

COPY

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho
SEP 14 2007
By _____ Clerk
Deputy Clerk

**SUPPLEMENTAL DIRECTOR'S REPORT REGARDING
SUBCASE NO. 63-3174**

In Re SRBA
Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

Prepared by the Idaho Department of Water Resources
David R. Tuthill Jr., Director
Donald V. Shaff, Adjudication Bureau Chief

September 14, 2007

I. INTRODUCTION

Special Master Theodore R. Booth of the Snake River Basin Adjudication ("SRBA") Court issued a trial scheduling order on April 25, 2007, requesting the Director of the Idaho Department of Water Resources ("IDWR" or the "Department") submit a report to the Court detailing IDWR's basis for its recommendation in subcase no. 63-3174. In particular, Special Master Booth asked IDWR to discuss the quantity element and the basis for including an annual volume limitation in its recommendation. In response to this request, IDWR submits this Supplemental Director's Report Regarding Subcase No. 63-3174 in accordance with Idaho Code § 42-1412(4) and Administrative Order 1. This report was prepared under the supervision of David R. Tuthill, Jr., Director, and Donald V. Shaff, Adjudication Bureau Chief for IDWR.

The following IDWR employees have knowledge of the information contained in this report: Jan Shurte, Adjudication Water Rights Supervisor, Western Regional Office; David R. Tuthill, Jr., Director.

II. BACKGROUND

On September 13, 1989, Jerry L. and Mary Lou Tlucek ("Tluceks") originally claimed in the SRBA water right no. 63-3174 based on a license for irrigation by ground water. On August 8, 1990, the Tluceks filed an amended claim for 63-3174. See Amended Claim, Exh. 1. The Amended Claim sought fewer irrigated acres, 114 instead of 200, and consequently a smaller consumptive amount, 399 acre feet per annum ("AFY") instead of 700 AFY. See id.

On December 16, 2005, IDWR filed its recommendation for water right no. 63-3174 with the SRBA District Court. See IDWR Director's Report ("Recommendation"),

Exh. 2. On April 18, 2006, the Tluceks filed an objection, contesting the quantity and place of use elements of IDWR's recommendation. See Tluceks' Objection ("Objection"), Exh. 3. No other objections or responses have been filed on subcase no. 63-3174. On May 7, 2007, the Tluceks and IDWR filed a Stipulation to Partially Resolve Objection as to the Tluceks' place of use objection.

III. DISCUSSION

This report first introduces briefly the Tluceks' objection to IDWR's recommendation and then provides the relevant history of water right no. 63-3174. This report concludes with a discussion of the manifold independent bases supporting IDWR's recommendation for the quantity element.

A. The Tluceks' Objection.

The Tluceks originally objected to both the quantity and place of use elements as recommended for subcase no. 63-3174, however only the quantity element remains at issue. For the quantity element of the Tluceks' claim, IDWR recommended 1.85 cfs and 513.00 AFY. See Recommendation, Exh. 2 at 1.

In their objection, the Tluceks state that the right should provide for 1.85 cfs without the AFY limitation. See Objection, Exh. 3 at 2. In the reasons supporting their objections, the Tluceks state the proposed change will "make the recommendation consistent with the license." Id.

Clarifying their objection at the initial hearing, the Tluceks proposed that because there was no AFY descriptor for the quantity on the 1967 license, IDWR therefore could not add said descriptor to the SRBA recommendation and right. Counsel for the Tluceks

asserted as authority for this proposition Judge Barry Wood's decision in the "Fish Facility Volume" case.¹

B. History of Water Right No. 63-3174.

Water right no. 63-3174 is based upon a 1967 ground water license. See License and Certificate of Water Right No. G-28285 ("License"), Exh. 4. As to quantity, the License states, "[t]hat the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall not exceed 1.85 cubic feet per second." Id.

C. Basis for IDWR's Inclusion of an AFY Descriptor in the Recommendation.

IDWR's inclusion of the AFY descriptor is thrice grounded in statute, practice and policy. Read separately or read together, sections of Title 42 of the Idaho Code demonstrate IDWR's authority to include an AFY quantity designation. Interwoven with the statutory authority, annual diversion volumes have been part of IDWR's ground water convention since before the SRBA was created. The value of uniform parameters in water rights, explicitly recognized by the Legislature, coupled with the legislative directive to regulate the extent of diversions, and the policy behind annual volume diversions, provide the framework for IDWR's recommendation.

