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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
FEB 25 2009	
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

Case No. 39576

)
) MEMORANDUM DECISION AND
) ORDER OF PARTIAL DECREE
)
) For water right: 63-03614
) (Anderson Ranch Reservoir)
)
)

I. BRIEF PROCEDURE

The above-captioned subcase is one of four subcases involving the ownership of certain United States Bureau of Reclamation (BOR) project water rights on the Boise River. The water rights were claimed by both the BOR and various irrigation delivery entities holding contracts with the BOR for the storage and delivery of irrigation water. The Idaho Department of Water Resources (IDWR) recommended that the rights be decreed in the name of the BOR and the claims filed by the irrigation entities be ordered disallowed. For case management purposes the Court separated the issue regarding ownership from the subcases and consolidated it for resolution. *See Order Separating and Consolidating Common Issue From Subcases; Order Rescinding Order of Reference to Special Master as to Consolidated Issue; Order Designating Issue as Consolidated Subcase 91-63; Notice of Scheduling and Status Conference on Consolidated Issue*, Consolidated Subcase 91-63 (June 23, 2003). The consolidated subcase proceeded independently of the other objections raised in the subcases. The Court issued a *Memorandum Decision and Order on Summary Judgment* from which cross-appeals were taken. The Idaho Supreme Court issued its opinion in *U.S. v. Pioneer*

Irr. Dist., 144 Idaho 106, 157 P.3d 600 (2007), ordering the following remark to appear in the face of the ***Partial Decrees***:

The name of the United States of America acting through the Bureau of Reclamation appears in the Name and Address sections of this partial decree. However, as a matter of Idaho constitutional and statutory law title to the use of the water is held by the consumers or users of the water. The irrigation organizations act on behalf of the consumers or users to administer the use of the water for the landowners in the quantities and/or percentages specified in the contracts between the Bureau of Reclamation and the irrigation organizations for the benefit of the landowners entitled to receive distribution of this water from the respective irrigation organizations. The interest of the consumers or users of the water is appurtenant to the lands within the boundaries of or served by such irrigation organizations, and that interest is derived from law and is not based exclusively on the contacts between the Bureau of Reclamation and the irrigation organizations.

Following remand, this Court issued ***Partial Decrees*** in subcases (Lucky Peak) and 63-0303, 63-3613 (Arrowrock) which included the remark. Objections remained in subcase 63-03614 with respect to the omission of a remark pertaining to hydropower generation. On January 22, 2009, the parties filed a *Standard Form 5 (SF-5)* resolving the remaining objections. The *SF-5* was not executed with IDWR's concurrence. In accordance with ***Administrative Order 1 (AOI)*** § 4.d.(3)(c) the Court conducted a hearing on the *SF-5* to determine whether "the facts, data, expert opinions and law support the issuance of a partial decree for the water right as stipulated in the Standard Form 5 or proposed settlement." ***AOI*** § 4.d.(3)(c). At the hearing, counsel for IDWR explained that IDWR did not concur with the *SF-5* because the ownership remark failed to address the water rights of non-irrigation entities also holding storage and delivery contracts with the BOR in the same projects. IDWR expressed concern over not having a uniform remark that would be applicable to other BOR project rights on the upper Snake River. IDWR's failure to concur on the *SF-5* was unrelated to the objection regarding the hydropower generation remark.

II. FINDINGS, CONCLUSIONS AND DISCUSSION

Despite IDWR's non-concurrence the Court finds it appropriate to issue the ***Partial Decree*** with the remark ordered by the Idaho Supreme Court in *U.S. v. Pioneer*

Irr. Dist., 144 Idaho 106, 157 P.3d 600 (2007). The ownership issue in this particular subcase was included as part of the consolidated subcase from which the appeal was taken. Accordingly, this Court concludes that the Supreme Court's directive on the remark is binding on this Court with respect each of the three BOR projects involved in consolidated subcase 91-63, including this particular subcase. This was previously acknowledged in this Court's ***Final Order on Remaining Portion of Consolidated Subcase 91-63: Order Separating and Dissolving Consolidated Subcase 91-63 and Requiring Further Proceedings to be Conducted in Individual Remaining Subcases*** issued June 28, 2007, where this Court included the following: "IT IS ORDERED that, in accordance with the holding in *U.S. v. Pioneer Irr. Dist.*, the ***Partial Decrees*** ultimately issued for subcases 63-0303, 63-3613 (Arrowrock Reservoir), 63-3618 (Lucky Peak Reservoir) and 63-3614 (Anderson Ranch Reservoir) shall be issued in the name of the United States Bureau of Reclamation with the following remark included in the "Other Provisions Necessary for the Administration or Definition of this Water Right" The ***Order*** then recited the remark drafted by the Idaho Supreme Court.

