

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

Case No. 39576

Subcase Nos.: See Attachment A

**MOTION TO CONSOLIDATE AND
MEMORANDUM IN SUPPORT OF MOTION TO
CONSOLIDATE COMMON ISSUE IN
SUBCASES LISTED IN ATTACHMENT A**

Pioneer Irrigation District and Settlers Irrigation District, by and through their counsel of record Moffatt, Thomas, Barrett, Rock & Fields, Chtd.; Nampa Meridian Irrigation District, New Dry Creek Ditch Company, Boise Valley Irrigation District Company, South Boise Water Company, Eureka Water Company, Thurman Mill Ditch Company, Eagle Island Water Users Association, Farmers Cooperative Ditch Company and Ballantyne Ditch Company Limited, by and through their counsel of record Ringert Clark Chartered; and Farmers Union Ditch Company, Canyon County Water Company, Middleton Irrigation Association, and Middleton Mill Ditch Company, by and through their counsel of record Stoppello & Kiser, Attorneys at Law; (collectively "Irrigation Entities") and in accordance with Idaho Rule of Civil Procedure 42(a) and Administrative Order 1 Rule 11, hereby move the Court for an order consolidating an issue common to the subcases listed in Attachment A hereto.

I.

LEGAL BACKGROUND

Idaho Rule of Civil Procedure 42(a) provides that:

When actions involving a common question of law or fact are

pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

I.R.C.P. 42(a). Similarly, Administrative Order 1, Rule 11 provides for consolidation of issues or subcases in the SRBA. Specifically:

Any matter at issue in any proceeding in the adjudication, including portions of or entire subcases, may be consolidated with or separated from any other matter at issue in the adjudication. Any party to a subcase may move for consolidation or separation of claims or issues . . . If a motion to consolidate concerns issues from subcases which are all before the same Special Master, it shall be served only on parties to those subcases and shall be decided by the Special Master.

AO1 Rule 11. A note to that Rule provides that:

A motion to consolidate subcases is appropriate in situations where common issues of law or fact present themselves in more than one subcase and resolution of those issues can be most expeditiously and effectively achieved through presentation to the Presiding Judge or a Special Master in consolidated hearings.

AO1, Rule 11, Note.

As discussed below, those circumstances are present regarding the subcases listed in Attachment A.

II.

ANALYSIS

The United States Bureau of Reclamation (the "BOR") filed claims to water rights for Arrowrock Dam and Reservoir (63-00303, 63-05262, and 63-03613)¹; Lucky Peak Dam and Reservoir (63-03618); and Anderson Ranch Dam and Reservoir (63-03614). In addition, the Irrigation Entities filed claims to water rights from those facilities. Broadly stated, the Irrigation Entities filed claims for water rights representing the quantity of water to which they are entitled under their respective contracts with the BOR.

When the Director of the Idaho Department of Water Resources issued his Director's Reports for Basin 63, Part 1, he recommended that the BOR's claims be decreed, and that the respective claims filed by the individual irrigation entities be decreed as disallowed. The Irrigation Entities listed in Attachment A of this Motion filed objections to the Director's Reports. The Committee of Nine also filed responses.

The claims listed in Attachment A all have a common issue: who is the proper owner of the water rights? As recommended by the Director, the BOR would be the owner of water rights 63-00303, 63-03618, and 63-03614. However, it is the Irrigation Entities' position that they should be decreed the full owner of the water rights which they have claimed for

¹ SRBA claim number 63-05262 was decreed disallowed on April 24, 2003.

Arrowrock, Anderson Ranch, and Lucky Peak or, at least, the beneficial owner of a portion of water rights 63-00303, 63-03618, and 63-03614.²

That issue is one that all of the subcases listed in Attachment A have in common. In the words of Administrative Order 1, a motion to consolidate ownership issue in the subcases listed in Attachment A is appropriate because the subcases have common issues of law, and resolution of those issues could be most expeditiously and effectively achieved through presentation to the Special Master in consolidated hearings. There are some issues that vary among the water rights for each of the facilities (for example, Pioneer and Settlers have raised an issue regarding whether one of the recommended purposes of use for the Lucky Peak water right is permissible under Idaho law), but the subcases in Attachment A have the ownership issue in common.