Section 1427 of Title 42² demonstrates the Idaho Legislature contemplated precisely the situation presented here.

The legislature finds that existing water rights are not uniformly described. Many old water rights were simply defined by source, priority date and diversion rate. Over time, the legislature and courts have made this original description of a water right more specific by the addition of other elements. Because of the increasing demand for water, it is important that the elements of a water right be standardized to allow for fair and efficient

¹ SRBA Subcase Nos. 36-02708, et al. *See* Part III.C *infra*.

² All section references are to Title 42 of the Idaho Code.

administration of the limited water supply. One (1) purpose of chapter 14, title 42, Idaho Code, is to establish through an adjudication a uniform description for surface water rights, ground water rights and water rights which include storage.

I.C. § 42-1427(1)(a). Here, the License, upon which the Tluceks' right is based, includes the diversion rate but fails to include a diversion volume.

While the volume of diversion was not always included in older decrees and licenses, as was the case with other elements, it has become an IDWR standard since before the inception of the SRBA. Since the mid 1970's, it has been the Department's policy to include a volume limitation on all licensed ground water rights. Furthermore, it has long been a standard practice of IDWR to include a volume limit on ground water recommendations in the SRBA. For example, the first version of the claims manual used at IDWR during the adjudication of the first basin in the SRBA stated explicitly that the water right "[a]mount includes the rate and volume of diversion for each nature of use, and the total rate and volume of diversion and total consumptive use." Claim Investigation Handbook ("Original Claims Manual"), Exh. 5, p. 67.³ The latest version of the claims manual ("Revised Claims Manual") continues to emphasize IDWR's standard practice of including volumes on ground water rights. Revised Claims Manual, Exh. 6, Nature of Use ("NOU") section, p. 3 (Agents are directed to "recommend an annual volume for all ground water irrigation rights.").⁴

The recurring statutory theme of annual volume for quantity is evident. Section 1409 states pointedly that a notice of claim shall include, among other elements, the quantity of water claimed such that the quantity "shall describe the rate of diversion or,

³ For the sake of brevity, IDWR is attaching as exhibits the relevant pages only of both the Original and the Revised Claims Manuals. IDWR can supply the whole manual(s) if requested by the Court.

⁴ The Revised Claims Manual includes revisions from September 1999 and February 2000.

for an instream flow claim, a rate of water flow in cubic feet per second or the annual volume of water for use or storage in acre-feet per year, or both.” I.C. § 42-1409(c)(i). Echoing that provision for annual volume, the director’s report recommendation must include a quantity element. See I.C. § 42-1411(2)(c). Specifically, the quantity shall be determined as “the rate of water diversion or, in the case of an instream flow right, the rate of water flow in cubic feet per second or annual volume of diversion of water for use or storage in acre-feet per year as necessary for the proper administration of the water right.” Id.

Section 1427 specifically authorizes the IDWR Director to implement the rubric of the Original and Revised Claims Manuals outlined above. Where, as here, a licensed right does not describe all of the elements of the right required in section 1409, then “the director shall include in his report recommendations for those elements not defined by the prior license or decree based upon the extent of beneficial use of the water right as of the date of the commencement of an adjudication.” I.C. § 42-1427(2). The Director is charged with making recommendations to the extent of beneficial use and is specifically authorized to “use uniform parameters for quantification of beneficial use.” I.C. § 42-1401B(1).

In section 1427, the Legislature expresses the public policy rationale for authorizing IDWR to standardize the descriptions of water rights. “[I]t is in the public interest to provide a mechanism to decree previously undefined elements of existing water rights based upon conditions existing on the date of commencement of the adjudication provided the claimant is not exceeding any previously determined and recorded element of the decreed or licensed right.” I.C. § 42-1427(i)(b).

In addition to the legislatively-recognized policy reasons for a volume descriptor, from a practical, administrative standpoint, annual volumes are important to define the water rights fully based on ground water in the State of Idaho. Ground water diversion is, at its root, a withdrawal from the aquifer so the volume diverted, not the rate of flow, is the true measure of impact to the State's water. Quantifying volume associated with each ground water right allows IDWR to consider and administer the impact of existing (and future) rights on an aquifer. The absence of a volume descriptor, and reliance on mere rate of flow, makes water rights vulnerable to injurious enlargement.⁵ Moreover, annual volume descriptors further define the right, helping to settle the matter for future administration. One of the goals of the current SRBA adjudication is to do just that, determine the nature and extent of water rights. See generally I.C. §§ 42-1401, 1401A(5), 1412(6).

