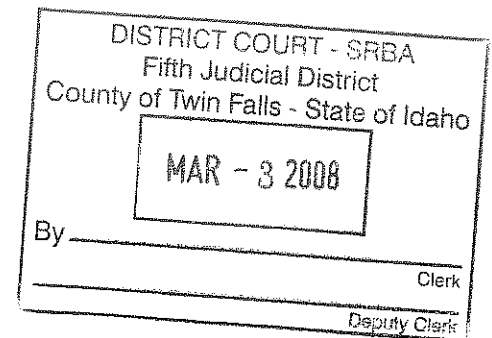


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MAR 04 2008

DEPARTMENT OF
WATER RESOURCES



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) Subcase 63-03174 and 63-23182
Case No. 39576)
) ORDER SETTING STATUS
) CONFERENCE and VACATING TRIAL
) IN 63-03174

On January 4, 2008, the Tluceks filed their *Motion for Summary Judgment* in Subcase no. 63-03174, together with supporting briefing and affidavit. Oral argument on the motion was heard on February 11, 2008. In the process of preparing an order on summary judgment, this Special Master has become aware of some questions regarding the relationship between 63-03174 and 63-23182.

Water right no. 63-23182, which was reported in the Basin 63 Part III *Director's Report*, is a claim for an enlargement of water right 63-03174. Because 63-03174 was reported in the *Director's Report* for Basin 63 Part II, and because 63-23182 was not identified by IDWR in the Basin 63 Part II *Case Management Proposal* (dated July 28, 2006) as an overlapping water right to 63-03174, these two subcases have heretofore proceeded on separate tracks, with 63-03174 being procedurally ahead of 63-23182.

The *Director's Report* in 63-23182 recommends an irrigated place of use of 86 acres, which was an enlargement of water right 63-03174 that occurred on May 1, 1973. The total number of acres allowed to be irrigated under both rights is 200 acres. The *Director's Report* for 63-23182 also recommends a remark which states: "This right when combined with Right No. 63-3174 shall provide no more than 1.85 cfs nor more than 513 AF per annum." The Tluceks have timely filed an objection on 63-23182, including an objection to IDWR's recommendation of quantity.

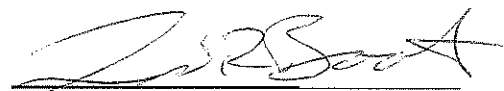
In the course of proceedings in 63-03174, it is clear that IDWR's recommendation of 513 AFY in 63-03174 is based upon IDWR's standard for the Treasure Valley area of

4.5 acre feet per acre multiplied by 114 acres, which is the number of acres licensed to be irrigated under water right 63-03174. *See* Supplemental Director's Report, Section III. D.; Deposition Testimony of Dave Tuthill, *Campbell Aff.* Exhibit B, at pp. 22-30. In other words, the recommended 513 AFY appears to be made without allowance for any additional annual volume for the 86 acres of the enlargement claim.¹

In *Freemont-Madison Irrigation District v. Idaho Ground Water Appropriators, Inc.*, 129 Idaho 454, 460, 926 P.2d 1301 (1996), the Idaho Supreme Court stated: "Section 42-1426 of the Idaho Code does not proscribe enlargements that include an increase in volume of water diverted, so long as the enlargement does not exceed the rate of diversion originally authorized" It appears to this Special Master that irrespective of the legal issues raised on summary judgment in subcase 63-03174 regarding whether IDWR has the authority to impose a volumetric limitation where one was not expressly stated in the 1967 license, any volumetric limitation that may ultimately become part of the partial decree for 63-23182 will be inextricably linked to the determinations made in subcase 63-03174. It is the opinion of this Special Master that subcases 63-03174 and 63-23182 need to proceed on the same track.

In accordance with the foregoing, and for the purpose of discussing with the claimants and IDWR how best to proceed with both subcases together, a status conference will be held on **March 11, 2008 at 10:30 AM Mountain Time** at the Snake River Basin Adjudication Courthouse, 253 3rd Avenue North, Twin Falls, Idaho. Parties may participate by telephone by dialing 225-383-1099 and when prompted entering the code 675342. The March 28, 2008, trial is **vacated**.

Dated March 3, 2008



THEODORE R. BOOTH
Special Master
Snake River Basin Adjudication

¹ If IDWR's standard 4.5 acre feet per annum were applied to the total of 200 acres, the resulting volumetric limitation would be 900 acre feet per year. The Tlucek's argue that the volumetric limitation of water right 63-03174 is 903 acre feet per year, which is arrived at by calculating the volume of water that could be diverted under a continuous diversion of 1.85 cfs for the entire irrigation season. Among other things, it is not clear to this Special Master whether or not IDWR's calculation of 513 AFY for right 63-03174 took into account the additional volume necessary, if any, for the 86 acre enlargement.

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER SETTING STATUS CONFERENCE AND VACATING TRIAL IN 63-03174 was mailed on March 03, 2008, with sufficient first-class postage to the following:

JERRY L & MARY LOU TLUCEK
JERRY L TLUCEK
MARY LOU TLUCEK

Represented by:
DYLAN B LAWRENCE
101 S CAPITOL BLVD 10TH FLOOR
PO BOX 829
BOISE, ID 83701-0829

JERRY L & MARY LOU TLUCEK
JERRY L TLUCEK
MARY LOU TLUCEK

Represented by:
SCOTT L CAMPBELL
101 S CAPITOL BLVD 10TH FLOOR
PO BOX 829
BOISE, ID 83701-0829
Phone: 208-345-2000

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

