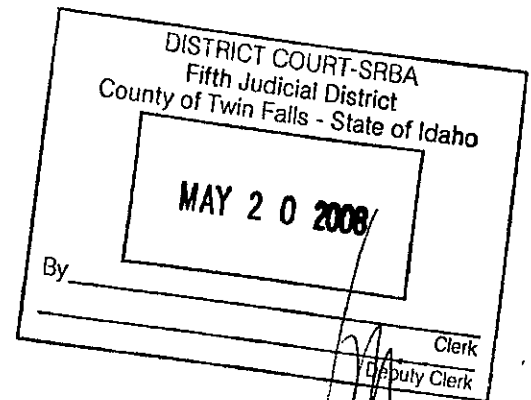




**SUPPLEMENTAL DIRECTOR'S REPORT REGARDING
SUBCASE NO. 74-14981**

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

May 20, 2008

I. INTRODUCTION

On February 13, 2008, Special Master Terrence A. Dolan of the Snake River Basin Adjudication ("SRBA") Court issued an Order Setting Hearing on I.R.C.P. 60(a) Motion and Trial Schedule ("Order"), requesting the Director of the Idaho Department of Water Resources ("IDWR") submit a report to the Court detailing IDWR's basis for its recommendation in subcase no. 74-14981. In response to this request, IDWR submits this Supplemental Director's Report Regarding Subcase No. 74-14981 in accordance with Idaho Code section 42-1412(4) and Administrative Order 1. This report was prepared under the supervision of David R. Tuthill, Jr., Director, Donald V. Shaff, Adjudication Bureau Chief for IDWR, and Carter Fritschle, Manager of the Technical Support Section of the Adjudication Bureau.

The following IDWR employees have knowledge of the information contained in this report: Nathaniel Arave, Water Resource Agent; Ernest Carlsen, Water Resource Program Manager.

II. DISCUSSION

In 1970, the Lemhi County District Court commenced a general stream adjudication for the Lemhi River, known as the Lemhi Adjudication. On December 30, 1982, the Lemhi County District Court executed a Partial Decree Pursuant to Rule 54(b) ("Lemhi Decree"), resolving most of the issues in the Lemhi Adjudication. On October 14, 1992, the Lemhi County District Court ordered the Lemhi Decree be considered a final decree.

Kathy and Glenn Seaberg have claimed water right no. 74-14981 as based on the Lemhi Decree. Specifically, water right no. 74-14981 is a split portion of water right no.

74-321C. The legal doctrine of *res judicata* bars reconsideration of the nature and extent of all water rights previously adjudicated. See, e.g., Idaho Code § 42-1420. Therefore, IDWR recommended water right no. 74-14981 consistent with the Lemhi Decree for water right no. 74-321C. To the extent the Seabergs' claim goes beyond the scope of the previously decreed right, IDWR considers itself barred in this instance from recommending elements inconsistent with the prior judicial determination.

III. CONCLUSION

During the February 7, 2008 status conference, Special Master Dolan stated that if he determines the Seabergs are not bound by the Lemhi Decree, he would appreciate IDWR's opinion as to what it would have recommended for this subcase were it not for *res judicata*. Special Master Dolan further requested that the Department contact L. Glen Saxton, who at the time of the Lemhi Adjudication was the lead investigator for IDWR, and seek his recollection, if any, regarding the claim. Attached as Exhibit A is a letter from L. Glen Saxton, dated March 5, 2008. Pursuant to the Order, attached as Exhibit B to this Report is IDWR's recommendation for water right no. 74-14981, if needed, for the Court's reference after a determination on the *res judicata* matter. To minimize confusion, Exhibit B bears a large red stamp DRAFT across its face.

Respectfully submitted this 20th day of May 2008.