The Revised Claims Manual further expresses the Department policy that an annual volume may also be necessary "if there is a need to protect junior priority rights on a stream, spring or other source with limited quantities of water and should be recommended if contained in a license, transfer or reasonable decree." Exh. 6, NOU p. 3. Here, an annual volume limit is critical because of the need to protect junior priority rights in the Treasure Valley where ground water supplies are limited.

The Department does not view the Fish Facility Volume case as limiting its statutory authority to recommend diversion volumes pursuant to the authorities discussed above. In his Order on Challenge (Consolidated Issues) of "Facility Volume" Issue and

⁵ For example, without a volume descriptor, the Tluceks could divert 1.85 cfs for 24 hours a day for the duration of the period of use, 246 days, for a total of 903 AFY. IDWR recommends 513.00 AFY based on a standardized calculation for fair and efficient administration of the limited water supply. See also Part III.D, *infra*.

“Additional Evidence” Issue (“Fish Facility Order”), Judge Wood made clear that facility volume was not a “third parameter” to quantity. See Fish Facility Order, SRBA Subcase Nos. 36-02708, etc., www.srba.state.id.us/FORMS/volume.PDF, at *8-9 (5th Dist. Idaho Dec. 29, 1999). In contrast, there is no indication from the decision that annual volume is unauthorized. Rather, the language of the decision suggests the contrary. Judge Wood reminded that when statutory language is clear and unambiguous, “the court applies the statute without engaging in statutory construction, giving the language its plain, obvious and rational meaning.” Id. at *8. Interpreting section 42-1411(2), Judge Wood states, “[t]he statute requires quantity to be measured by rate of diversion or flow in cfs or afy.” Id. at *8. Here, the plain meaning of the statute provides for the inclusion of a diversion volume.⁶

For the Tluceks to read the Fish Facility Order as precluding IDWR from recommending a volume descriptor on a licensed ground water right whose quantity is described only by diversion rate would require Judge Wood’s decision be interpreted as very narrowly construing sections 42-1409, 1411 and 1401B and rendering section 42-1427 meaningless. The Fish Facility Order does not mention section 42-1427, and the Department cannot believe he intended to accomplish such a drastic outcome *sub silentio*.

In sum, for longer than the SRBA has existed, IDWR has included a diversion volume to ground water recommendations, including those based on old licenses and decrees. To belatedly challenge this long-established practice could potentially affect hundreds of recommendations, most already partially decreed in the SRBA. The Legislature has already provided the statutory resolution of the issue, instructing IDWR

⁶ The Fish Facility Order is further distinguishable from the present matter because it concerned, and indeed emphasized, the non-consumptive nature of use, as opposed to the Tluceks’ consumptive irrigation

that for purposes of standardized, fair and efficient administration of water rights, the Director is authorized to use uniform parameters for quantification of beneficial use. See I.C. §§ 42-1401B(1), 1427(1)(a). The Director is explicitly commanded to include in the recommendations those elements not defined in the old licenses and decrees. See I.C. § 42-1427(2). Annual volume is part of the quantity element. See I.C. §§ 42-1409(c)(i), 1411(2)(c); IDAPA 37.03.08.35.03.b.iv. Therefore, IDWR has sufficient basis for including an AFY descriptor for the quantity element of a ground water right based on a license, which is silent as to the same.

D. IDWR's Calculation of the Annual Volume Limitation Used in the Recommendation.

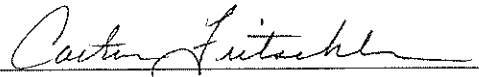
IDWR's current ground water volume standard allows 4.5 acre feet per acre of water at the field headgate. Therefore, for the quantity element, the recommended diversion volume for water right no. 63-3174 is simply the number of irrigated acres (114 acres) multiplied by the field headgate requirement (4.5 acre feet per acre) for a total of 513 AFY.

IV. CONCLUSION

IDWR's inclusion of the annual volume limitation on water right no. 63-3174 is supported by unambiguous statutory authority buttressed by practice and policy. Accordingly, IDWR recommends that the Special Master adopt IDWR's recommendation for water right no. 63-3174.

use. See Fish Facility Order, at *9.

Respectfully submitted this 14th day of September 2007.

A handwritten signature in cursive script, reading "Carter Fritschle", written over a horizontal line.

