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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
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Department of Water Resources

**SUPPLEMENTAL DIRECTOR'S REPORT REGARDING
SUBCASE NO. 65-02900**

In Re SRBA
Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

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

February 3, 2003

I. INTRODUCTION

Special Master Thomas R. Cushman of the Snake River Basin Adjudication ("SRBA") court issued a trial scheduling order on December 3, 2002, requesting the Director of the Idaho Department of Water Resources ("IDWR") to submit a report to the court detailing IDWR's basis for its recommendation in subcase no. 65-02900. In response to this request, IDWR submits this Supplemental Director's Report Regarding Subcase No. 65-02900 in accordance with Idaho Code § 42-1412(4) and Administrative Order 1. This report was prepared under the supervision of Karl J. Dreher, Director, and David R. Tuthill Jr., Adjudication Bureau Chief for IDWR.

The following IDWR employee has knowledge of the information contained in this report: Ron Howerton, Senior Water Right Agent.

II. BACKGROUND

Water right 65-02900 is claimed in the SRBA by Black Canyon Irrigation District ("Black Canyon"). On September 18, 2001, IDWR filed its recommendation for water right 65-02900 with the SRBA District Court. On January 7, 2002, Black Canyon filed an objection, contesting the place of use element in IDWR's recommendation. No other objections or responses have been filed.

III. DISCUSSION

This report first discusses Black Canyon's objection to IDWR's recommendation and then explains the history of water right 65-02900. Lastly, this report examines the basis of IDWR's recommendation for the place of use element.

A. Black Canyon's Objection.

Black Canyon objects to IDWR's place of use recommendation for 65-02900. Specifically, Black Canyon objects to the total number of acres recommended under the place of use element. IDWR's place of use recommendation states in full:

This right is limited to the irrigation of 51,332 acres within the boundaries of the Black Canyon Irrigation District in a single irrigation season. Use of this right with right no. 65-2433 is limited to the irrigation of a combined total of 53,200 acres in a single irrigation season.

IDWR Recommendation for Water Right 65-02900, at 1.

In its objection, Black Canyon states that the right should be limited to the irrigation of 53,200 total acres (instead of the 51,332 total acres listed in IDWR's recommendation). Black Canyon writes, "Contract with Bureau of Reclamation which this right was obtained to supply water under is for 53,200 acres." *Standard Form 1 Objection* filed by Black Canyon, at 2.

B. History of water right 65-02900.

Water right 65-02900 is based upon a license issued by IDWR. Black Canyon filed the *Application for Permit* for this water right on September 13, 1965, seeking a supplemental source of water for irrigation. The *Application for Permit* listed a total of 51,332 acres to be irrigated under the permit. *Application for Permit*, at 2. A copy of the *Application* is attached to this report as Attachment "A." Notice of the application was published in accordance with I.C. § 42-203. Paragraph 3 of the notice states, "That the lands to be irrigated are 51,332 acres in Black Canyon Irrigation District in Townships 4,5,6, and 7N., Ranges 2,3,4 and 5 W., B.M." *Notice of Application for Permit*, at 1, a copy of which is attached hereto as Attachment "B." The State Reclamation Engineer

(the predecessor of the Director of the IDWR) approved the application on August 10, 1967.¹

IDWR issued the license for this water right on July 26, 1982.² The place of use is listed on the license as “Within the Boundaries of the Black Canyon Irrigation District. Total number of acres irrigated 51,332.” *License for Water Right 65-02900*, at 2. A copy of the license is attached to this report as Attachment “C.”

C. Basis for IDWR’s Recommendation

Generally, a license issued by IDWR is binding upon both IDWR and the license holder. *See Order on Challenge (Consolidated Issues) of "Facility Volume" Issue and "Additional Evidence" Issue*, subcases 36-02708 *et al.* (Dec. 29, 1999) (“Facility Volume Decision”), at 16. The 51,332 irrigated acres recommended by IDWR is based upon the 51,332 acres applied for and subsequently licensed to Black Canyon. IDWR did modify the place of use language from the license slightly, but this change was done to clarify the water right’s supplemental nature to water right 65-02433 and to aid its administration. The modified language does not impact Black Canyon’s existing rights under 65-02900.

IV. CONCLUSION

IDWR’s recommendation of 51,332 total acres is based on license issued to Black Canyon. The 51,332 total acres recognized in the license comes directly from the application for permit submitted to IDWR by Black Canyon. This acreage amount was

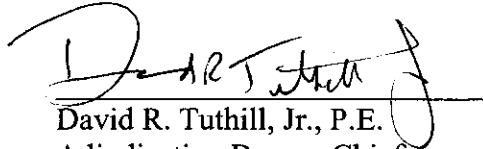
¹ Letha Irrigation and Water Company and Noble Ditch Company filed protests to the application. However, the parties reached a settlement agreement and the protests were withdrawn prior to the application approval.

