

RECEIVED

MAR 24 2008

DEPARTMENT OF
WATER RESOURCES

Attorneys for Sinclair Oil Corporation
dba Sun Valley Company

Scott L. Campbell, ISB No. 2251
Dylan B. Lawrence, ISB No. 7136
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 South Capitol Boulevard, 10th Floor
Post Office Box 829
Boise, Idaho 83701
Telephone (208) 345-2000
Facsimile (208) 385-5384
16845.0014

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

MOTION TO DESIGNATE BASIN-WIDE
ISSUE

Sinclair Oil Corporation d/b/a Sun Valley Company (the "Company"), by and through its counsel of record, hereby files this Motion to Designate Basin-Wide Issue pursuant to Section 16(a) of this Court's Administrative Order 1 ("AO1"). It is supported by the Affidavit of Dylan Lawrence, filed contemporaneously herewith (the "Lawrence Aff.").

PLEASE NOTE: Pursuant to Sections 6(f) and 16(a)(4) of AO1, the Company requests consideration of this Motion on an EXPEDITED basis.

I. BACKGROUND

The Company is a claimant in the SRBA to several water rights within Basin 37, including water rights 37-415 and 37-416. (Lawrence Aff., ¶¶ 2, 3.) The Idaho Department of Water Resources' recommendations for these two water rights each include purposes of use of "aesthetic" and "wildlife." (Lawrence Aff., ¶¶ 4, 5.)

On or about November 14, 2007, the Big Wood Canal Company ("BWCC") and a group of eight self-described "Concerned Water Users" ("CWU") (collectively, the "Objectors") filed objections to four Company water rights, including 37-415 and 37-416. (Lawrence Aff., ¶¶ 6, 7.) Each of the Objections to 37-415 and 37-416 asserts that the water right should not exist and contains the following language:

Under Idaho Code 42-1501, aesthetic, wildlife and recreation are not beneficial uses authorized by the Idaho legislature or Constitution to be held in the name of private entities. If such uses are allowed, the right cannot carry a priority date earlier than the first date that the legislature authorized that beneficial use to be held by a private party.

(Lawrence Aff., ¶ 8.)

Based upon further research conducted by counsel for the Company, it appears the Objectors have objected to more than 60 other water rights in Basin 37 on a similar basis. (See Lawrence Aff., ¶ 9.) For the reasons discussed more fully below, the Company believes this Court should designate a basin-wide issue to resolve issues raised in the Objections filed by BWCC and CWU.

II. ARGUMENT

This Court's Administrative Order 1 ("AO1") requires a motion to designate a basin-wide issue to state:

- (a) The issue, in 20 words or less;
- (b) Why the issue is broadly significant and is better resolved as a basin-wide issue;
- (c) The need for its early resolution;
- (d) The type of right(s) affected by the issue; and
- (e) A description of how those rights will be affected.

AO1 § 16(a)(1).

The remainder of this section deals with each of these items in turn.

A. Statement Of Issue, In Twenty Words Or Less

The Company believes the BWCC and CWU Objections raise the following issue to be resolved by this Court:

Issue: Are aesthetic, wildlife, and recreation beneficial uses of water if the water right is held by a private party?

B. Why The Issue Is Broadly Significant And Better Resolved Basin-Wide

This issue is broadly significant because, if BWCC and CWU prevail on their arguments, this would call into question the validity of all water rights designated for aesthetic, wildlife, and recreation uses. The Objectors rely specifically on the Minimum Stream Flow Act in Title 42, Chapter 15 of the Idaho Code (the “MSFA”) to support their argument. (*See* Lawrence Aff., ¶ 8.) That legislation contains detailed procedural requirements for water rights that are subject to its provisions. *See* IDAHO CODE § 42-1503. These include:

- That the water right is held by the Idaho Water Resource Board;
- That the water right application be distributed to various state agencies for their review and comment;
- That notice of the water right application be published county-wide;

- That a public hearing be held on the application; and
- That an approved application be presented to the Idaho Legislature for its review.

IDAHO CODE § 42-1503.