Carter Fritschle
Section Manager, Adjudications Bureau

CERTIFICATE OF MAILING

I certify that on 9-14, 2007, I caused to be mailed the original and copies of the **Supplemental Director's Report (706)**, 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

original mailed
copy served via facsimile

2. Copies to:

Scott L Campbell
101 S Capitol Blvd, 10th Floor
PO Box 829
Boise, ID 83701-0829
Attorney for Jerry & Mary Lou Tlucek

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

Becky Hawley
Signature of person mailing the form

EXHIBIT 1

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

the processing of this
application please contact:

SCOTT L. CAMPBELL
Elam, Burke and Boyd
P. O. Box 1539
Boise, ID 83701-1539

Ident. Number: A63-03174
Date Received: 9/19/1989
Receipt No: C011672
Received By: 

AMENDED

343-5454

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

AMENDED

1. Name: JERRY L. TLUCEK
Address: RT. 1
MELBA, ID 83641

208-495-2550

AND/OR

Name: MARY LOU TLUCEK
Address: RT. 1
MELBA, ID 83641

208-495-2550

RECEIVED
AUG 13 1990

2. Date of Priority: NOV 27, 1959

3. Source: GROUNDWATER

Trib. to:

4. Point of Diversion:

Department of Water Resources

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
01N	01W	22	SE	SE			ADA

5. Description of diverting works:

WELL, 385', 12", 100 HP VERT. TURB. PUMP, 8" LINE, 60 HP BOOSTER

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	03/15	11/15	1.850		

7. Total Quantity Appropriated is:

1.850 C.F.S. (and/or)

A.F.A.

8. Total consumptive use is

~~XXXXX~~ 399.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4 of	Lot	Use	Acres
01N	01W	22	NE	SE		IRR	35.0

A63-03174

Page 1

Date: 07/31/90

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
01N	01W	22	SW	SE		IRR	39.0
			SE	SE		IRR	40.0

Section Acres 114.0

Total Acres 114.0

11. Place of use in counties: ADA

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
NONE

14. Remarks:

15. Basis of Claim: LICENSE

Water Right Number: 28285

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not ☒ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: 0

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): *Janet L. Sweet* Date: 8/8/90
Mary Lou Lulich Date: 8-8-90

State of Idaho

County of Canyon) SS.

Subscribed and sworn (or affirmed) before me this 8th day

of Aug 19 90

Seal

Ryan Perry
Notary Public

Residing at Merba

My Commission Expires 11-12-92

17. Notice of Appearance:

Notice is hereby given that I, Scott L. Campbell will be
Print Name

acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature Scott L. Campbell

Address P.O. Box 1539, Boise, Idaho 83701-1539

Date 8/10/90

EXHIBIT 2

12/12/2005

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-3174
NAME AND ADDRESS: JERRY L TLUCEK
15188 S CAN-ADA RD
MELBA ID 83641
MARY LOU TLUCEK
15188 S CAN-ADA RD
MELBA ID 83641

SOURCE: GROUND WATER TRIBUTARY:

QUANTITY: 1.850 CFS
513.00 AFY

PRIORITY DATE: 11/27/1959

POINT OF
DIVERSION: T01N R01W S22 SESE Within ADA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	03/15 11/15	1.850 CFS 513.00 AFY

THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS
EARLY AS MARCH 1, PROVIDED OTHER ELEMENTS OF THE RIGHT ARE
NOT EXCEEDED. THE USE OF WATER BEFORE MARCH 15 UNDER THIS
REMARK IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO
SUBORDINATED EARLY OR LATE IRRIGATION USE AND A PRIORITY DATE
EARLIER THAN THE DATE A PARTIAL DECREE IS ENTERED FOR THIS RIGHT.

PLACE OF USE: IRRIGATION Within ADA County

T01N R01W S22	NESE	35.00	T01N R01W S22	SWSE	39.00
T01N R01W S22	SESE	40.00			

114 ACRES TOTAL

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for
the definition of the rights or for the efficient administration of the water
rights as may be ultimately determined by the Court at a point in time no
later than the entry of a final unified decree. Section 42-1412(6), Idaho
Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

EXHIBIT 3

COPY

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
APR 20 2006	
By _____	Clerk
_____	Deputy Clerk

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

A. Subcase 63-03174

(Insert water right number)

Case No. 39576

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Jerry L. Tlucek and Mary Lou Tlucek

Address: 15188 S. Can-Ada Road

Melba, Idaho 83641

Daytime Phone: (208) 495-2034

Name & Address of Attorney, if any:

