

RECEIVED

APR 28 2008

DEPARTMENT OF
WATER RESOURCES

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 854-8072

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 Nos. 63-00132, 63-00133 & 63-00134
	)	
	)	STATE OF IDAHO, DEPARTMENT OF PARKS AND
	)	RECREATION'S BRIEF IN REPLY TO MACE-
Case No. 39576	)	CATLIN MUTUAL DITCH COMPANY'S RESPONSE
	)	TO STATE OF IDAHO, DEPARTMENT OF PARKS
	)	AND RECREATION'S MOTION FOR SUMMARY
_____	)	JUDGMENT

COMES NOW the State of Idaho, Department of Parks and Recreation (hereinafter the "IDP&R"), by and through the undersigned deputy attorney general, and submits the STATE OF IDAHO, DEPARTMENT OF PARKS AND RECREATION'S BRIEF IN REPLY TO MACE-CATLIN MUTUAL DITCH COMPANY'S RESPONSE TO STATE OF IDAHO, DEPARTMENT OF PARKS AND RECREATION'S MOTION FOR SUMMARY

STATE OF IDAHO DEPARTMENT OF PARKS AND RECREATION'S BRIEF
IN REPLY TO MACE-CATLIN MUTUAL DITCH COMPANY'S RESPONSE TO
STATE OF IDAHO, DEPARTMENT OF PARKS AND RECREATION'S MOTION
FOR SUMMARY JUDGMENT

COPY

JUDGMENT in accordance with the SECOND SUPPLEMENTAL TRIAL SCHEDULING ORDER entered on December 21, 2007.

I. ADDITIONAL STATEMENT OF THE CASE

ii. Additional Course of the Proceedings

The Director's Recommendation for water right no. 63-132 states, in part, as follows:

EXPLANATORY MATERIAL: BASIS OF CLAIM – Decreed
WATER IS DELIVERED THROUGH THE MASON-CATLIN
[SIC] CANAL THE FOLLOWING RIGHTS ARE ALSO
DIVERTED THROUGH POINT OF DIVERSION DESCRIBED
ABOVE: 63-133, 63-382b, **63-31312, 63-31313**. . .

Affidavit of Jon C. Gould In Support Of Motion For Summary Judgment, at Exhibit E (Emphasis Added).

The Director's Recommendation for water right no. 63-133 states, in part, as follows:

EXPLANATORY MATERIAL: BASIS OF CLAIM – Decreed
WATER IS DELIVERED THROUGH THE MASON-CATLIN
[SIC] CANAL THE FOLLOWING RIGHTS ARE ALSO
DIVERTED THROUGH POINT OF DIVERSION DESCRIBED
ABOVE: 63-132, 63-382b, **63-31312, 63-31313**. . .

Affidavit of Jon C. Gould In Support Of Motion For Summary Judgment, at Exhibit F (Emphasis Added).

iii. Additional Statement of Facts

g. Diversions for Water Rights in the Mace-Catlin ditch.

The point of diversion for water right no. 63-31312 is the Mace-Catlin Ditch. The owner of water right no. 63-31312 is as follows:

JON W WROTEN
PO BOX 686
799 W SOUTH CHANNEL RD
EAGLE ID 83616

IDP&R Exhibit 50: True and correct copy of the Director's Recommendation for water right no. 63-31312.

The point of diversion for water right no. 63-31312 is the Mace-Catlin Ditch. The owner of water right no. 63-31313 is as follows:

MARIETTA WROTEN
PO BOX 686
799 W SOUTH CHANNEL RD
EAGLE ID 83616

JAMES L WROTEN
2305 S CHANNEL RD
EAGLE ID 83616

IDP&R Exhibit 51: True and correct copy of the Director's Recommendation for water right no. 63-31313.