Arguably, any water rights designated for wildlife, aesthetic, or recreation uses that have not undergone the procedures specified in Section 42-1503 would be invalid, if the Objectors prevail on their Objections. This would not only affect claims and recommendations for these uses that are still pending in the SRBA, but could call into question the validity of partial decrees that have already been issued for such purposes. Therefore, the Company believes this issue is “broadly significant” as required by AO1.

For similar reasons, the Company also believes this issue is best resolved as a basin-wide issue. At issue is the construction of the MSFA, which of course has not only basin-wide, but state-wide application. Designating this issue as a basin-wide issue will provide a procedural mechanism for notifying other parties to the SRBA of the issue and to provide them the opportunity to participate in its resolution. AO1 § 16(b). The deadline for responses in Basin 37, Part 3 was January 15, 2008. Therefore, unless a basin-wide issue is designated, a party that is not already involved in these subcases would be required to file a motion to file a late response or a motion to participate, each of which has its own procedural hurdles. *See* I.R.C.P. 24, 55(c); AO1 § 10(k).

C. The Need For Early Resolution Of These Issues

While it is no longer “early” in the SRBA, the Company believes the issue raised by the Objectors should be resolved soon. Given the large number of water right claims in Basin 37 that are affected by the Objections filed by BWCC and CWU, resolving this threshold

issue early should allow those subcases to proceed more efficiently. It would also foreclose having to revisit this issue in any of the basins that have not yet been completed.

D. The Types Of Rights Affected

The Company believes that any water right held by a party for off-stream diversion-based use, other than the Idaho Water Resource Board with designated or claimed uses of aesthetic, wildlife, recreation, wildlife storage, or recreation storage are affected by the resolution of this issue.

E. How Such Rights Will Be Affected

If the Objectors prevail on their argument that aesthetic, wildlife, and recreation uses are not beneficial uses when the water right is held by a private party, then rights for such uses could be susceptible to a claim that they are invalid, or that they must undergo the procedures generally described in Section II.B of this Motion.

**III.
CONCLUSION**

The Objectors argue that private parties cannot hold water rights for aesthetic, wildlife, and recreation uses. The Objectors base their arguments on Idaho's Minimum Stream Flow Act.

If the Objectors prevail on their arguments, this would potentially call into question the validity of every water right held by a party other than the Idaho Water Resource Board that is designated for aesthetic, wildlife, and recreation uses. Affected parties outside of Basin 37 should have an opportunity to weigh in on this issue. And, resolution of this issue should allow affected subcases to proceed more efficiently in the SRBA. Therefore, the Company believes this issue should be designated as a basin-wide issue, and respectfully moves this Court for an order to that effect.

DATED this 21st day of March, 2008.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By Scott L. Campbell
Scott L. Campbell – Of the Firm
Attorneys for Sinclair Oil Corporation
dba Sun Valley Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of March, 2008, I caused a true and correct copy of the foregoing **MOTION TO DESIGNATE BASIN-WIDE ISSUE** to be served by U.S. Mail, postage prepaid, and addressed to the SRBA Expedited Service List and the following:

Director
IDAHO DEPARTMENT OF WATER RESOURCES
322 E. Front St., 6th Floor
P.O. Box 83720
Boise, ID 83720-0098
Fax: (208) 287-6700

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

Chief, Natural Resources Division
Office of the Attorney General
STATE OF IDAHO
P.O. Box 44449
Boise, ID 83711-4449
Fax: (208) 334-2530

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

UNITED STATES DEPARTMENT OF JUSTICE
Environment & Natural Resource Division
550 W. Fort St., MSC 033
Boise, ID 83724
Fax: (208) 334-1414

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

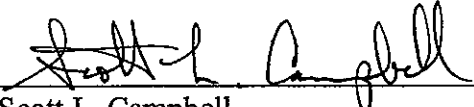
Albert P. Barker
BARKER, ROSHOLT & SIMPSON, LLP
P.O. Box 2139
Boise, ID 83701
Fax: (208) 344-6034

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

Attorneys for Tom O'Gara, John F. Stevenson, Bill Molyneux, Pete Van Der Meulen, Grace Eakin, Rocky Sherbine, Gerald Bashaw, and Pepin Corso-Harris

Craig D. Hobdey
HOBDEY & HOBDEY
P.O. Box 176
Gooding, ID 83330
Attorneys for Big Wood Canal Company

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



Scott L. Campbell