Scott L. Campbell

Moffatt Thomas Barrett Rock & Fields

PO Box 829, Boise, Idaho 83701

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Jerry L. Tlucek and Mary Lou Tlucek

Address: 15188 S. Can-Ada Road

Melba, Idaho 83641

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ Name and Address
Should be: _____
2. ☐ Source
Should be: _____
3. ☒ Quantity
Should be: 1.850 cfs without any afa limitation
4. ☐ Priority Date
Should be: _____
5. ☐ Point(s) of Diversion
Should be: _____
6. ☐ Instream Flow Description
Should be: _____
7. ☐ Purpose(s) of Use
Should be: _____
8. ☐ Period of Year
Should be: _____
9. ☒ Place of Use
Should be: Please see Attachment A attached hereto.

11. I object because:

- ☐ This water right should not exist.
- ☐ This water right was not recommended, but should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION(S):

Concerning quantity, there is no basis for inclusion of the acre feet per year volumetric limitation. This is a licensed water right and the license did not contain the acre feet per year volumetric limitation.

Concerning place of use, claimant has claimed an additional 86 irrigated acres to increase the permissible place of use from 114 acres to 200 acres, as such 200 acre place of use is set forth in Attachment A. This expansion in the amount of irrigated acres is made pursuant to Idaho Code § 42-1416B.

F. VERIFICATION (Must be Completed)

State of Idaho)County of Ada) ss.Scott L. Campbell

(Name of person filing objection)

, duly sworn, upon oath, deposes and says:

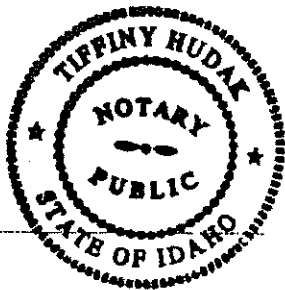
That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing objection)

Scott L. Campbell

(Attorney signing in representative capacity)

Subscribed and sworn to before me on:

April 18th
Tiffany HudakNotary Public for IdahoResiding at: BoiseMy Commission Expires: 9/16/09

INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on April 18th, 2006, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: Jerry L. Tlucek and Mary Lou Tlucek

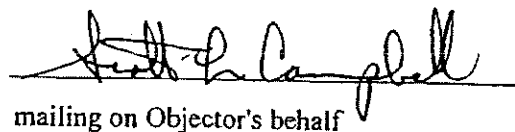
Address: 15188 S. Can-Ada Road
Melba, Idaho 83641

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724


mailing on Objector's behalf

**ATTACHMENT A TO
STANDARD FORM 1 - OBJECTION FOR SUBCASE 63-03174**

Jerry L. Tlucek and Mary Lou Tlucek are objecting to the place of use of 114 irrigated acres for the reason set forth in the Objection. The correct place of use is as follows:

1N	1W	22	SE	SW	40
			NE	SE	40
			NW	SE	40
			SW	SE	40
			SE	SE	40
TOTAL ACRES					200

EXHIBIT A

BOI_MT2612172.1

SCANNED

JAN-22-07 MON 12:58 PM JRBA

FAX NO.

P. 01

2006 SEP 26 AM 10:15
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

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

) NOTICE SETTING SUBCASE(S)
) FOR INITIAL HEARING
)
) SUBCASE NO: 63-03174

The Initial Hearing for this subcase will be held before
Special Master THEODORE R. BOOTH

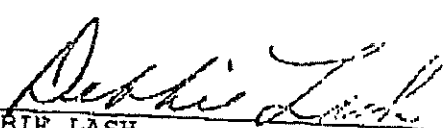
TUESDAY, JANUARY 23, 2007 at 02:30 PM (MT)
IDAHO SUPREME COURT BUILDING
451 WEST STATE STREET
BOISE, ID

ATTENDANCE IS MANDATORY. All parties are required to
attend and must have full settlement authority.

At the Initial Hearing you will have an opportunity
to meet with a representative of the Idaho Department of
Water Resources (IDWR) and/or the objector in an attempt
to reconcile any difference between the claim and the
Director's Report. Bring any and all information you
believe is relevant to your claim and/or objection. If
the claim cannot be reconciled at the Initial Hearing,
the court will set the subcase(s) for trial within 45
days of the Initial Hearing. IF YOU INTEND TO AMEND YOUR
CLAIM, YOU MUST DO SO AT OR BEFORE THE INITIAL HEARING.

Settlement documents must be filed with the court by
JANUARY 15, 2007 or hearing will not be vacated.