It would make little sense from a legal or a financial standpoint to adjudicate each of the numerous subcases listed in Attachment A separately, when they have the ownership issue in common. Consolidation is the most expedient and sensible way to approach these subcases, particularly since the BOR has filed a motion to participate in those subcases in which the water rights are claimed by an irrigation entity. *See* United States' Motion for Permission to Participate and to File Late Responses, SRBA Subcase Numbers 63-303A et. seq. (filed on or about June 5,

² By way of clarification, not every irrigation entity listed in Attachment A has a contract for each of the three facilities. For example, Canyon County Water Company has a contract and thus claims an ownership interest in water from Lucky Peak Dam and Reservoir. However, Canyon County Water Company does not have a contract for water from Arrowrock Dam and Reservoir, and thus does not claim an ownership interest. This does not affect the overall issue, nor the propriety of consolidation.

2003), p. 4-5 (stating that the listed subcases have common issues of law and fact).

III.

CONCLUSION

The Irrigation Entities respectfully request that the Special Master issue an order consolidating the ownership issue in the subcases listed in Attachment A for purposes of resolving that issue.

DATED this 17th day of June 2003.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By Scott L. Campbell
Scott L. Campbell - Of the Firm

By Angela Schaer Kaufmann
Angela Schaer Kaufmann - Of the Firm
Attorneys for Pioneer Irrigation District and
Settlers Irrigation District

DATED this _____ day of June 2003.

RINGERT CLARK, CHARTERED

By _____
Daniel V. Steenson - Of the Firm
Attorney for s for Nampa Meridian Irrigation
District, New Dry Creek Ditch Company, Boise
Valley Irrigation District Company, South Boise
Water Company, Eureka Water Company,
Thurman Mill Ditch Company, Eagle Island
Water Users Association, Farmers Cooperative
Ditch Company and Ballantyne Ditch Company
Limited

2003), p. 4-5 (stating that the listed subcases have common issues of law and fact).

III.

CONCLUSION

The Irrigation Entities respectfully request that the Special Master issue an order consolidating the ownership issue in the subcases listed in Attachment A for purposes of resolving that issue.

DATED this 17th day of June 2003.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By

Scott L. Campbell
Scott L. Campbell - Of the Firm

By

Angela Schaer Kaufmann
Angela Schaer Kaufmann - Of the Firm
Attorneys for Pioneer Irrigation District and
Settlers Irrigation District

DATED this 17th day of June 2003.

RINGERT CLARK, CHARTERED

By

Daniel V. Steenson for:
Daniel V. Steenson - Of the Firm
Attorney for s for Nampa Meridian Irrigation
District, New Dry Creek Ditch Company, Boise
Valley Irrigation District Company, South Boise
Water Company, Eureka Water Company,
Thurman Mill Ditch Company, Eagle Island
Water Users Association, Farmers Cooperative
Ditch Company and Ballantyne Ditch Company
Limited

MOTION TO CONSOLIDATE AND MEMORANDUM IN SUPPORT OF MOTION
TO CONSOLIDATE COMMON ISSUE IN SUBCASES LISTED IN ATTACHMENT A - 6

BOI_MT2:S11337.1

DATED this 17 of June 2003.

STOPPELLO & KISER

By


Jerry A. Kiser - Of the Firm

Attorneys for Farmers Union Ditch Company,
Canyon County Water Company, Middleton
Irrigation Association, and Middleton Mill Ditch
Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of June 2003, I caused a true and correct copy of the foregoing **MOTION TO CONSOLIDATE AND MEMORANDUM IN SUPPORT OF MOTION TO CONSOLIDATE SUBCASES LISTED IN ATTACHMENT A - 8** to be served by the method indicated below, and addressed to the following:

Boise Project Board of Control

Albert P. Barker
Amy D. Chestnut
Barker Rosholt & Simpson
205 N. 10th Street, Suite 520
PO Box 2139
Boise, ID 83701-2139
Fax: 344-6034

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

*Ballantyne Ditch Company Ltd., Boise Valley Irrigation
Ditch, Eagle Island Water Users Association, Eureka
Water Company, Farmers Cooperative Ditch Co., Nampa
& Meridian Irrigation, New Dry Creek Ditch Company,
South Boise Water Company, Thurman Mill Ditch Co.*

Daniel V. Steenson
S. Bryce Farris
Ringert Clark Chtd.
455 S. Third Street
PO Box 2773
Boise, ID 83701-2773
Fax: 342-4657

