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AUG 03 2009

DEPARTMENT OF
WATER RESOURCES

Attorneys for Idaho Ground Water Appropriators, Inc.

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

Subcases: 1-209, 1-210, 1-211A, 1-211B,
1-212, 1-213, 1-214A, 1-214B, 1-217, 1-218,
1-219, 1-10187, 1-10188, 1-10192, 1-10194

“Minidoka Credit Remark”

**GROUND WATER DISTRICTS’
PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Pursuant to the Special Master’s request of May 20, 2009, the Ground Water Districts hereby submit their Proposed Findings of Fact and Conclusions of Law in accordance with the Court’s order.

PROPOSED FINDINGS OF FACT

The Ground Water Districts propose the historical findings of fact that are comprehensively set forth in Ex. 25 pages 1-45. Said facts are incorporated herein as if fully set forth. In addition, the Ground Water Districts propose the following Findings of Fact:

1. The Foster Decree is a private adjudication that arose when Twin Falls Canal Company requested an adjudication of its water rights.

2. Neither the Ground Water Districts nor their members were parties to the Foster Decree.
3. The Minidoka Credit is a calculation of return of the gains or return flows in the Minidoka to Milner reach and they are credited back upstream to the Minidoka canals, to the Minidoka Project, instead of being included in the natural flows to Twin Falls and North Side Canal.
4. The Minidoka Credit arose out of language in the Foster Decree in an attempt to not injure senior water right users on the Snake River.
5. The calculation of the Minidoka Credit has varied over time, but generally has resulted in most years to require Twin Falls and North Side Canal Companies to transfer an amount of water back to Burley Irrigation District and Minidoka Irrigation District.
6. After many years of dispute on how to calculate the credit, on February 14, 2006, Burley Irrigation District, Minidoka Irrigation District, Twin Falls Canal Company, North Side Canal Company and American Falls Reservoir District No. 2 entered into a *Settlement Agreement to Determine Natural Flows Pursuant to Foster Decree*. The Ground Water Districts were not parties to the 2006 Agreement.
7. The 2006 Agreement provides for 14,500 acre-feet of water to be provided by Twin Falls and North Side Canal Companies to Burley Irrigation District, Minidoka Irrigation District and American Falls Reservoir District No. 2. The 2006 Agreement eliminates the need for the Watermaster to calculate the Minidoka Credit and requires him to trade water between the parties as set forth in the 2006 Agreement.
8. American Falls Reservoir District No. 2 was not in existence at the time of the Foster Decree and has never historically received any benefit from the Minidoka Credit calculation.

9. The SWC and the Department are recommending that a remark be placed in water right nos. 1-209, 1-210, 1-211A, 1-211B, 1-212, 1-213, 1-214A, 1-214B, 1-217, 1-218, and 1-219 that references the 2006 Agreement.
10. Providing credit for “return flows” is an aberration and not normally recognized in Idaho.
11. Administrative application of the Minidoka Credit may adversely impact the amount of water ground water users can pump in the event the Director finds material injury to Twin Falls and North Side Canal Companies by increasing the amount of mitigation water owed to those two entities.
12. The Minidoka Credit amounts to an agreement among water users to trade water among themselves. While this type of an arrangement can be recognized and enforced by the Department, it cannot bind parties who are strangers to the agreement.
13. Exhibit 25 is admitted for the reasons set forth in the Ground Water Districts’ Post-trial Brief.

CONCLUSIONS OF LAW

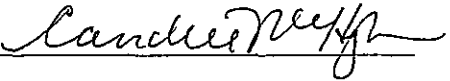
The conclusions of law proposed by the Ground Water Districts’ are discussed in detail in the Ground Water Districts’ Post-trial Brief. Those proposed conclusions of law are incorporated herein as if fully set forth. In addition, the Ground Water District propose the following conclusions of law.

- A. The Idaho Supreme Court has held that a prior decree entered in a private adjudication is binding only upon the parties (and their privies) to that decree. *State v. Hagerman Water Right Owners*, 130 Idaho 736 (1997); I.C. § 42-1401A.
- B. Proceedings to adjudicate water rights, prior to the SRBA, are not strictly *in rem* and therefore the decree is not conclusive as to the parties who are strangers to it. *Mays v. District Court*, 34 Idaho 300 (1921).

- C. The Court has jurisdiction to examine and review remarks proposed by the Director in the Director's Report and to apply the law to the facts as the Court finds them.
Higginson v. United States, 128 Idaho 246 (1995)
- D. I.C. § 42-1411(i) authorizes the SRBA court to include conditions on the exercise of any water right included in any prior decree. Yet, that is not to say that simply because a provision is included in a prior decree that the SRBA Court is unable to re-examine the condition or limit its application.
- E. The Foster Decree was a private adjudication. The ground water users were not parties to the Foster Decree.
- F. The SRBA Court decree will bind all water users to the decree's provisions and in this case would bind all water users to the 2006 Agreement.
- G. The water rights at issue in this case can be administered without reference to the Minidoka Credit or the 2006 Agreement. As such, any remark is not necessary for the administration of the water rights and should not be included.
- H. The Minidoka Credit amounts to an agreement among water users to trade water among themselves. While this type of an arrangement can be recognized and enforced by the Department, it cannot bind parties who are strangers to the agreement.
- I. To the extent parties want to contract for the Minidoka Credit they are free to do so, however, the agreement should be treated as a private contract and should not be used in manner that impacts the use of water under the ground water users' water rights or any obligations arising under the use of the water rights.

DATED this 31st day of July, 2009.

RACINE, OLSON, NYE, BUDGE
& BAILEY, CHARTERED

By: 

CANDICE M. McHUGH
Attorney for the Ground Water Districts

CERTIFICATE OF MAILING

I hereby certify that on this 31st day of July, 2009, a true and correct copy of the foregoing was served by email to those with email addresses and U.S. Mail, postage pre-paid and addressed to the following:


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