

DISTRICT COURT
SNAKE RIVER BASIN ADJUDICATION
STATE OF IDAHO



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RECEIVED
JAN 24 2003
Department of Water Resources

SRBA CHAMBERS
P.O. BOX 2707
TWIN FALLS, IDAHO 83303-2707

January 22, 2003

Re: Joint Motion for Interim Administrative Order
Subcase 43-10356

Dear Messrs. Ward, Hall, Warr and Branch:

The SRBA Court received and filed your *Joint Motion for Interim Administrative Order* on December 5, 2002, along with a *Memorandum* and *Affidavit of Dave Sundberg*. As objectors, you asked for interim administration of subcase 43-10356 (claimed by William D. Jones and William D. Jones and Son), "as a part of Water District 43B and requiring the claimants to follow the laws of the State of Idaho and limiting the usage of this claim to that which has been recommended by the Department of Water Resources." At the same time, you reserved your *Objections* that the water right should not exist.¹

On January 10, 2003, the claimant filed an *Objection to Joint Motion for Interim Administration* because "interim administration is not reasonably necessary to protect senior water rights and on such further grounds as will be set forth at a hearing on this matter."

Idaho law specifically provides for interim administration in the midst of a general adjudication such as the Snake River Basin Adjudication. The SRBA Court can order interim administration in accordance with a director's report² based upon your *Joint Motion* to protect senior water rights, but only "after notice by the moving party by mail to the [IDWR] director and each claimant of water from the water system or portion thereof that could reasonably be determined to be adversely affected by entry of the order. . . ." I.C. § 42-1417 (2) (b). A copy of the statute is enclosed for your reference.

Based on the statute, then, you must first mail a copy of your *Joint Motion* to the IDWR Director, 1301 N. Orchard Street, Boise, Idaho 83706. Next, all claimants from the Raft River and Almo Creek "that could reasonably be determined to be adversely affected by entry of the order [of interim administration]" must be identified. The logical agency to accomplish that is IDWR. Finally, once IDWR has identified all potentially affected parties, they, too, must be mailed notice of your *Joint Motion*.

¹ There is no indication that Clark W. Ward, another objector, joined in the *Joint Motion*. Reid S. Stewart's *Objection* was dismissed on July 15, 2002, at his request.

² The *Director's Reports for Irrigation and Other, Reporting Area 7, IDWR Basin 43*, was filed with the SRBA Court on September 28, 2001.

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Practically speaking, you may choose not to proceed with the *Joint Motion* in light of the mandatory settlement conference set for February 28, 2003, and trial set for May 29, 2003. But if you do, please let us know and we will arrange a hearing date.

Sincerely,



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

Cc: Clark W. Ward
HC 61, Box 1560
Malta, Idaho 83342

Jason D. Walker
Ling & Robinson
P.O. Box 396
Rupert, Idaho 83350

IDWR Director
1301 N. Orchard Street
Boise, Idaho 83706

Roscoe Ward
P.O. Box 108
Almo, Idaho 83312

Rodney Hall
PO Box 631
Malta, Idaho 83342

Olene Warr
2231 South, 2350 East
Malta, Idaho 83342

Nolan K Branch
1823 South, 2330 East
Malta, Idaho 83342

- (a) "Expanded use" means an increase in the number of acres irrigated, or other additional use, under a valid ground water right without any increase in the rate of diversion or volume of water diverted.
- (b) "Management program" means a program to recharge the aquifer, limit withdrawals from the aquifer or provide surface water supplies for all, or a portion, of the land irrigated with water withdrawn from the aquifer, including any actions designed to bring withdrawals into balance with the average annual recharge to the aquifer.
- (c) "Recharge" refers to all processes, natural or artificial, which add water to the aquifer.
- (d) "Withdrawal" refers to all processes, natural or artificial, which take water from the aquifer.
- (6) The hearing and judicial review provisions of section 42-1701A, Idaho Code, shall apply to any findings and orders issued by the director pursuant to this section.
- (7) Nothing contained in this section shall be construed to limit the authority of the director of the department of water resources to administer and enforce any other ground water laws of the state. [I.C., § 42-1416B, as added by 1989, ch. 212, § 1, p. 521.]