Dated: SEPTEMBER 26, 2006


DEBBIE LASH
Deputy Clerk
Snake River Basin Adjudication

FILE COPY FOR 01177
FILE COPY FOR 01177

EXHIBIT B

Page 1 9/26/06

SCANNED

MAR 06 2007

JAN-22-07 MON 12:58 PM RBA

FAX NO. 3.

P. 02

CERTIFICATE OF MAILING

I Certify that a true and correct copy of the NOTICE SETTING SUBCASE(S) FOR INITIAL HEARING was mailed on SEPTEMBER 26, 2006, with sufficient first-class postage to the following:

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

JERRY L & MARY LOU TLUCKEK
JERRY L TLUCEK
MARY LOU TLUCEK
15188 S CAN-ADA RD
MELBA, ID 83641
Phone: 208-495-2034

(Notice Setting Initial Hearing)
Page 2 9/26/06 ORIGINAL COPY

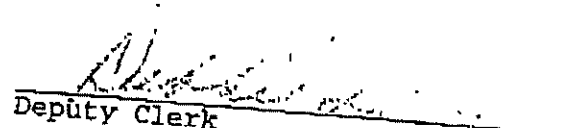

Deputy Clerk

EXHIBIT B

SCANNED

MAR 9 9 2007

EXHIBIT 4

State of Idaho

License and Certificate of Water Right

Water License No. G-28285 Priority November 27, 1959 Amount 1.85 c.f.s.

THIS IS TO CERTIFY that KENT BUNN

of Boise, Idaho, made application for a permit to appropriate the public waters of the State of Idaho, dated November 27, 1959; that Permit No. G-28285 was issued under said application; that Certificate of Completion of Works, with a carrying capacity of 1.85 second feet, was issued thereunder on June 26, 1967, showing that said works were completed on the 4th day of November, 1966; and that on the 4th day of November, 1966

KENT BUNN

of Boise, State of Idaho, made proof to the satisfaction of the State Reclamation Engineer of Idaho, of a right to the use of the waters of a well

a tributary of subterranean flow for the purpose of irrigation, under Use Permit No. G-28285 of the Department of Reclamation, and that said right to the use of said waters has been perfected in accordance with the laws of Idaho, and is hereby confirmed by the State Reclamation Engineer of Idaho and entered of record in Volume 14 of Licenses, at Page 8828, on the 26th day of June, 1967.

The right hereby confirmed dates from November 27, 1959.

The Point of Diversion is located

in the SE 1/4 SE 1/4, Sec. 22, Twp. 1 N, R. 1 W, B.M. Ada County.

That the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall not exceed 1.85 cubic feet per second.

Description and location of use:

Twp.	Range	Section	Forty-Acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated
1 N	1 W	22	NE 1/4 SE 1/4	40	35
			SW 1/4 SE 1/4	40	39
			SE 1/4 SE 1/4	40	40
			Total number of acres to be irrigated:		114

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described, as provided by the laws of Idaho.

WITNESS the seal and signature of the State Reclamation Engineer, affixed at Boise, Idaho, this 26th day of June, 1967.

Jack A. Bennett
Deputy State Reclamation Engineer.

State of Idaho

LICENSE AND CERTIFICATE
OF WATER RIGHT

Water License No.	G-28285
To	Kent Bunn
	Boise, Idaho
Source of Supply	subterranean
	Ada County
Amount	1.85 Sec. Ft.
Point of Diversion	SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 22, T. 1 N., R. 1 W., B.M.
Place of Use	NE $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 22, T. 1 N., R. 1 W., B.M.
Purpose	irrigation
Date of Priority	November 27, 1959
Recorded	June 26, 1967
in Book	14 of Licenses, Page 8828

EXHIBIT 5

V. NATURE OF USE (NU), AMOUNT FOR EACH NATURE OF USE, AND TOTAL AMOUNT

A. GENERAL

1. Other uses

Where the NU to be recommended is domestic, stock, industrial, commercial, or mining, the use should be further described in "other uses." With domestic use for households, the number of households should be described; for stockwater, the number and type of stock should be described; for the others (ESPECIALLY uses pursuant to part B of the domestic definition), the facility in which the water is used should be described. For example, small domestic use in a gas station should be described as use in a gas station; industrial use in a sugar factory should be described as a sugar factory, etc. The distinction between commercial and industrial is that commercial involves service or sales to the general public, whereas industrial involves manufacturing, refining, or other types of processing. Mining includes extraction of minerals and related processes that accompany the mining operation, such as milling, gravel washing, etc. Domestic and stockwater uses should be described in the following form: DOMESTIC, 1 HOME; STOCKWATER, 40 CATTLE, 10 HORSES.

