



State of Idaho

DEPARTMENT OF WATER RESOURCES

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DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 16, 2002

Willard and Elizabeth Cheirrett
1998 Ivins Road
Bancroft, ID 93217

REF: Snake River Basin Adjudication (SRBA)

Subject: Private Water

Dear Will and Elizabeth,

I got back a response from the Department of the issue of private water. Unless the use is de minimus and falls within the definition of a "deferred use" our position is to recommend filing a claim. The deferred uses are ground water for domestic use or stock water all other uses need to be claimed in the SRBA.

The adjudication statute 42-1401A(12) defines water systems to include springs and lakes and does not exclude private springs and lakes. The SRBA commencement order requires all rights to the use of water within the boundaries of the water system to be adjudicated, and does not exempt claimants of private springs and lakes from the adjudication. If the claimant wants a determination by the court that the spring or lake is "private", the claimant should indicate on the "source" blank on the claim form.

Idaho Code 42-101 declares, "All the waters of the state, when flowing in their natural channels, including the water of all natural springs and lakes within the boundaries of the state are declared to be property of the state...." All natural springs and lakes are therefore public water, subject to appropriation, subject to the laws that establish the procedures for making an appropriation, subject to the laws that govern the distribution of water, and subject to the laws that govern the adjudication of water rights. The state constitution declares natural streams to be public and therefore subject to the appropriation laws. A natural channel is "a stream of water flowing in a definite channel, having a bed, and sides or banks."

Can it be recommended in the SRBA if it wasn't claimed in the Bancroft-Lund Decree? The Bancroft-Lund was a general adjudication and falls under the adjudication statute 42-1401A(12) described above. Which means that if the point of diversion and place of use falls within the Bancroft-Lund boundaries then it required you file on in the prior adjudication. The only other way it can be recommended in the SRBA is if you or your predecessor was not a party to the Bancroft-Lund Decree.

The two springs located in the section 26 was decreed in the SRBA for the purpose of stock water under water right 29-10185, and therefore cannot be used for the purpose of irrigation. Continuing to use the water for the purpose of irrigation would be an illegal diversion and would subject to a fine.

If you would like to file a claim to the water in the SRBA I have all the necessary claim forms in my office. You have the right to object to the recommendation in the SRBA and have the SRBA judge make a ruling on the claim.

I understand your frustration in this matter but remember don't shoot the messenger. If you have any additional question, please feel free to contact me at 547-3993.

Sincerely,

Cindy E. Bird
Adjudication Bureau.