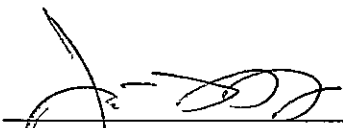
Furthermore, even though the issue originated over the rights of irrigation entities, non-irrigation entities were granted intervention in the consolidated subcase. Intervention was granted to Gene E. Bray, Thomas R. Stuart III, Thomas J. Cade, Amy Williams, the City of Boise and the State of Idaho. All parties participating in the consolidated subcase were afforded the opportunity to actively represent their interests in the summary judgment proceedings as well as submit proposed remarks following the Court's ruling on summary judgment. All parties were also afforded the opportunity to appeal from this Court's decision on the remark. This is not a situation where the interests of non-irrigations entities were not adequately represented.

Finally, with respect to the concerns expressed by IDWR, the Court does not find the Supreme Court's decision and remark to be conclusive with respect to the interests of non-irrigation rights related to other BOR projects that were not part of consolidated subcase 91-63. Interested parties will still have the opportunity to have this Court address the application of the Supreme Court's remark to non-irrigation entities if and when the issue arises with respect to claims unrelated to Consolidated Subcase 91-63.

III. ORDER OF PARTIAL DECREE

Therefore, for the above-stated reasons, IT IS ORDERED that the above-captioned water right is hereby decreed as set forth in the attached *Partial Decree Pursuant to I.R.C.P. 54(b)*.

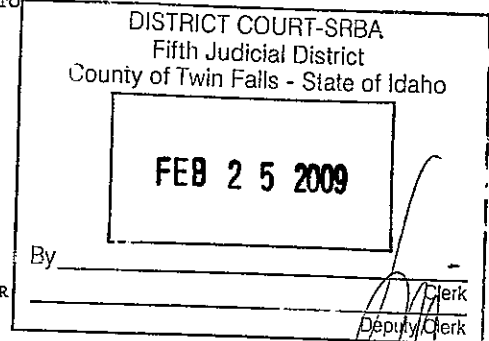
Dated February 25, 2009



JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

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)
)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 63-03614



NAME AND ADDRESS: UNITED STATES OF AMERICA
BUREAU OF RECLAMATION
1150 N CURTIS RD SUITE 100
BOISE, ID 83706-1234

SOURCE: SOUTH FORK BOISE RIVER TRIBUTARY: BOISE RIVER

QUANTITY: 493161.00 AFY

TOTAL RESERVOIR CAPACITY IS 493,161 ACRE FEET WHEN FILLED TO
ELEVATION 4196.0 FEET AND MEASURED AT THE UPSTREAM FACE OF THE
DAM.

PRIORITY DATE: 12/09/1940

POINT OF DIVERSION: T01S R08E S01 LOT 4 (NWSE) Within Elmore County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation Storage	01-01 TO 12-31	487961.00 AFY
	Irrigation from Storage	03-15 TO 11-15	487961.00 AFY
	Industrial Storage	01-01 TO 12-31	5200.00 AFY
	Industrial from Storage	01-01 TO 12-31	5200.00 AFY
	Power Storage	01-01 TO 12-31	493161.00 AFY
	Power from Storage	01-01 TO 12-31	493161.00 AFY
	Municipal Storage	01-01 TO 12-31	5200.00 AFY
	Municipal from Storage	01-01 TO 12-31	5200.00 AFY

THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS
EARLY AS MARCH 1 AND MAY CONTINUE TO AS LATE AS NOVEMBER 15,
PROVIDED OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED. THE USE
OF WATER BEFORE MARCH 15 UNDER THIS REMARK IS SUBORDINATE TO ALL
WATER RIGHTS HAVING NO SUBORDINATED EARLY IRRIGATION USE AND A
PRIORITY DATE EARLIER THAN THE DATE A PARTIAL DECREE IS ENTERED
FOR THIS RIGHT.

