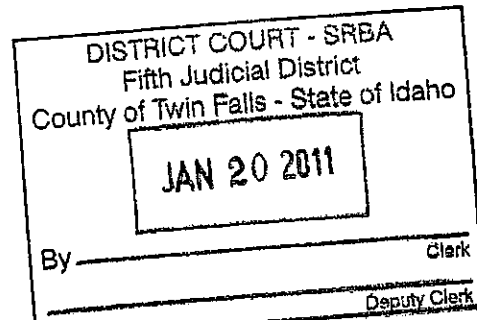


RECEIVED

JAN 21 2011

DEPARTMENT OF
WATER RESOURCES



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

	)	Subcases
	)	01-4 (Twin Falls Canal Co.)
In Re SRBA	)	01-6 (American Falls Reservoir Dist. #2)
	)	01-10 (Twin Falls Canal Co.)
	)	01-209 (Twin Falls Canal Co.)
Case No. 39576	)	
	)	ORDER DENYING GROUND WATER
	)	DISTRICTS' MOTION TO FILE
	)	SECOND AMENDED OBJECTIONS

Background

IGWA's First Objections

On October 4, 2006, the Idaho Ground Water Appropriators, Inc., (IGWA) filed *Objections* in subcases 01-4, 01-10 and 01-209 objecting to quantity ("The quantity should not exceed 5/8" per acre consistent with the rights of all other surface water coalition rightholders.") and place of use ("Conditions should be inserted to limit this right to actual irrigated acres for conjunctive management purposes."). The same date, IGWA filed an *Objection* in subcase 01-6 objecting to source ("High surface water runoff from snowmelt or rain.").¹

Ground Water Districts' Amended Objections

On January 13, 2009, the Ground Water Districts were granted leave to amend their *Objections* to "more clearly define the issues in the original objections." Their *Amended Objections* in the four subcases were essentially the same:

¹ IGWA is now known collectively as the "Ground Water Districts." See May 29, 2008 *Order Granting IGWA's Motion for Substitution of Parties* in multiple subcases 01-4, *et al.*

Source: A condition should be added to reflect that for conjunctive administration this water right is a flood right and available only during high-flow periods.

Quantity: A condition should be added to reflect that for conjunctive administration the quantity of water available to supply this right has historically been limited to the period of high flows resulting from snowmelt. Accordingly, consideration should be given to the history and seasonal availability of water so as not to require replacement water at times when the right has not received a full supply. Additionally, for purposes of conjunctive administration, the irrigation requirement for purposes of a delivery call, the quantity should not exceed 5.8 inch per acre head gate delivery.

Period of Year: The season of use should be limited to the high-flow period only, ending in late June or early July. Consideration should be given to the history and seasonal availability of water so as not to require replacement water at times when the right has not received a full supply.

Place of Use: For purposes of conjunctive administration, the irrigation requirement for purposes of a delivery call is limited to actual irrigated acres.

Other Conditions: A condition should be added to this water right [sic] is not entitled to make a delivery call against junior priority ground water rights. Alternatively, conditions that limit the season of use, priority date, and identifies the source as flood flows from snow melt should be included in times of shortage, for conjunctive administration purposes.

Order on Motions for Summary Judgment

On December 11, 2009, the Special Master entered an *Order on Motions for Summary Judgment* in multiple subcases, including the above four claims. The Special Master concluded in relevant part:

1. The source of water for all rights listed in the *Supplemental Eagle Decree* is the Snake River not limited by classification as flood or high flow;
2. The priority dates decreed in the *Eagle Decree* are valid;
3. Flood water rights are not subordinated to junior hydraulically connected water rights; [and]
4. The season of use for flood water rights should be IDWR's standard season of use[.]

Order, at 19.

Ground Water Districts' Motion to File Second Amended Objections

On November 30, 2010, the Ground Water Districts filed their *Motion to File Second Amended Objections* in the four subcases. In this *Motion*, the Ground Water

Districts sought to make minor changes to their earlier *Amended Objections*. What follows are their proposed second amendments with earlier portions stricken:

Source: A condition should be added to reflect that for conjunctive administration this water right is a flood right and available only during high-flow periods.