² Water right 65-02900 was listed in the Proposed Findings of Water Rights in the Payette Adjudication for informational purposes, but was not decreed in the Payette Adjudication because it was still in the permit stage.

approved by IDWR in the licensing process and was not objected to by Black Canyon.

Accordingly, IDWR recommends that the Special Master adopt IDWR's recommendation for water right 65-02900.

Respectfully submitted this 3rd day of February 2003.


David R. Tuthill, Jr., P.E.
Adjudication Bureau Chief

CERTIFICATE OF MAILING

I certify that on February 3, 2003, 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:

McDevitt & Miller LLP
P.O. Box 2564
Boise, ID 83701
Attn: Chas F McDevitt

Black Canyon Irrigation District
P.O. Box 226
Notus, ID 83656

IDWR Repository
P.O. Box 83720
Boise, ID 83720



Signature of person or attorney mail

EXHIBIT A

P. O.

65-2900

APPLICATION FOR PERMIT

TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF IDAHO

Application No. 40673

Permit No. 33634

District No. _____

RECEIVED
JAN 10 1966
7:30 A.M.
DEPARTMENT OF RECLAMATION

1. Name of Applicant: BLACK CANYON IRRIGATION DISTRICT

Post Office address Notus County Canyon State Idaho

If applicant is a corporation, give:

(a) Date and place of incorporation: _____

(b) Amount of Capital stock: \$ _____

(c) Amount paid in: \$ _____

(d) Names and addresses of directors: Harold R. Iverson, President, Rt. 1, Caldwell,
Roy L. Miller, Rt. 1, Parma, Robert A. Goodell, Rt. 1, Caldwell, John T. Ray,
Rt. 1, New Plymouth, Idaho, Gerald O. Talbot, 1824 South Kimball, Caldwell, Idaho

The financial resources of the applicant are: (a) Cash on hand: \$ 149,434.57 (as of 7/30/65)
Equipment Fund - \$ 42,303.32

(b) Treasury stock: _____ (c) Bonds to be issued: _____

(d) Other resources: \$ 170,259.00 in our Contingent Reserve Fund wic. includes Series H
Bonds and Investments in U.S. Treasury Notes and Bills

2. Quantity of water claimed: one hundred cubic feet per second

3. Source of water supply: Tunnel No. 2, Black Canyon Irrigation Dist. Drain and
all tributaries

4. Location of point of diversion: 1000 S. & 610 W. feet distant from the NE corner
of Section 20, Twp. 6 N., Rge. 2 W., B. M., and is in the NE 1/4 NE 1/4

Point of discharge at Station 799 77.0 Main Canal, Black Canyon Irrigation Distr

5. Water is to be used for: irrigation

6. If for any non-irrigation purpose, give:

(a) Point of use of water: _____ feet distant from _____ corner of Section _____
Twp. _____, Rge. _____, B. M., in the _____ of Section _____, Twp. _____, Rge. _____, B. M.

(b) Amount of power generated: _____ H. P., under _____ feet head.

(c) Water is to be returned to _____ at a point _____ feet
distant from the _____ corner of Section _____, Twp. _____, Rge. _____, B. M., in the
_____ of Section _____, Twp. _____, Rge. _____, B. M.

7. Estimated cost of works: \$ 280,000

8. Kind of works: Pumping plant, ditch and pipe

(Reservoir, dam, ditch, flume, pipe, etc.)

9. Height of dam _____ feet; length of dam at top _____ feet; length of dam at bottom _____

feet; material used in dam _____
(If height of dam will exceed 10 feet or will store more than 100 acre feet of water, send to Department of Reclamation for
Regulations.)

10. Size of headgate: Width _____ feet; Height _____ feet

11. Ditch: Width at bottom 10 feet; Width at water line 35 feet; Depth of water 4 feet;

Dimensions of flume none; Diameter of pipe 48 inches;

Length of conduit 1500 feet; Average grade per mile _____ feet.

The foregoing is a true and certified copy of
the document on file at the department of
Water Resources.

Signed this 29 day of January, 2003

12. The time required for the completion of such work is two..... years.
13. The time required for the complete application of the water to the proposed use is immediate.....~~additional~~ years.
14. The land to be irrigated is described in the following tabulation:

(Give irrigable acreage in each 40-acre subdivision)

[illegible]

Total Number of Acres to be Irrigated 51,332

15. Existing water rights and/or valid permits appurtenant to the lands to be irrigated are: Rights for 1300 C.F.S
from Payette River at Black Canyon Dam

Remarks:

BLACK CANYON IRRIGATION DISTRICT
Applicant.