493,161 ACRE-FEET FOR POWER THAT CAN BE GENERATED BY THE RELEASE
OF 487,961 ACRE-FEET OF WATER FOR IRRIGATION AND 5,200 ACRE-FEET
FOR INDUSTRIAL AND MUNICIPAL PURPOSES.

PLACE OF USE:

THE PLACE OF USE IS WITHIN THE BOISE FEDERAL RECLAMATION PROJECT
WITHIN ADA, CANYON, ELMORE COUNTIES, IDAHO AND MALHEUR COUNTY
OREGON (BIG BEND IRRIGATION DISTRICT).

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE NAME OF THE UNITED STATES OF AMERICA ACTING THROUGH THE
BUREAU OF RECLAMATION APPEARS IN THE NAME AND ADDRESS SECTIONS OF
THIS PARTIAL DECREE. HOWEVER, AS A MATTER OF IDAHO CONSTITUTIONAL
AND STATUTORY LAW, TITLE TO THE USE OF THE WATER IS HELD BY THE
CONSUMERS OR USERS OF THE WATER. THE IRRIGATION ORGANIZATIONS
ACT ON BEHALF OF THE CONSUMERS OR USERS TOADMINISTER THE USE OF
THE WATER FOR THE LANDOWNERS IN THE QUANTITIES AND/OR PERCENTAGES
SPECIFIED IN THE CONTRACTS BETWEEN THE BUREAU OF RECLAMATION AND
THE IRRIGATION ORGANIZATIONS FOR THE BENEFIT OF THE LANDOWNERS
ENTITLED TO RECEIVE DISTRIBUTION OF THIS WATER FROM THE
RESPECTIVE IRRIGATION ORGANIZATIONS. THE INTEREST OF THE
CONSUMERS OR USERS OF THE WATER IS APPURTENANT TO THE LANDS

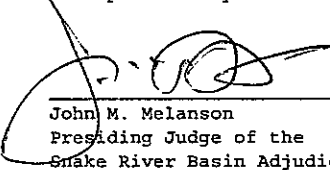
OTHER PROVISIONS (continued)

WITHIN THE BOUNDARIES OF OR SERVED BY SUCH IRRIGATION ORGANIZATIONS, AND THAT INTEREST IS DERIVED FROM LAW AND IS NOT BASED EXCLUSIVELY ON THE CONTRACTS BETWEEN THE BUREAU OF RECLAMATION AND THE IRRIGATION ORGANIZATIONS.

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 DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.



John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I hereby certify that true and correct copies of the **MEMORANDUM DECISION AND ORDER OF PARTIAL DECREE** were mailed on February 25, 2009, by first-class mail to the following:

Director of IDWR
PO Box 83720
Boise, ID 83720-0098

Jerry A. Kiser
620 West Hayes
Boise, ID 83702

United States Department of Justice
Environment & Natural Resources Div.
550 West Fort Street, MSC 033
Boise, ID 83724

Scott L. Campbell
Po Box 829
Boise, ID 83701-0829

Albert P. Barker
Shelley M. Davis
PO Box 2139
Boise, ID 83701-2139

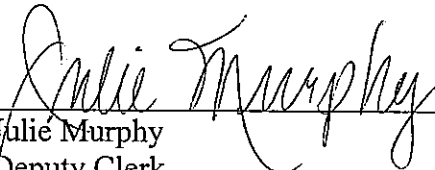
State of Idaho
Natural Resources Division
Attorney General's Office
PO Box 44449
Boise, ID 83711-4449

Daniel V. Steenson
S. Bryce Farris
PO Box 2773
Boise, ID 83701-2773

Travis L. Thompson
PO Box 485
Twin Falls, ID 83303-0485

John K. Simpson
PO Box 2139
Boise, ID 83701-2139

Jerry R. Rigby
PO Box 250
Rexburg, ID 83440-0250


Julie Murphy
Deputy Clerk