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|---------------------------------------|-------|
| DISTRICT COURT - SRBA                 |       |
| Fifth Judicial District               |       |
| County of Twin Falls - State of Idaho |       |
| AUG - 4 2008                          |       |
| 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     | ) | Subcases 63-31417 and 63-31418        |
|                | ) | (split from 63-07354)                 |
| Case No. 39576 | ) | )                                     |
|                | ) | <b>ORDER RE: MOTIONS TO FILE LATE</b> |
|                | ) | <b>OBJECTIONS</b>                     |
|                | ) | )                                     |
|                | ) | <b>ORDER REQUESTING AMENDED</b>       |
|                | ) | <b>DIRECTOR'S REPORT FROM IDWR</b>    |
|                | ) | )                                     |
|                | ) | <b>ORDER SETTING DEADLINES</b>        |

Water right claims 63-31417 and 63-31418 were split from licensed right 63-07354 prior to the issuance of the *Director's Report*. IDWR split water right 63-07354 for the reason that three (3) acres of the licensed place of use are located in T06N R04W Section 34, NWNE, which is land owned by the United States of America, through the Department of Interior, Bureau of Land Management(BLM). The split of the right arose in the context of a change of ownership from Joseph Roberts to John Roorda and Larry Roorda. The *Director's Report* recommended water right 63-31417 in the name of Joseph Robert for the irrigation of the three (3) acres on the BLM land (0.060 cfs), and the remainder of the licensed place of use was recommended under water right number 63-31418 in the name of John Roorda and Larry Roorda for the irrigation of 110 acres on privately owned land (2.20 cfs).

The BLM timely filed an objection to the *Director's Report* for water right 63-31417, asserting that the claimant's use of BLM land is not authorized. On February 19, 2008, a *Standard Form 5* was filed in subcase 63-31417, wherein Joseph Robert agreed that water right 63-31417 should be decreed disallowed.

On February 29, 2008, Basin and Range Resource Company, LLC, (hereinafter "Basin and Range"), through its attorney Dana Hofstetter, filed a *Motion to File Late Objection*, asserting that Basin and Range is the successor in interest to Joseph Roberts for water right 63-31417, and seeking an opportunity through a late objection to prevent water right 63-31417 from being disallowed before Basin and Range has an opportunity to file an application to transfer the three (3) acres of irrigation from the BLM land to private land. A hearing on the *Motion* was held on July 29, 2008, at which the BLM argued that Basin and Range does not have any instrument of conveyance to show that it is the successor-in-interest to water right 63-31417, and therefore Basin and Range cannot show a meritorious position regarding ownership of the right. Additionally, the BLM argued that because it has already settled the subcase with the record owner (Mr. Roberts) through the filing of a *Standard Form 5*, the BLM would be prejudiced by allowing a late objection at this stage of the proceeding.

As to water right claim 63-31418, the current claimant of the water right, Basin and Range, has filed a *Motion to File Late Objection*, together with the *Affidavit of Steve Hannula in Support of Motion to File Late Objection*, and the *Affidavit of Dana L. Hofstetter*, seeking to file a late objection under the theory that the licensed place of use for water right 63-31418 should be 120.6 acres rather than 110 acres. The *Motion to File Late Objection* in subcase 63-31418 was also heard on July 29, 2008. For the reason set forth below, this Special Master hereby requests an amended director's report from IDWR, and further rules that the subject *Motions to File Late Objections* are moot for the reason that the claimant will have an opportunity to file a timely objection to the amended director's report.

The *Notice of Claim* filed for water right 63-07354 on February 7, 1990 by Arthur L. Wilson, **does not include a claim for a place of use in T06N, R04W, Section 34, NWNE**, which is the place of use objected to by the BLM. Although the license ultimately issued for the water right included three (3) acres of irrigation on the BLM

ground,<sup>1</sup> this three (3) acres was not claimed in the SRBA. Accordingly, it is hereby requested that IDWR re-evaluate water right claim 63-07354 and issue an amended director's report that excludes any places of use not claimed.<sup>2</sup> The amended director's report is due by **September 30, 2008**. Notice of the issuance of the amended director's report shall be published on the Court's Docket Sheet in October 2008, and **objections to the amended director's report are due October 28, 2008**. Responses to objections are due **November 12, 2008**.

Although the filing of an amended director's report will provide an opportunity for the claimant to file a timely objection thereto, it should be noted that the general rule in the SRBA is that a collateral attack on a license is prohibited based upon the doctrine that a party aggrieved by IDWR's issuance of a license is required to exhaust its administrative remedies, and if necessary, seek judicial review in accordance with I.C. §§ 42-1701A and 67-5270. The requirement that a party exhaust its administrative remedies is subject to certain exceptions, such as when an agency's action is *ultra vires*. *See Memorandum Decision and Order on Challenge; Order on State of Idaho's Motion to Dismiss Claimant's Notice of Challenge*, Subcase 36-08099 (River Grove Farms) (January 11, 2000). In the absence of such an exception, and/or in the absence of an amendment of the license by IDWR, the SRBA does not provide an opportunity for a claimant to litigate the elements of a water right based upon a previously issued license.

IT IS SO ORDERED

Dated August 4, 2008



THEODORE R. BOOTH  
Special Master  
Snake River Basin Adjudication

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<sup>1</sup> It is noted that the Beneficial Use Field Report, a copy of which is attached to the Affidavit of Dana L. Hofstetter, recognizes that at the time of the examination there was no verification of ownership as to the three (3) acres of land in the NWNE.

<sup>2</sup> Because there is no reason to "split" irrigated acreage that was not claimed in the SRBA, the amended director's report requested herein might be issued under the pre-split water right number, 63-07354.

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER RE: MOTIONS TO FILE AMENDED OBJECTIONS; ORDER REQUESTING AMENDED DIRECTOR'S REPORT; ORDER SETTING DATES was mailed on August 04, 2008, with sufficient first-class postage to the following:

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