2. Forfeiture

Since a water right is limited to the amount of water beneficially used, a portion of a water right may be forfeited by nonuse. Since forfeiture of the entire right affects whether the right is recommended for disallowal, it is addressed in Part I (priority date). Since partial forfeiture affects the amount recommended, forfeiture of a portion of a right is addressed in this Part V. The analysis in both cases is essentially the same.

3. Amount

Amount includes the rate and volume of diversion for each nature of use, and the total rate and volume of diversion and total consumptive use. See Adjudication Memo #31 as to measurement of flow for ground water claims that require field exam; see Adjudication Memo #34 as to which rights require determination of diversion volume. See Application Processing Memo 14 as to determination of amount for rights that include storage purposes.

Generally, consumptive use for irrigation should be recommended based on current standards. This is true even where claimed differently (more or less), or licensed or decreed differently (more or less). This is an exception to the general rule that IDWR may not recommend more than was claimed, and is also an exception to the rule of res judicata (see Intro Part J). Consumptive use may be treated differently because consumptive use

is not necessary for watermaster distribution. (The adjudication statute provides that consumptive use "is included as a rebuttable presumption in a decree only for the purpose of transfers pursuant to section 42-222, Idaho Code.")

Diversion volume for irrigation should generally be recommended in accordance with IDWR standards, unless there is some reason to believe otherwise. If the volume is determined by decree, then the volume recommended should be the volume decreed (unless it can be determined that a portion of the water right has been forfeited, or unless there has been an expansion in irrigated acres of a decreed right pursuant to the first presumption). With beneficial use rights, reason to believe that the volume is different than IDWR standards may arise from the field exam, or from volumes decreed for similar diversion systems of the same time period. If an excessive rate of diversion is to be recommended (more than 1" per acre), then the volume should be proportionately higher. Also, diversion volume should not be in excess of the volume that can be diverted under the recommended rate of diversion (in computing volume, the dates for season of use are inclusive).

4. Remarks describing amount

Adjudication Memo #32 sets forth standard remarks to describe the following:

- a. right measured at point other than point of diversion (D01),
- b. portion of right solely for conveyance loss (D02 - D04),
- c. storage capacity (D05),
- d. facility volume (D06).

See Part VIII below as to combined use limits for multiple rights.

5. Excessive flows for irrigation

Claims to flows in excess of the statutory standard of an inch per acre have been referred to generally as "excessive flow" claims. Excessive flow claims can be of two types - a single water right for more than an inch per acre, or multiple rights that total more than an inch per acre.

For irrigation claims to more than an inch per acre, the water agent should complete the excess irrigation requirement worksheet to determine if more than an inch per acre is reasonably required. Where this information is not already available to the agent, then the claimant should be contacted to provide the information (regardless of whether the claim is based on beneficial use, license, or decree). Where an amount in excess of current standards is actually needed under the claimant's irrigation practices, then the claim should be referred to the bureau chief

EXHIBIT 6

CHAPTER 6

PURPOSE OF USE, QUANTITY FOR EACH PURPOSE, AND TOTAL QUANTITY

I. INTRODUCTION

The purpose and quantity elements of a water right lie at the heart of the description of water use under a water right. The agent must be familiar with how to describe the various uses of water the investigation uncovers. Further, the method by which the water right was established determines to a large extent what evidence is relevant to the purpose of use and quantity to be recommended.

II. PURPOSES OF USE AND QUANTITY

Any use of water can be recommended for a water right so long as the use is for a beneficial purpose. The following subsections describe various beneficial uses, how they should be reported, and the quantity to recommend for each.

Adjudication Memo #32 sets forth standard remarks to describe the following:

- a. right measured at point other than point of diversion (D01),
- b. portion of right solely for conveyance loss (D02 - D04),
- c. storage capacity (D05),
- d. facility volume (D06).

The agent's recommendation on quantity must include the rate and volume of diversion for each use, and the total rate and volume of diversion. See Adjudication Memo #31 as to measurement of flow for ground water claims that require field exam; see Adjudication Memo #34 as to which rights require determination of diversion volume. Application Processing Memo 14 discusses the determination as to the amount for rights that include storage purposes.