By Carroll C. Johnson, Agent

(Not to be used when spring is situated on lands owned by applicant.)

STATE OF IDAHO

County of _____

SS.

Witness my hand and seal, the day and year in this certificate first above written.

.....
Notary Public.

My commission expires

Approval of State Reclamation Engineer

The number of this permit is 33634

Recorded in Book Page 33634 Approved August 10, 1967

This is to certify that I have examined the within application for a permit to appropriate the public waters of the State of Idaho, and hereby approve the same, subject to the following limitations and conditions:

Bond in the sum of \$..... to be filed before

Work to begin on or before, and to continue diligently and uninterruptedly to completion, unless temporarily interrupted by circumstances over which the permit holder has no control.

One-fifth of the work above specified to be completed on or before February 10, 1970

The whole of said work to be completed on or before August 10, 1972

Beneficial use of water appropriated in accordance herewith, to be made on or before August 10, 1978

Witness my hand this 10th day of August, 1967

R. Keith Higgins
State Reclamation Engineer.

IN TESTIMONY WHEREOF, We, ... Governor of the State of Idaho,

and Secretary of State of the State of Idaho, have caused this instrument to be executed in the name of the State of Idaho, and caused the Great Seal of the State of Idaho to be hereunto affixed, this day of, 19.....

Countersigned:

STATE OF IDAHO

By
Secretary of State.

By
Governor.

No. 33634

PERMIT

Date of first receipt at office of State
Reclamation Engineer

Returned to applicant for correction

Corrected application received

Fees, \$

FILING FEES FOR USE PERMIT:

For the first Sec. Ft. \$5.00

For each additional Sec. Ft. or Fraction

Thereof .25

The foregoing is a true and certified copy of the document on file at the department of Water Resources.

Signed this 29 day of January, 2003

33634

EXHIBIT B

RECEIVED
OCT 19 1965

AFFIDAVIT OF PUBLICATION

NOTICE OF APPLICATION FOR
PERMIT TO APPROPRIATE THE
PUBLIC WATERS OF THE STATE
OF IDAHO, IN ACCORDANCE
WITH THE PROVISIONS OF
SECTION 42-203, IDAHO CODE

Department of Reclamation

STATE OF IDAHO, } ss.
COUNTY OF GEM,

NOTICE IS HEREBY GIVEN, That the Black Canyon Irrigation District of Notus, Idaho, has made application No. 40673, on the 13th day of September, 1965, to appropriate 100 cubic feet per second of the waters of Tunnel No. 2, Black Canyon Irrigation District Drain, for irrigation purposes.

That the point of diversion is located NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 20, Twp. 6 N., R. 2 W., B. M.

That the lands to be irrigated are 51,332 acres in Black Canyon Irrigation District in Townships 4, 5, 6 and 7 N., Ranges 2, 3, 4 and 5 W., B. M.

That any protests against the approval of this application must be filed in the Department of Reclamation at Boise, Idaho, within forty (40) days from the date of this notice, and such protest shall state the name and address of the protestant, and shall clearly set forth his objection to the approval of said application.

Dated this 13th day of September, 1965.

/s/ RALPH W. THOMAS
Deputy State Reclamation
Engineer

Date of First Publication: September 23, 1965.

Date of Last Publication: October 7, 1965.

Last date for Protest: October 23, 1965.

SERVICE OF THE FOREGOING, by copy, is hereby acknowledged this 15th day of September, 1965.

BLACK CANYON
IRRIGATION DISTRICT
Applicant

By: LOIS S. JOHNSTON
Secretary

3t 9/23, 30; 10/7

Amrita Dales, being first duly sworn, on his oath deposes and says that he is the printer of Messenger-Index, a legal weekly newspaper published at Emmett, in Gem County, Idaho; that said newspaper is in general circulation in said county and has been published uninterruptedly and continuously for more than 78 weeks prior to the first publication of the annexed document; and that the document notice, process, or advertisement hereunto annexed was published in the regular edition of

Messenger-Index for 3 consecutive weekly issues thereof, be-

ginning with the issue of Sept. 2, 1965 and ending with the issue of

Oct 7, 1965
Amrita Dales

Subscribed and sworn to before me this

7th day of October, 1965
James Young
N.P., residing at Emmett, Idaho

The foregoing is a true and certified copy of the document on file at the department of Water Resources.

Signed this 29 day of January, 2003

33434

EXHIBIT C

WATER RIGHT LICENSE

Director