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Committee of Nine

John K. Simpson
Travis L. Thompson
Barker Rosholt & Simpson
205 N. 10th Street, Suite 520
PO Box 2139
Boise, ID 83701
Fax: 344-6034

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

United State of America
U.S. Department of Justice
Environment & Natural Resources
550 West Fort Street, MSC 033
Boise, ID 83724

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

*Canyon County Water Company, Farmers Union Ditch
Company, Middleton Irrigation Association, Middleton
Mill Ditch Company*
Jerry A. Kiser
Stoppello & Kiser
620 W. Hays Street
Boise, ID 83702
Fax: 336-1027

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

State of Idaho, Department of Fish & Game
Natural Resources Division Chief
State of Idaho
Attorney General's Office
PO Box 44449
Boise, ID 83711-4449

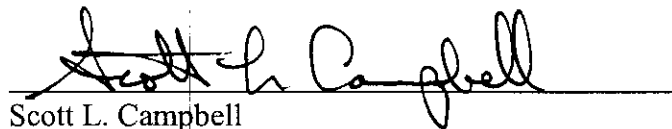
☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

United States of America
Acting Regional Director PN Region
Bureau of Reclamation
1150 N. Curtis Road, Suite 100
Boise, ID 83706-1234

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Director
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83702-0098
Fax: 327-7866

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile


Scott L. Campbell

ATTACHMENT A

<u>CLAIM NUMBER</u>	<u>CLAIMANT</u>
63-303	United States Bureau of Reclamation
63-303A	Farmers Cooperative Ditch Company
63-05262	United States Bureau of Reclamation
63-05262A	Pioneer Irrigation District
63-05262B	Settlers Irrigation District
63-05262C	Nampa Meridian Irrigation District
63-03613	United States Bureau of Reclamation
63-03613A	Farmers Union Ditch Company
63-03614	United States Bureau of Reclamation
63-03614A	Pioneer Irrigation District
63-03614B	Settlers Irrigation District
63-03614C	Farmers Union Ditch Company
63-03614D	New Dry Creek Ditch Company
63-03614E	Boise Valley Irrigation Ditch
63-03614F	Nampa Meridian Irrigation District
63-03618	United States Bureau of Reclamation
63-03618A	Pioneer Irrigation District
63-03618B	Settlers Irrigation District
63-03618C	Canyon County Water Co. Ltd.
63-03618D	Farmers Union Ditch Company

63-03618E	Middleton Irrigation Association
63-03618F	Middleton Mill Ditch Company
63-03618G	New Dry Creek Ditch Company
63-03618H	Boise Valley Irrigation Ditch
63-03618J	Nampa Meridian Irrigation District
63-03618K	South Boise Water Company
63-03618L	Eureka Water Company
63-03618M	Thurman Mill Ditch Co. Ltd.
63-03618N	Eagle Island Water Users Association
63-03618P	Ballantyne Ditch Co. Ltd.

RECEIVED

JUN 19 2003

Department of Water Resources

Attorneys for Pioneer Irrigation District
and Settlers Irrigation District

Scott L. Campbell, ISB No. 2251
Angela Schaer Kaufmann, ISB No. 5436
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 S. Capitol Boulevard, 10th Floor
Post Office Box 829
Boise, Idaho 83701
Telephone: (208) 345-2000
Facsimile: (208) 385-5384
18946.24

Attorneys for Nampa Meridian Irrigation District, New Dry
Creek Ditch Company, Boise Valley Irrigation District Company,
South Boise Water Company, Eureka Water Company, Thurman
Mill Ditch Company, Eagle Island Water Users Association,
Farmers Cooperative Ditch Company and Ballantyne Ditch Company Limited

Daniel V. Steenson, ISB No. 4332
S. Bryce Farris, ISB No. 5636
RINGERT CLARK CHTD.
PO Box 2773
Boise, ID 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

Attorneys for Farmers Union Ditch Company, Canyon County
Water Company, Middleton Irrigation Association, and
Middleton Mill Ditch Company

Jerry A. Kiser, ISB No. 3719
Stoppello & Kiser
620 W. Hays Street
Boise, ID 83702
Telephone: (208) 336-1020
Facsimile: (208) 336-1027

**MOTION TO CONSOLIDATE AND MEMORANDUM IN SUPPORT OF MOTION
TO CONSOLIDATE COMMON ISSUE IN SUBCASES LISTED IN ATTACHMENT A - 1**

BOI_MT2:511337.1