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12-15

Attorneys for IDWR

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 No. 34-10563
	)	
	)	
Case No. 39576	)	
	)	
	)	STATUS REPORT

DESCRIPTIVE SUMMARY

At the December 1, 1995, status conference, the Special Master requested a status report from IDWR for the above-referenced subcase. IDWR submits the following report.

DISCUSSION

On December 12, 1995, the claimant, represented by Patrick Brown, and IDWR, represented by Matt J. Howard, held a telephone conference regarding water right no. 34-10563. No settlement was reached.

Mr. Brown feels this case involves a partial forfeiture issue. He indicated that he will file a motion with the court to stay this subcase pending resolution of proposed Basin Wide Issues 10 and 11, dealing with partial forfeiture.

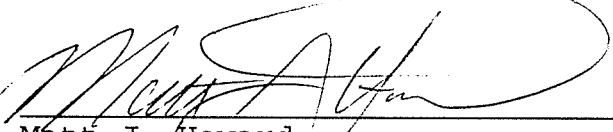
IDWR maintains that this case does not involve a partial

forfeiture issue. On December 14, 1995, IDWR sent Mr. Brown a letter, via facsimile, explaining why this case does not involve partial forfeiture. This letter is attached as Attachment 1 to this report. The letter also clarifies the number of acres that IDWR found to have actually been irrigated. This clarification may resolve the claimant's objection.

Based on the above information, a scheduling conference appears appropriate for this subcase. The period leading up to the scheduling conference should provide IDWR and the claimant ample opportunity to settle this case, if settlement is possible.

DATED this 15th day of December, 1995.

Respectfully submitted



Matt J. Howard
Deputy Attorney General
Idaho Department of Water Resources

CERTIFICATE OF MAILING

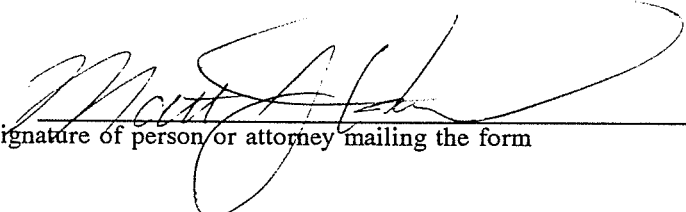
I certify that on December 15, 1995, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, Idaho 83303-2707

2. Copies to:

Patrick D. Brown
HEPWORTH, ET AL
P.O. Box 389
Twin Falls, ID 83303-0389



Signature of person or attorney mailing the form



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

December 14, 1995

Patrick D. Brown
HEPWORTH, LEZAMIZ & HOHNHORST
CHARTERED
P.O. Box 389
Twin Falls, ID 83303-0389

Via facsimile
(208) 734-4115

RE: SRBA Subcase No. 34-10563

Dear Mr. Brown:

I writing you to clarify issues we discussed December 12 regarding water right no. 34-10563. I tried contacting you twice by phone yesterday but your secretary indicated that you were unavailable.

During our December 12 telephone conversation, I explained to you that IDWR could not recommend an irrigation water right for this claim. The reason, as I indicated, was that your client claimed 100 acres for irrigation, but a field examination conducted by IDWR only showed 38 acres as actually being irrigated. The 38 acres could not be recommended more water because they were already receiving two inches per acre under other water rights recommended to your client.

The above explanation is still correct, except for the number of acres. After reviewing the file further with technical staff, it was brought to my attention that 78 acres, not 38 acres, out of the 100 acres claimed by your client are actually being irrigated. However, these 78 acres are already receiving two inches per acre under other water rights recommended to your client. This leaves only 22 acres that IDWR did not recommend to your client for irrigation.

Given this information, I am not sure if your client still wishes to pursue his objection to the amount of irrigated acres. You indicated that your client wanted irrigation water for a "triangle" area somewhere within the 100 acres claimed by your client. Please let me know if the "triangle" area is included in

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the 78 acres referenced above. If it is, then it appears that your client's objection may be resolved.

Also, I wanted to clarify a second issue. You indicated that you felt this case involved a partial forfeiture issue. You indicated that the 100 acre place of use claimed by your client was based on earlier decreed rights. You further indicated that you believed IDWR disallowed irrigation for this claim based on its finding that your client had partially forfeited the non-irrigated place of use because of nonuse.

I disagree. After our conversation, I again reviewed the claim file for this water right, and it became apparent that this case does not involve partial forfeiture. Rather, IDWR disallowed the irrigation portion of this water right claim because it did not receive any evidence from your client that the 22 non-irrigated acres had, in fact, ever been irrigated.

The reason this is not a partial forfeiture case is because the 100 acre place of use claimed by your client is not entirely based on earlier decreed water rights. Specifically, your client based this claim on a combination of five old decreed water rights: 34-00579, 34-00272, 34-00021, 34-00271, and 34-00859. However, only 34-00579 has a decreed place of use within the 100 acre place of use claimed by your client. This place of use is part of the 78 acres that IDWR has already recommended sufficient irrigation water for. The places of use for the other four decreed water rights are not even within the 100 acres claimed by your client. Therefore, if your client is claiming that he is entitled to a water right for the 22 non-irrigated acres based on the five old decreed water rights, then your client must be claiming an accomplished transfer in the place of use. As such, your client must submit evidence to IDWR to support a finding that there has been an accomplished transfer in the place of use of the old decreed water rights and that the 22 non-irrigated acres have in fact been irrigated. Until such evidence is provided to IDWR, IDWR cannot recommend irrigation for this water right.

Based on the above information, I do not believe that this subcase can be resolved by waiting for the outcome of proposed Basin Wide Issues 10 and 11, dealing with partial forfeiture. Rather, it appears that this case should be resolved at the subcase level. Please let me know if the above information

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resolves your client's concerns about this water right. If not, then the next step would probably be to request that the court set a date for a scheduling conference.

If you have any questions, please do not hesitate to contact me.

Sincerely,

IDAHO DEPARTMENT OF WATER RESOURCES



Matt G. Howard
Deputy Attorney General

PS: Enclosed is a copy of the revised recommendation for this water right. As I indicated in our conversation, IDWR removed the remark regarding the point of measurement. This remark was mistakenly included in the original recommendation.