////

////

////

////

////

////

////

////

////

////

////

FURTHER ARGUMENT

I. THE DETERMINATION THAT THE IDP&R OWNS PORTIONS OF WATER RIGHT NOS. 63-00132 AND 63-00133 WILL NOT CAUSE ANY PROBLEMS FOR MACE-CATLIN MUTUAL DITCH COMPANY, INCORPORATED SINCE IT ALREADY DELIVERS WATER RIGHTS THAT IT DOES NOT OWN.

Presently, the Mace-Catlin Ditch delivers water right no. 63-31312 to owner Jon Wroten and water right no. 63-31313 to owners Marieta Wroten and James L. Wroten. Additional Statement of Facts at 2. The Mace-Catlin Mutual Ditch Company, Incorporated has not identified any actual problems with this delivery of water rights owned by other persons.

CONCLUSION

For all the reasons stated in the IDP&R's briefs, the district court should determine that the IDP&R owns a portion of water right numbers 63-00132 and 63-00133, and all of water right no. 63-00134.¹

RESPECTFULLY SUBMITTED this 25th day of April 2008.

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CLIVE J. STRONG
DEPUTY ATTORNEY GENERAL
STATE OF IDAHO



DAVID J. BARBER
Deputy Attorney General

¹ The *State Of Idaho Department Of Parks And Recreation's Brief In Support Of Its Motion For Summary Judgment* describes on page 11 that the IDP&R is a successor to 1.52 c.f.s. of water right no. 63-00132 and to 4.16 c.f.s. of water right no. 63-133 and 3.3 c.f.s. of water right no. 63-00134. Since the amount of water right no. 63-00132 is 2.692 c.f.s. and the amount of water right no. 63-00133 is 7.788 c.f.s., each of those two water rights will need to be split. The *State Of Idaho Department Of Parks And Recreation's Brief In Support Of Its Motion For Summary Judgment* incorrectly stated in its Conclusion on page 12 that IDP&R claimed all of water nos. 63-132 and 63-133.

CERTIFICATE OF SERVICE

I certify that on this 25th day of April 2008, I caused to be served the original and/or copy of the STATE OF IDAHO, DEPARTMENT OF PARKS AND RECREATION'S BRIEF IN REPLY TO MACE-CATLIN MUTUAL DITCH COMPANY'S RESPONSE TO STATE OF IDAHO, DEPARTMENT OF PARKS AND RECREATION'S MOTION FOR SUMMARY JUDGMENT on each of the following persons by the indicated method:

1. Original to:

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

- ☐ U.S. Mail, postage prepaid
- ☒ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (208) 736-2121
- ☐ Statehouse Mail

2. Copies to the following persons:

Special Master Theodore Booth
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

- ☐ U.S. Mail, postage prepaid
- ☒ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: 345-8800
- ☐ Statehouse Mail

Hart-Davis Ditch Company
Represented by:
S. Bryce Farris
RINGERT CLARK
455 South Third St.
PO Box 2773
Boise, ID 83701-2773

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Mace Catlin Mutual Ditch Company
Incorporated
Represented by:
Jon C. Gould
RINGERT CLARK
455 South Third St.
PO Box 2773
Boise, ID 83701-2773

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali & Ron Sali Properties
Ron Sali Properties, Inc.
Represented by:
Michael C. Creamer
GIVENS PURSELY
601 W. Bannock St.
PO Box 2720
Boise, ID 83701-2720

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali
PO Box 488
Boise, ID 83701-0488

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali Properties, Inc.
Profit Sharing Plan
919 S. Linder Rd
Eagle, ID 83616-5513

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali
919 S. Linder Rd.
Eagle, ID 83616-5513

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

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

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Idaho Department of Parks and
Recreation
5657 Warm Springs Avenue
Boise, ID 83716

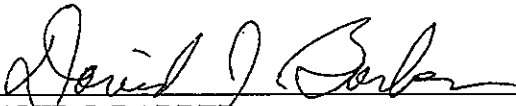
- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☒ Statehouse Mail

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

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: _____
- ☒ Statehouse Mail

Chief of Natural Resource Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

Not Applicable



DAVID J. BARBER
Deputy Attorney General