Quantity: A condition should be added to reflect that for conjunctive administration the quantity of water available to supply this right has historically been limited to the period of high flows resulting from snowmelt. Accordingly, consideration should be given to the history and seasonal availability of water so as not to require replacement water at times when the right has not received a full supply. ~~Additionally, for purposes of conjunctive administration, the irrigation requirement for purposes of a delivery call, the quantity should not exceed 5.8 inch per acre head gate delivery.~~ Additionally, the quantity under this water right should be reduced to reflect present needs, beneficial use and in no event should the quantity exceed 5/8 [sic] per acre. The quantity element should be reduced to reflect the actual irrigated acres.

Period of Year: The season of use should be limited to the high-flow period only, ending in late June or early July. Consideration should be given to the history and seasonal availability of water so as not to require replacement water at times when the right has not received a full supply.

Place of Use: ~~For purposes of conjunctive administration, the irrigation requirement for purposes of a delivery call is limited to actual irrigated acres.~~ The total acres under this water right should be reduced to actual irrigated acres. The quantity element should be reduced accordingly.

Other Conditions: ~~A condition should be added to this water right [sic] is not entitled to make a delivery call against junior priority ground water rights. Alternatively, conditions that limit the season of use, priority date, and identifies the source as flood flows from snow melt should be included in times of shortage, for conjunctive administration purposes.~~ A condition should be recommended by the Director of IDWR to comply with the historic Water District 1 administration, delivery and accounting of this water right and the storage reservoirs in Water District 01.

[Subcase 01-6 only – The current condition recommended by the Director of IDWR is confusing and should be reworded in order to comply with the historic Water District 1 administration, delivery and accounting of this water right and the storage reservoirs in Water District 01. As currently recommended, the administration of water right 01-6 would distribute water to AFRD2 inconsistent with the distribution of this right for the last 30 years by allowing AFRD2 to count previously stored water as natural flow as long as the reservoir fills by or after April 30.]

a) Conditions should be inserted to limit this right to water available below Blackfoot, except when upstream storage has filled.

- b) Conditions reflecting that for administrative purposes consideration will be given to the history and seasonal availability of water for diversion which may reduce the quantity element of the water right.
- c) A condition should be added that this water right is not entitled to make a delivery call against junior priority ground water rights. Alternatively, conditions that limit the season of use, priority date, and identifies the source as flood flows from snow melt should be included in times of shortage, for conjunctive administration purposes.
- d) A condition should be added clarifying that the quantity element of this water right is not a guaranteed amount but is an authorized maximum that can be diverted if available and used beneficially.

Joint Opposition

The American Falls Reservoir District #2 and Twin Falls Canal Company filed their *Joint Opposition to Ground Water Districts' Motion to File Second Amended Objections* on January 3, 2011. They argued:

[T]he proposed amended objections do nothing more than make insignificant wording changes, ask for conditions which contradict existing decrees and Idaho law, and are not within the province of this Court, and in any event, do not set out a valid claim, defense or objection. Therefore, granting leave to amend the objections as requested by GWD would cause unnecessary delay in these proceedings, and therefore the motion should be denied.

Joint Opposition, at 2.

Hearing on Ground Water Districts' Motion to File Second Amended Objections

The hearing on the Ground Water Districts' *Motion to File Second Amended Objections* was held by telephone on January 10, 2011. The following counsel appeared:

- 1) Ground Water Districts
Candice M. McHugh
- 2) American Falls Reservoir District #2
Isaac D. Keppler
- 3) Amalgamated Sugar
Josephine P. Beeman
- 4) City of Pocatello
Mitra M. Pemberton
- 5) Freemont Madison Irrigation District
Jerry R. Rigby
- 6) Independent Water Users
Robert L. Harris
- 7) State of Idaho
David I. Stanish
Michael C. Orr

- 8) A&B Irrigation District
Roger D. Ling
- 9) United States of America
USDI / BLM – **David L. Negri / Fredric W. Price**
USDI / BOR – **David W. Gehlert**
- 10) IDWR
Chris M. Bromley

Conclusions of Law

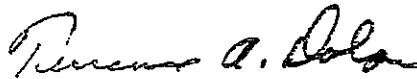
A review of the Ground Water Districts' proposed *Second Amended Objections* reveals the amendments make no significant changes from their January 13, 2009 *Amended Objections*. Rather, the changes are more in the nature of refinements of their earlier arguments.

While it is commendable that the Districts are making a good faith effort to fairly notify the parties of their positions, it does not warrant another round of responses and the risk of further delays and it is unlikely the other parties will be able support a reasonable claim of surprise if these further amendments are denied. If the Districts are concerned about discovery, relevance or admissibility with their proposed amendments, that can be addressed at a later time. The matters at issue are fairly framed now and are ready to move forward toward final resolution.

