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DISTRICT COURT SRBA
TWIN FALLS CO. IDAHO

FILED

94-04-0023

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) Subcase Nos: 34-00012, 34-00013, 34-10873, 34-02507,
Case No. 39576) 34-10943, 34-10944, 34-10945, 34-10946
) ORDER: GRANTING MOTION FOR PRELIMINARY
) INJUNCTION;
)
) DENYING MOTION FOR WRIT OF MANDATE;
)
) DENYING MOTION TO TAKE JUDICIAL NOTICE OF
) FACTS;
)
) DENYING MOTION TO PARTICIPATE AND
)
) AMENDING ORDER ON INTERIM ADMINISTRATION
) IN REPORTING AREA 1 (BASIN 34)
)

Randall C. Budge, Racine, Olson, Nye, Cooper & Budge, for Young Harvey Walker.

Susan Hamlin, Deputy Attorney General, for the State of Idaho.

William R. Hollifield, Attorney, for Big Lost River Water Users Association and Bill Sowards.

Roger D. Ling, Ling, Nielsen & Robinson, for Big Lost River Irrigation District.

On April 11, 1994, hearing was held on the *Petition for Preliminary Injunction and Writ of Mandate* (Petition and Writ) brought by Young Harvey Walker. A *Motion to Take Judicial Notice of Facts* was filed along with the Petition and Writ.

This order memorializes the oral rulings entered at the hearing.

Mr. Walker requested a Preliminary Injunction enjoining the Big Lost River Irrigation District and the Idaho Department of Water Resources (IDWR) from interfering with delivery through the Arco Canal of his storage water rights in the Mackay Reservoir to his "Butte City Property." The Butte City Property consists of a total of 321.1 acres and is described as:

Township 3 North, Range 27 East, B.M.:

Section 3: SW1/4 SW1/4, SE1/4 SW1/4

Section 4: NW1/4 SW1/4, SW1/4 SW1/4, SE1/4 SW1/4,
SW1/4 SE1/4, SE1/4 SE1/4

Section 9: NE1/4 NE1/4, SE1/4 NE1/4

The Big Lost River Water Users Association and Bill Sowards filed a *Notice of Intent to Participate in Hearing for Preliminary Injunction and Writ of Mandate*. The Big Lost River Water Users Association and Bill Sowards lack independent standing to be heard on the Petition and Writ. Members of the Big Lost River Water Users Association, including Mr. Sowards, are members of the Big Lost River Irrigation District, which is represented by Roger Ling.

The Big Lost River Irrigation District and IDWR did not oppose the Petition and Writ but opposed the *Motion to Take Judicial Notice of Facts*.

The *Motion to Take Judicial Notice of Facts*, as found by the trial court in *Young Harvey Walker v. Big Lost River Irrigation District*, 124 Idaho 78, 856 P.2d 868 (1993), is **DENIED** because the Idaho Supreme Court reversed the trial court's decision and, therefore, the findings of fact and conclusions of law entered by the trial court cannot be judicially noticed pursuant to I.C. § 9-101(2).

During the course of the hearing, the Big Lost River Irrigation District and Mr. Walker stipulated to facts which were made part of the record in this action.

Based on the facts of record, IT IS ORDERED that the petition for the Preliminary Injunction is GRANTED. The petition for Writ of Mandate, however, is DENIED.

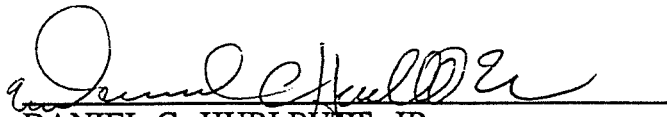
IT IS FURTHER ORDERED that the *Order Granting Interim Administration in Reporting Area 1 (Basin 34)*, dated February 28, 1994, is AMENDED to allow distribution of Mr. Walker's storage water rights in the Mackay Reservoir through the Arco Canal to

Mr. Walker's place of use, known as the "Butte City Property," as specifically described previously.

The February 28, 1994, *Order Granting Interim Administration in Reporting Area 1 (Basin 34)* was granted through the expiration of the 1994 irrigation season. This order GRANTING the petition for Preliminary Injunction shall be consistent with the time limitations of the February 28, 1994, Order.

Mr. Budge shall prepare the Preliminary Injunction for review and submission.

DATED April 15, 1994.


DANIEL C. HURLBUTT, JR.
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the **ORDER GRANTING MOTION FOR PRELIMINARY INJUNCTION; DENYING MOTION FOR WRIT OF MANDATE; DENYING MOTION TO TAKE JUDICIAL NOTICE OF FACTS; DENYING MOTION TO PARTICIPATE AND AMENDING ORDER ON INTERIM ADMINISTRATION IN REPORTING AREA 1 (BASIN 34)** was mailed on April 15, 1994, with sufficient first-class postage to the following:

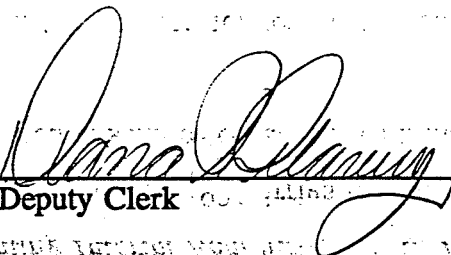
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