For a claimed quantity to be recommended, the full amount must be beneficially used and the amount must be reasonable. Otherwise the amount recommended will be limited to a reasonable amount. In determining whether the amount used is reasonable, the following factors should be taken into account: the nature of use, the purpose of use, transmission losses, quantities used for the same purpose by others in the area, and amount of return flows. The fact that water is returned to the stream does not automatically make the diversion unreasonable. A determination that the quantity diverted for a long-standing use is not reasonable is a decision that should be made only after consultation with legal staff and the bureau chief.

There may be instances in which the total quantity may appropriately be less than the sum of the amounts for each purpose, such as where all or part of the amount for one purpose may also be used for another purpose. (For example, if an appropriator diverts 10

cfs for irrigation, and runs that same 10 cfs through a small hydropower facility, the total rate of diversion would be 10 cfs, not 20.)

A. Irrigation.

"Irrigation" is the spreading of water on land to materially increase the productiveness of the land for raising crops. The particular crop to be raised does not need to be identified in the recommendation, but may be necessary to conduct a Hubble analysis. The number of acres irrigated needs to be identified in the recommendation.

1. Instantaneous Quantity.

If not otherwise determined by a license or reasonable decree the agent must determine an instantaneous quantity for irrigation. Idaho Code § 42-220 provides that no more than an inch per acre may be decreed under a water right unless it is shown that a greater amount of water is necessary. The quantity, alone or as combined, to be recommended for most irrigation rights is an inch per acre. Claims to flows in excess of the statutory standard of an inch per acre have been referred to generally as "excessive flow" claims. Excessive flow claims can be of two types - a single water right for more than an inch per acre, or multiple rights that total more than an inch per acre.

The agent should complete the excess irrigation requirement worksheet to determine if more than an inch per acre is reasonably required. The agent should use the Hubble analysis to determine if the excess amount is necessary due to field requirements. If so the claim should include a remark identifying the per acre rate of diversion at the field headgate. It may be that the excess flow is required for conveyance loss, which is discussed in subsection Q of this section.

The quantity to be recommended should, in the first instance, be the quantity based upon the irrigation system used at the time the adjudication commenced. However, if the water user demonstrates that in the past a reasonable water system used more water to accomplish the same purpose, the agent should recommend a quantity consistent with the needs under the historic system. Use the Hubble analysis to calculate this quantity.

Adjudication Memo #32 sets forth standard remarks for claims to be recommended with excessive flows for irrigation (D02, D03, D04, D08).

The agent should not recommend less than an inch per acre unless (1) the claim is for less than an inch per acre, or (2) historic use has always been less than an inch per acre. When a claimant claims much less water than would appear to be reasonably necessary to irrigate the number of acres claimed the agent should make further inquiry to ensure that the water use is beneficial.

2. Annual Volume.

The agent should recommend an annual volume for all groundwater irrigation rights. Use the "Field Headgate Requirement" map for this determination if the information is not otherwise determined in a license, transfer or reasonable decree.

Annual volume may also be recommended if there is a need to protect junior priority rights on a stream, spring or other source with limited quantities of water and should be recommended if contained in a license, transfer or reasonable decree.

B. Municipal.

Municipal use is defined by statute:

"Municipal purposes" refers to water for residential, commercial, industrial, irrigation of parks and open space, and related purposes, excluding use of water from geothermal sources for heating, which a municipal provider is entitled or obligated to supply to all those users within a service area, including those located outside the boundaries of a municipality served by a municipal provider.

Idaho Code § 42-202B(4). Further relevant definitions are also contained in this section .

1. Instantaneous Quantity.

If not otherwise determined by a license or reasonable decree the agent must determine an instantaneous quantity for this purpose.

The amount of water to be recommended for a municipal water right should be at least the amount actually diverted by the municipal provider, and should not exceed the full constructed capacity of the municipal system. The total amount recommended should equal the amount that is reasonably necessary to provide for the existing uses plus the reasonably anticipated future needs of the municipality.

2. Annual Volume.

Municipal water rights should not be recommended with an annual volume unless contained in a license, transfer or reasonable decree.

C. Stockwatering.

Stockwatering use refers to the diversion of water for drinking by domestic livestock or wildlife. This use can be either instream (or "in situ"), in which case the diversion is made by the animal itself, or out-of-stream stock watering use. In the case of wildlife there must be some type of human intent to divert the water to create a water right. Thus, drinking from a natural source by natural wildlife does not constitute stockwatering.