Order

THEREFORE, IT IS ORDERED that the Ground Water Districts' *Motion to File Second Amended Objections* is **denied**.

DATED January 20, 2011.



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER DENYING GROUND WATER DISTRICTS' MOTION TO FILE 2ND AMENDED OBJECTIONS was mailed on January 20, 2011, with sufficient first-class postage to the following:

CITY OF POCATELLO

Represented by:
A. DEAN TRANMER
CITY OF POCATELLO
PO BOX 4169
POCATELLO, ID 83201
Phone: 208-234-6148

AMERICAN FALLS RESERVOIR

Represented by:
C THOMAS ARKOOSH
CAPITOL LAW GROUP, PLLC
301 MAIN ST
PO BOX 32
GOODING, ID 83330
Phone: 208-934-8872

BLACKFOOT IRRIGATION CO
FREMONT MADISON IRRIGATION
FREMONT-MADISON IRRIGATION
UNITED CANAL CO

Represented by:
JERRY R. RIGBY
25 N 2ND E
PO BOX 250
REXBURG, ID 83440-0250
Phone: 208-356-3633

CITY OF POCATELLO

Represented by:
JOSEPHINE P BEEMAN
409 W JEFFERSON ST
BOISE, ID 83702
Phone: 208-331-0950

STATE OF IDAHO

Represented by:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
PO BOX 44449
BOISE, ID 83711-4449

CITY OF POCATELLO

Represented by:
PEMBERTON, MITRA M
WHITE & JANKOWSKI LLP
511 16TH ST STE 500
DENVER, CO 80202
Phone: 303-595-9441

ABERDEEN AMERICAN FALLS

BINGHAM GROUND WATER DISTRICT
BONNEVILLE JEFFERSON GROUND
CAREY VALLEY GROUND WATER DIST
IGWA INC
JEFFERSON CLARK GROUND WATER
MADISON GROUND WATER DISTRICT
MAGIC VALLEY GROUND WATER DIST
NORTH SNAKE GROUND WATER DIST

Represented by:
RANDALL C BUDGE
201 E CENTER, STE A2
PO BOX 1391
POCATELLO, ID 83204-1391
Phone: 208-232-6101

INDEPENDENT WATER USERS OF
JEFFERSON IRRIGATION DISTRICT
MONTEVIEW CANAL CO
MUD LAKE WATER USERS INC
PALISADES WATER USERS INC
PRODUCERS IRRIGATION CO

Represented by:
ROBERT L HARRIS
1000 RIVERWALK DR, STE 200
PO BOX 50130
IDAHO FALLS, ID 83405
Phone: 208-523-0620

BURLEY IRRIGATION DISTRICT

Represented by:
ROGER D LING
615 H ST
PO BOX 396
RUPERT, ID 83350-0396
Phone: 208-436-4717

(Certificate of mailing continued)

CITY OF POCA TELLO

Represented by:

SARAH A KLAHN
WHITE & JANKOWSKI LLP
KITTREDGE BUILDING
511 16TH ST STE 500
DENVER, CO 80202
Phone: 303-595-9441

STATE OF IDAHO DEPARTMENT OF

Represented by:

STATE OF IDAHO
PO BOX 44449
BOISE, ID 83711-4449
Phone: 208-334-2400

TWIN FALLS CANAL COMPANY

Represented by:

TRAVIS L THOMPSON
113 MAIN AVE W, STE 303
PO BOX 485
TWIN FALLS, ID 83303-0485
Phone: 208-733-0700

UNITED STATES OF AMERICA
USDI BUREAU OF RECLAMATION

Represented by:

US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

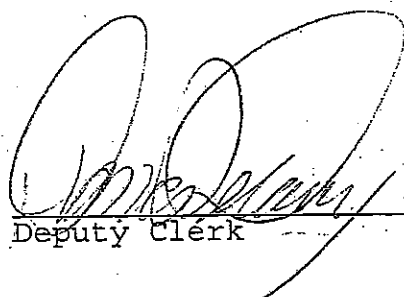
DIRECTOR OF IDWR

PO BOX 83720
BOISE, ID 83720-0098

ORDER DENYING

Page 2 1/20/11

FILE COPY FOR 00014


Deputy Clerk