

SEP 01 1999

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

In Re SRBA

Case No. 39576

A. Subcase 57-07153

STANDARD FORM 1a

OBJECTION TO IRRIGATION SEASON
AND/OR CONJUNCTIVE MANAGEMENT
GENERAL PROVISIONS

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Succor Creek District Improvement Co.
(Ron Cunningham, President)

Address: 502 Succor Creek Rd.

Jordan Valley OR 97910

Daytime Phone: (541) 339-3403

Name & address of attorney, if any:

Yturri Rose LLP

Attn: Cliff Bentz or Todd Winegar
89 SW 3rd Avenue/PO Box "S"
Ontario, Oregon 97914

C. CLAIMANT OF WATER RIGHT AS LISTED IN
SUPPLEMENTAL DIRECTOR'S REPORT

Name: Succor Creek District

Improvement Company

Address: Rockville Rt.

Jordan Valley OR 97910

D. ELEMENTS OBJECTED TO:

8. Period (Irrigation Season) of Use

Should be: April 1 - October 31

12. General Provision

Number: - Reported in Basin: -

Comments: --

E. REASONS SUPPORTING OBJECTION: (if you have additional reasons, please attach to this form)

This standard form is for the sole purpose of objecting to the Director's supplemental recommendations on irrigation season of use and general provisions. This form may not be used to object to any other elements of your water right.

If you have evidence that the recommendations on irrigation season of use and/or conjunctive management adversely affect other elements of your water right, please contact the Snake River Basin Adjudication at 208-736-3011. A deputy clerk of the court will inform you of how to proceed.

F. VERIFICATION (Must be Completed)

State of OREGON)
)ss.
County of Malheur)

Todd J. Winegar, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

[Signature]
(Signature of person filing objection)

Subscribed and sworn to before me on: 2-31-99

Todd J. Winegar
(Attorney signing in representative capacity)

Kathy Newkirk
Notary Public
for Oregon
Residing at: Weiser, Idaho
My Commission Expires: 2-9-01



INSTRUCTIONS FOR MAILING

You must mail the objection to the Clerk of the Court. FAX filings will not be accepted. You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on 2-31, 1999, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: Succor Creek District Improvement Co.
Address: 502 Succor Creek Road
Jordan Valley, Oregon 97910

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

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

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

[Signature]
Signature of Objector or attorney

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REASONS SUPPORTING OBJECTION

Department of Water Resources

Introduction

This objection is being filed by the Succor Creek District Improvement Company ("Company") in response to the Director's proposed "period of use" for basin 57. The proposed "period of use" is May 1 through October 1. The Company has been operating under an April 1 through October 31 "period of use" in connection with both an Idaho and Oregon permit.

I. FACTS**A. Idaho.**

The Succor Creek Improvement Company ("Company") includes approximately 2,600 irrigated acres located in both Oregon and Idaho. The Company irrigates this property with the stored waters of the Texas Basin Dam and Reservoir. The Texas Basin Dam and Reservoir is located in the NE ¼ Sec. 7, Twn. 3 South, Range 5 West, B.M., Owyhee County, State of Idaho. Of the Company's 2,600 acres, approximately 50 acres are located in Idaho.

Currently, the Company is operating under a water permit in the State of Idaho (#57-07153). The Company has been operating under an April 1 through October 31 "period of use" in connection with its Idaho permit. This period of use applies to the release of water from the Texas Basin Reservoir and application to 50 acres located in Idaho. Additionally, the Company's Idaho permit provides for the year around storage of water in the Texas Basin Reservoir. The Director of Water Resources is proposing May 1 through October 1 as the "period of use" for the irrigation from storage for the Company. This would shorten the Company's period of use by two months.

B. Oregon.

Approximately 2,550 of the Company's 2,600 acres are located in Oregon. Therefore, approximately 98% of the "stored" water of the Texas Basin Reservoir (located in Idaho) is used for irrigation purposes in Oregon. Currently, the Company is operating under a permit in the State of Oregon (#R-6469 and #40584).

Approximately three months ago, the Company filed its final proof survey in the State of Oregon. The Company is now waiting for a certificate to be issued. The State of Oregon's "period of use" for the Company is April 1 through October 31. Therefore, the current Idaho permit provides the same "season of use" or "period of use" as Oregon.

II. DISCUSSION

There are three water rights which could potentially be affected by the Director's proposed period of use:

1. Oregon application/irrigation from storage;
2. Idaho application/irrigation from storage; and
3. Irrigation storage in Idaho.

It does not appear the Director's proposed "period of use" for the Company's storage rights will be affected. The Company's right to store water in the Idaho reservoir (Texas Basin Reservoir) in accordance with its Idaho permit is the same as that being proposed by the Director.

However, the Director's proposed "period of use" for *irrigation* from storage in the State of Idaho would effectively shorten the irrigation season set forth in the Idaho permit. Additionally, the shortened "period of use" for irrigation from storage could shorten the Company's application rights in the State of Oregon since it may limit the release from storage which will take place in the State of Idaho. We recently discussed this situation with a representative of the Idaho Department of Water Resources (Don Shaff). According to Mr. Shaff, the IDWR may be willing to agree to a stipulation between the Company and the IDWR which would permit the Company to operate under its existing season of use in Oregon and under the Idaho permit. However, the IDWR may not be willing to provide the stipulation until the Company obtains its perfected water right. This raises an interesting dilemma.

As previously discussed, the Company has filed its final proof survey in Oregon for the purpose of procuring a certified water right in that state. Once that certificate is issued, it will be forwarded to the Idaho Department of Water Resources

(IDWR) for review in order to obtain a water license/certificate in Idaho. The IDWR has contacted our office and advised that it would be acceptable to the department to wait until the Oregon certificate is issued. Thereafter, the Idaho certificate will be issued in accordance with the Oregon certificate. The Company is now waiting for the State of Oregon to issue its certificate.

The IDWR has indicated its willingness to agree to a "stipulation" between the Company and the IDWR due to the Company's location (98% in Oregon), the Oregon "season of use" and the rights conferred in its existing Idaho permit. This stipulation agreement would permit the Company to operate under its existing "season of use" in Oregon and the Idaho permit. However, the IDWR may not be willing to provide the stipulation until the Company obtains its perfected water right. For this reason, the IDWR has advised the Company to file this objection in order to ensure that a decree is not issued against the Company without making the SRBA Court aware of the situation.

III. CONCLUSION

This objection is being filed by the Company in response to the Director's proposed "period of use" for basin 57. The proposed period of use is May 1 through October 1. The Company has been operating under an April 1 through October 31 "period of use" in connection with its Oregon and Idaho water permits. The IDWR may be willing to stipulate to the longer period of use due to the fact that the Company is located largely in Oregon and that the Company's Idaho permit provides for the longer season of use. However, since the Company is operating under a permit in both Idaho and Oregon, the IDWR would prefer to wait until the Company obtains its water certificate before it stipulates to the longer period of use.

It is our understanding that the SRBA Court will schedule a status conference for the purpose of establishing a plan for the future and discussing the Company's objection. It may be beneficial to discuss the likelihood of a future stipulation agreement with a representative of the IDWR. As previously stated, we discussed the situation with Don Shaff of the IDWR. Mr. Shaff is familiar with the facts surrounding this objection.

We appreciate your consideration of the Company's objection and look forward to working with both the SRBA Court and the IDWR in reaching a decision surrounding the Director's proposed period of use for the Company.