Compiler's notes. Section 2 of S.L. 1989, ch. 212 declared an emergency. Approved March 29, 1989.

42-1417. General adjudication — Interim administration of water rights. — (1) The district court may permit the distribution of water pursuant to chapter 6, title 42, Idaho Code:

- (a) in accordance with the director's report or as modified by the court's order;
 - (b) in accordance with applicable partial decree(s) for water rights acquired under state law;
 - (c) in accordance with applicable partial decree(s) for water rights established under federal law.
- (2) The district court may enter the order only:
- (a) upon a motion by a party;
 - (b) after notice by the moving party by mail to the director and each claimant of water from the water system or portion thereof that could reasonably be determined to be adversely affected by entry of the order; and
 - (c) upon a determination by the court, after hearing, that the interim administration of water rights in accordance with the report, or as the report is modified by the court's order, and in accordance with any partial decree(s), is reasonably necessary to protect senior water rights.
- (3) Immediately upon entry of the court's order of interim administration of water rights, the clerk of the district court shall mail a certified copy of the order to the director, and the director shall immediately give notice of the order to the watermaster of the water districts affected by the order.
- (4) After entry of the district court's order for interim administration, the director may form a water district pursuant to chapter 6, title 42, Idaho

Code. [I.C., § 42-1417, as added by 1986, ch. 220, § 17, p. 558; am. 1987, ch. 158, § 2, p. 308; am. 1994, ch. 454, § 25, p. 1443.]

Compiler's notes. Section 16 of S.L. 1986, ch. 220 is compiled as § 42-1415.

Section 1 of S.L. 1987, ch. 158 is compiled as § 42-1412, and § 3 is compiled as § 42-238a.

Section 26 of S.L. 1994, ch. 454 is compiled as § 42-1420.

42-1418. Appeals. — An appeal may be taken to the supreme court from an order, partial decree, or decree of the district court in any adjudication proceeding as provided by rule or order of the supreme court. [I.C., § 42-1418, as added by 1986, ch. 230, § 3, p. 621.]

Compiler's notes. This section was enacted by two 1986 acts — ch. 220, § 18, approved April 3, 1986, at 6:06 a.m., effective July 1, 1986, and ch. 230, § 3, approved April 3, 1986, at 1:14 p.m., effective July 1, 1986. Since these enactments are not compatible, the enactment by ch. 230, § 3 has been compiled as the latest expression of the legislature.

The enactment by ch. 220, § 18 read: "42-1418. **Appeals.** The following orders and decrees are appealable under entry:

"(1) an order commencing a general adjudication pursuant to sections 42-1406A or 42-1408, Idaho Code;

"(2) an order of reference to a special matter in a general adjudication pursuant to section 42-1422, Idaho Code;

"(3) a partial decree in a general adjudication pursuant to subsection (9) of section 42-1412, Idaho Code; and

"(4) a decree after hearing on objections in a general adjudication pursuant to subsection (8) of section 42-1412, Idaho Code."

42-1419. Entry of an order commencing a general adjudication on a special docket — Constructive notice — Filing of certified copy of order in other counties. — (1) The clerk of the district court shall enter an order commencing a general adjudication on a special docket for water right adjudications in addition to any other district court record.

(2) From the time of docketing and not before, any order commencing a general adjudication is constructive notice of the contents thereof, within the county in which the order is docketed, to subsequent purchasers and mortgagees.

(3) The director shall file a true and certified copy of any order commencing a general adjudication with the district court for each county of this state where the water system to be adjudicated is located. The clerk of the district court shall file and docket the same as provided in subsection (1) of this section. From the time of such docketing and not before, the order so docketed is constructive notice of the contents thereof within the county in which the order is docketed to subsequent purchasers and mortgagees. [I.C., § 42-1419, as added by 1986, ch. 220, § 19, p. 558.]

42-1420. Binding effect of decree — Exceptions. — (1) The decree entered in a general adjudication shall be conclusive as to the nature and extent of all water rights in the adjudicated water system except that the following described water rights shall not be lost by failure to file a notice of claim:

(a) a water right for domestic use or stock watering use, specifically excluded from the general adjudication by court order;