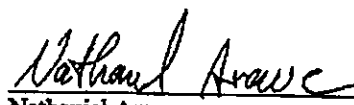

Nathaniel Arave
Water Resource Agent

EXHIBIT A

March 5, 2008

Chris Bromley
Deputy Attorney General
322 E. Front Street
Boise, Idaho 83702

**RE: WATER RIGHTS OF CLARENCE C. AND/OR MYRA E. MILLER IN THE LEMHI
RIVER DRAINAGE**

Dear Mr. Bromley:

This letter responds to your inquiry involving water rights claimed by Clarence C. and/or Myra E. Miller ("Millers") during the course of the Lemhi River Adjudication conducted by the Idaho Department of Water Administration (now the Idaho Department of Water Resources or "IDWR") in the early 1970's. This adjudication was conducted under my direct supervision from an office of IDWR located in Salmon, Idaho.

You asked that I review adjudication claims and the recommendation of rights claimed by the Millers during the adjudication. Since the adjudication took place about 35 years ago and since my memory has faded, my review of the matter and conclusions described below were reached using copies of the Miller's claims, the Proposed Finding of Water Rights in the Lemhi River Basin in Civil Case No. 4948 ("the Green Book"), and the map identified as T21N, R22E, Map D ("Map D") that was prepared during the adjudication.

It might be easiest to explain my review by using the bullet list format shown below:

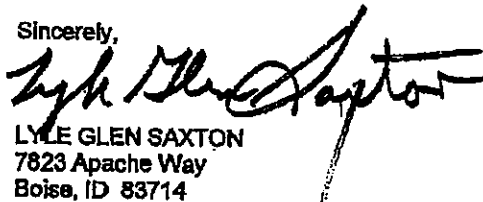
- The Millers filed 2 claims originally identified as 74-0447 and 74-0448. Claim 74-0447 was subsequently renumbered by IDWR to be 74-0321C, since the right claimed was part of previously decreed water right no. 74-0321.
- Both claim nos. 74-0448 and 74-0321C are included in the Green Book. Claim 74-0448 is for domestic purposes and is not at issue in review of the Miller rights here.
- The Green Book recommendation of claim 74-0321C includes the irrigation of 5.3 acres in the NWNW Section 15 and 1 acre in the NENW Section 15. Map D shows that the Millers irrigate 5.3 acres in the NWNW Section 15, and 9 acres in the NENW Section 15.
- The Green Book recommendation does not include the remaining 8 acres (14.3 minus 6.3 acres) located in the NENW Section 15 even though the 8

acres were claimed by the Millers and Map D shows the 8 acres to be irrigated.

I don't know why the 8 acres were not included in the recommendation of right no. 74-0321C. I can only conclude that the omission of the 8 acres was an error or oversight and should have been included as a part of the recommendation of right 74-0321C. If the recommendation had included the 8 acres, the rate of diversion recommended would have been 0.32 cfs larger for a total rate of diversion of 0.57 cfs for right no 74-0321C.

If you have additional questions about this matter or would like to further discuss it, please feel free to contact me at my home phone 853-2743.

Sincerely,



LYLE GLEN SAXTON
7823 Apache Way
Boise, ID 83714

EXHIBIT B

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

RIGHT NUMBER: 74-14981
NAME AND ADDRESS: KATHY SEABERG
PO BOX 471
SALMON ID 83467

GLENN SEABERG
PO BOX 471
SALMON ID 83467

DRAFT

SOURCE: LEMHI RIVER TRIBUTARY: SALMON RIVER
QUANTITY: 0.240 CFS
PRIORITY DATE: 06/09/1975

POINT OF
DIVERSION: T21N R22E S24 SESE Within LEMHI County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	3/15 11/15	0.240 CFS

PLACE OF USE: IRRIGATION in LEMHI County

T21N R22E S15 NENW 7.15

7.15 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 be 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 - Decreed

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20TH day of May, 2008, I caused to be served a true and correct copy of the foregoing by the following method to:

1. Original to:

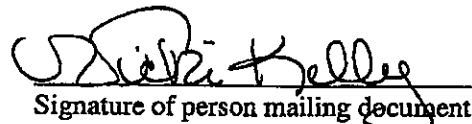
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

☐ Overnight Mail
☐ Regular Mail
☐ Hand-Delivered
☒ Facsimile

2. Copy to:

Robert L. Harris
Holden Kidwell
P.O. Box 50130
Idaho Falls, ID 83405-0130

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile


Signature of person mailing document