addressing (1) whether IDWR would have collected additional filing fees from claimants Nevada Omohundro, Shelby and Joan Wise, John Mavencamp, and Ronnie and Charlene Smith, had they claimed year-round stockwater as an additional use on their notices of claim; and (2) whether, on the basis of information now available to it, IDWR is presently willing to amend its recommendations of water right nos. 36-00043A, 36-00084, 36-00104A and 36-00104B to recommend year-round stockwater as an additional purpose of use.

A. FILING FEES

The filing fee for claims other than small domestic and stockwater claims consists of a flat \$50.00 fee, plus a variable fee of \$1.00 per acre for any claimed irrigation use, plus a per cfs variable fee for other claimed purposes of use. The filing fee for small domestic and stockwater rights is \$25.00; no filing fee is required for portions of rights for small domestic and stockwater rights.¹

IDWR's records show that the claimants of water right nos. 36-00043A (Omohundro), 36-00084 (Wise), 36-00104A (Mavencamp) and 36-00104B (Smith) each claimed irrigation as the sole purpose of use for these rights. Accordingly, each paid the fifty dollar (\$50.00) flat fee provided for by Idaho Code §42-1414(1)(a)(ii) plus the irrigation use variable fee of one dollar (\$1.00) per acre claimed, as provided for by Idaho Code §42-1414(1)(b)(I).

If the claimants had claimed a small stockwater use (a diversion rate up to 0.24 cfs and a diversion volume up to 13,000 gallons per day), no additional filing fee would have been required. If the claimants had claimed a larger stockwater use, an additional variable fee of \$100 per cfs would have been required.²

B. RECOMMENDATION OF YEAR-ROUND STOCKWATER USE

For reasons described below, IDWR is prepared to recommend a small stockwater use for water right numbers 36-00043A (Omohundro), 36-00084 (Wise),

¹ Filing fees are set forth in Idaho Code §42-1414 and IDWR's Adjudication Rules, IDAPA 37.03.01 *et seq.*

² See IDAPA 37.03.01.07, 37.03.01.04.c., and 37.03.01.06.

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and 36-00104B (Smith), but is not prepared to recommend a stockwater use for water right no. 36-00104A (Mavencamp) at this time.

1. Omohundro, Wise and Smith

Because stockwater was not claimed for any of these rights IDWR did not investigate to confirm that purpose of use in preparing its recommendations. However, during various settlement conferences and other discussions the claimants have had with the United States and IDWR they have asserted that they graze livestock in the pastures bordering the Brailsford Ditch during the irrigation season, and winter livestock there as well. When so pastured, the livestock drink directly out of the ditch.

If claimants Omohundro, Wise and Smith now seek to claim small year-round stockwater uses of 0.02 cfs, IDWR would recommend such uses for the following reasons.

IDWR has reached agreement with Flying Triangle, Inc. to resolve its objection to IDWR's recommendation of water right no. 36-00030. Pursuant to this agreement IDWR has prepared a Standard Form 5 that includes within it Flying Triangle's claimed year-round stockwater use of 0.14 cfs. The Standard Form 5 provides that this quantity is to be measured at the place of use, and that the claimant is entitled to divert at the point of diversion a reasonable quantity sufficient to convey the 0.14 cfs down the ditch to the place of use. Since Flying Triangle's right is the last water right on the Brailsford Ditch, this agreement in effect provides that there will be water in the ditch during the winter months which would be available to satisfy small stockwater rights for Omohundro, Wise and Smith.

As part of the agreement between the United States and the Brailsford Ditch irrigators, the parties have agreed that 4.0 cfs is to be released down the ditch during the winter months. This agreed-to quantity provides both a definition for the parties to the agreement as to what constitutes a reasonable diversion rate at the point of diversion to convey Flying Triangle's winter stockwater to the place of use, as well as a cap on the quantity that Flying Triangle may divert for that purpose. Moreover, since the agreement between the United States and the Brailsford Ditch Irrigators also includes recognition by the United States of small year-round stockwater rights for Omohundro, Wise, Mavencamp and Smith, the agreed-to winter diversion rate contemplates such uses and is therefore of sufficient size to satisfy them.

