



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

LAWRENCE G. WASDEN

May 20, 2014

The Honorable Eric J. Wildman
Snake River Basin Adjudication
Fifth Judicial District Court
253 3rd Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

Dear Judge Wildman,

I am writing to inform you of a potential problem IDWR has discovered regarding how several water rights in Basin 63 were recommended and decreed in the SRBA that may affect future administration of the rights, and to explain IDWR's proposal to rectify the situation.

As you likely are aware, several water rights in Basin 63 were previously decreed in the case *Pioneer Irrigation District v. American Ditch Association, et al.* (Seventh Judicial District, Canyon County, decree entered by Judge E. L. Bryan on February 14, 1929), commonly referred to as the "Bryan Decree." The Bryan Decree case commenced in 1913, following entry of what generally is referred to as the "Stewart Decree," a decree of the rights on the Boise River in the case of *Farmers' Cooperative Ditch Company, Inc. v. Riverside Irrigation District, Ltd., et al.* (Seventh Judicial District, Canyon County, decree entered by Judge George H. Stewart on January 18, 1906). The purpose of the Bryan Decree case was to adjudicate a small number of rights that for various reasons had not been previously adjudicated and decreed in the Stewart Decree. These rights were decreed in the February 14, 1929, Bryan Decree, but that decree imposed upon them the following limitation:

[A]ll rights and amounts of water herein awarded are and are hereby decreed to be subject, subsequent and inferior to all the rights and priorities established by and awarded in said Stewart Decree.

Eleven rights were originally made subject to this limitation. Two more were added by a subsequent order entered in the case by Judge A.O. Sutton on January 30, 1932, entitled *Order for Distribution of Waters of Boise River for 1932*, which order in turn was extended by a subsequent order entered by Judge Charles E. Winstead on June 23, 1933, entitled *For 1933 and*

until Further Order of the Court, an order still in effect today. Three other rights were added to the list of Bryan Decree rights by two subsequent decrees which made the rights contained therein subject to both the Stewart and Bryan Decrees.

The Bryan Decree rights all have priority dates senior to one or more rights contained in the Stewart Decree, but because of the limitation quoted above the watermaster historically subordinated them to the Stewart Decree rights junior to them. This subordination was carried over into the SRBA recommendations for Basin 63. However, in making its recommendations IDWR placed language referencing the subordination not on the Bryan Decree rights that were subordinated to one or more Stewart Decree rights, but rather on the Stewart Decree rights that receive the benefit of the subordination. IDWR has now determined that this approach was flawed because IDWR did not likewise place notice of the subordination on the rights that are subject to the burden of the subordination. IDWR should have placed language referencing the subordination also on the Bryan Decree rights to better communicate how they historically have been administered and to provide clear instruction to the watermaster.

All of the Bryan Decree rights were partially decreed except one that was not claimed in the SRBA (63-298). With respect to nine of the partially decreed rights (63-301A, B, C; 63-302A, B, C; and 63-373A, B, C), IDWR discussed the problem with the parties to those subcases as part of the ongoing objection resolution process and the appropriate subordination language was inserted into the partial decrees.

For the twelve other rights that have been partially decreed, IDWR requests that the Court amend the partial decrees to insert appropriate subordination language. IDWR contacted the water right holders by letter to inform them of the problem and requested feedback regarding proposed subordination language. Not all of the water right holders responded to the letter, but of those that did, IDWR managed to resolve their concerns. For instance, Farmers Cooperative Ditch Company (63-296) requested an addition to the subordination language suggested by IDWR.

Enclosed with this letter are the specific subordination conditions that IDWR proposes be placed on the twelve water rights at issue.

The purpose of this proposal is not to impose any greater limitations on this group of rights than have historically existed. Rather, it is intended simply to maintain the historic status quo in terms of how these rights have always been delivered by the watermaster. (IDWR has confirmed with the watermaster that these rights have always been administered subject to the subordination provision of the Bryan Decree). If these corrections are not made, the legal confusion that could result may lead to litigation between the holders of the benefitted rights and the holders of the burdened rights and produce unforeseen detrimental consequences to the delivery regime on the Boise River. This is a situation we would like to avoid.

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Thank you very much for your consideration and attention.

Sincerely,

A handwritten signature in black ink, appearing to read "Emmi L. Blades". The signature is fluid and cursive, with a long horizontal stroke at the end.

Emmi L. Blades
Deputy Attorney General

Enclosure

cc: Jerry A. Kiser
S. Bryce Farris
Albert P. Barker
Shelley M. Davis
Scott L. Campbell
Jodee K. Kelly
Michael P. Lawrence
Pioneer Dixie Ditch Co. c/o Marjorie Maxwell
Matt Howard

Proposed subordination conditions for specific “Bryan Decree rights”

- Right No. 63-294
 - Pursuant to a call in times of scarcity, this right is junior to water right nos. 63-253, 63-285, 63-292, 63-293 and 63-382B and any future splits of these rights.
- Right No. 63-295
 - Pursuant to a call in times of scarcity, this right is junior to water right nos. 63-253, 63-292, 63-293 and 63-382B and any future splits of these rights.
- Right No. 63-296
 - Pursuant to a call in times of scarcity, this right is junior to water right nos. 63-253, 63-285, 63-292, 63-293 and 63-382B and any future splits of these rights. This condition does not modify, amend or waive any defenses available to this right to a call in times of scarcity.
- Right No. 63-297
 - Pursuant to a call in times of scarcity, this right is junior to water right nos. 63-191, 63-225, 63-228, 63-229, 63-248, 63-250, 63-251, 63-252, 63-253, 63-285, 63-286, 63-292, 63-293, 63-369 and 63-382B and any future splits of these rights.
- Right No. 63-299
 - Pursuant to a call in times of scarcity, this right is junior to water right nos. 63-292, 63-293 and 63-382B and any future splits of these rights.
- Right No. 63-300
 - Pursuant to a call in times of scarcity, this right is junior to water right no. 63-293 and any future splits of this right.
- Right No. 63-303
 - Pursuant to a call in times of scarcity, this right is junior to water right nos. 63-293 and 63-382B and any future splits of these rights.
- Right No. 63-367
 - Pursuant to a call in times of scarcity, this right is junior to water right nos. 63-292, 63-293 and 63-382B and any future splits of these rights.
- Right No. 63-372
 - Pursuant to a call in times of scarcity, this right is junior to water right nos. 63-225, 63-229, 63-251, 63-252, 63-253, 63-285, 63-292, 63-293, 63-369 and 63-382B and any future splits of these rights.
- Right No. 63-374
 - Pursuant to a call in times of scarcity, this right is junior to water right no. 63-293 and any future splits of this right.

- Right No. 63-33515
 - Pursuant to a call in times of scarcity, this right is junior to water right nos. 63-292, 63-293 and 63-382B and any future splits of these rights.
- Right No. 63-33516
 - Pursuant to a call in times of scarcity, this right is junior to water right nos. 63-292, 63-293 and 63-382B and any future splits of these rights.