IDWR has developed guidelines for the quantification of stockwater rights. These guidelines are based on gallon per day per head standards published by the United States Environmental Protection Agency. To allow for differences in the

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method of delivery of this volume, IDWR uses a two-hour formula, computing the diversion rate that will produce the required diversion volume within a two-hour period. A claimed diversion rate up to the diversion rate produced by the formula is deemed a reasonable diversion rate for the type and number of stock watered pursuant to the water right. Under these guidelines, a reasonable diversion rate for 0-50 head of cattle is 0.02 cfs. At the present time, IDWR does not have information as to the use of water for a greater number of livestock which would support recommendation of a greater diversion rate. In addition, 0.02 cfs is the diversion rate which, diverted continuously, would produce approximately 13,000 gallons per day, the diversion volume limit for a small stockwater right.³ Due to the significant conveyance losses in the Brailsford Ditch, and the difficulty of allocating that conveyance loss among the water rights from the ditch, IDWR would recommend that the description of the right include language providing that the 0.02 cfs is to be measured at the place of use, the same as in the Standard Form 5 submitted for the Flying Triangle Right.⁴ Small stockwater rights, described in this manner, should be sufficient to supply what IDWR understands to be the stockwatering practices of Omohundro, Wise and Smith.⁵

2. Mavencamp

The Mavencamp property does not border the Brailsford Ditch. Water used pursuant to water right no. 36-00104A is conveyed from the ditch through a pipe to the place of use. IDWR understands that the water used pursuant to this right is conveyed through the pipe up onto a ridge, along the crest of the ridge, and into irrigation hand lines coming off both sides of the ridge. While IDWR further understands that Mavencamp does winter stock in this same area, the water for those stock is provided by filling stock tanks from a water line coming from the barn. This stockwater use was both claimed and recommended under water right no. 36-15454, which has not been objected to.

³ Further information as to IDWR's methodology for the quantification of small stockwater rights is included in IDWR's reports currently of record in the court's files as to Basin Wide Issue 12.

⁴ Further information as to IDWR's use of remarks providing for the measurement of small stockwater rights at the place of use is included in IDWR's Report Regarding Claim to Water Right No. 36-0003A, at section II.G.4, which report is currently of record in that subcase.

⁵ Recommendation of an amount for year-round stockwater would not, however, result in an increase in the total amount of water recommended pursuant to these rights during the irrigation season. (In other words, the amount recommended for irrigation and the amount recommended for stock would not be additive.)

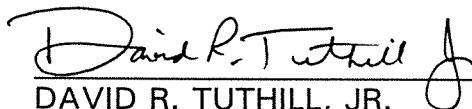
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Therefore, IDWR could not agree to inclusion of a stockwater use in water right no. 36-00104A, without first being provided information to confirm the use of water for stock from the Brailsford Ditch and to determine the extent of that use. IDWR requested additional information about this in a letter to then legal counsel for Mavencamp in early March; as yet, however, Mavencamp has provided no additional information.

STATE OF IDAHO)
) ss.
County of Ada)

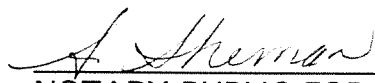
DAVID R. TUTHILL, JR., being first duly sworn upon oath, deposes and says:

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 6th day of September, 1996.



NOTARY PUBLIC FOR IDAHO
Residing at: Boise, ID
Commission expires: 11-14-1998

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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of September, 1996, I served a true and correct copy of the foregoing document on each of the following persons by first class mail, postage prepaid, to the addresses listed below.

Ms. Nevada Omohundro
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Hagerman, Idaho 83332

Mr. Ronnie D. Smith
1046 East 2900 South
Hagerman, Idaho 83332

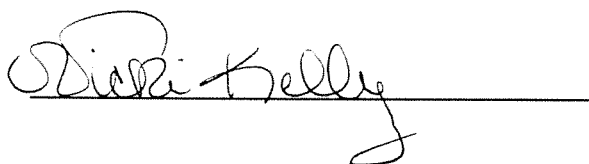
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A handwritten signature, appearing to read "Rick Kelly", is written over a horizontal line.