

Parties' Names:

UNITED STATES OF AMERICA

A&B IRRIGATION DISTRICT

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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)
)
)
)
)
)
)
)

Subcase No. 36-02080

JOINT SUBMISSION OF PARTIES
SUPPORTING ELEMENTS OF WATER
RIGHT INCLUDED IN S.F. 5

DESCRIPTIVE SUMMARY

This is the United States' and A & B Irrigation District's submission to explain the necessity of including certain statements in the water right related to the element name and address.

I. BACKGROUND

This water right was originally claimed by both the United States and the A&B Irrigation District. The Idaho Department of Water Resources (IDWR) recommended that it be decreed in the name of the United States. A&B Irrigation District filed an objection requesting that the decree include a statement reflecting the relationship between A&B Irrigation

District and the Bureau of Reclamation with regard to the management of this water right.

The parties and IDWR have agreed that the following language should be included in the water right as a further explanation under the element "Name and Address of Owner":

The beneficial use of the water represented hereby is for the landowners within the A & B Irrigation District pursuant to contract No. 14-06-100-2386, dated February 9, 1962 (as may be supplemented or amended) between the United States of America through the U.S. Bureau of Reclamation and the A & B Irrigation District for irrigation and other permitted purposes as authorized by the Act of September 30, 1950, ch. 1114, 64 Stat. 1083, of the North Side Pumping Division, of the Minidoka Irrigation Project.

On August 30, 1996, A & B Irrigation District filed a supplemental statement on the S.F. 5. This submission supersedes that submission. That supplemental statement should be withdrawn and this substituted for it.

II. DISCUSSION

Pursuant to I.C. 42-1411(2), the Director is authorized to determine the elements of a water right "to the extent the director deems appropriate and proper, [in order] to define and administer the water right acquired under state law." In addition, the Director has authority to impose "conditions on the exercise of any water right included in any decree....", I.C. 42-1411(2)(j), and make "such remarks and other matters as are necessary for definition of the right, for clarification of any element of a right, or for administration of the right by the director." I.C. § 42-1411(2)(k). IDWR and the parties agree that the above precatory language is appropriate to provide

proper notice to all appropriators and future water masters that the water rights of the United States are exercised in accordance with the contract between the Bureau of Reclamation and the A&B Irrigation District. Moreover, IDWR and the parties agree that the language is necessary for clarifying and defining how the United States' water rights are administered.

Through settlement of A&B Irrigation District's objection, IDWR and the parties acknowledged that the United States should hold legal title to the project water rights provided the final decree acknowledges the complex contractual arrangement between the Bureau of Reclamation and A&B Irrigation District. It is this contract and the license of the United States that recognizes that the beneficial use of the project water is for the district's landowners as provided by state and federal laws,¹ and the terms of the contract. Also, it is this contract that provides A&B Irrigation District with the day-to-day operational authority and recognizes that the Bureau of Reclamation oversees the District's management of the project and insures the overall proper distribution of project water as required by the contract and federal law. It is this knowledge of the parties' contract that provides the important link on how the project water rights are administered and is critical

¹ The purpose of this submission is to explain why the precatory language included within the title element is necessary for purposes of administration under state water law. However, neither the United States nor A & B Irrigation District waive any arguments it may make in this adjudication under federal or state law regarding the respective property interests of the United States, A&B Irrigation District and its landowners.


information for other appropriators and water masters to understand. I.C. § 42-1413 states "upon entry of a final decree, the director shall administer the water rights by distributing water in accordance with the final decree and with title 42, Idaho Code." If the contract relationship is not recognized within the decree, future water masters would not understand that the project water rights must be administered by the terms of the contract in addition to the requirements of state law.

Therefore, it is IDWR's and the parties' belief that the precatory title language is necessary to capture the complex relationship between the parties and provide the notice required that the project water rights are defined and administered by the parties' contract.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, the United States and the A & B Irrigation District request that the decree for this water right include the statement under the element "Name and Address of Owner."

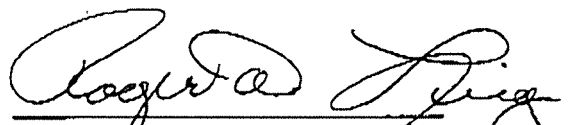
Respectfully submitted,


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 Env. & Nat. Res. Div.
 U.S. Dept. of Justice

Attorney on behalf of
 Bureau of Reclamation

DATED: Sept 5, 1996

OF COUNSEL for Bureau
 of Reclamation:
 Kathleen M. Carr, Office of Solicitor, DOI


 ROGER D. LING, ESQUIRE
 Ling, Nielsen & Robinson

Attorney for A & B
 Irrigation District

DATED: Sept. 5, 1996

CERTIFICATE OF SERVICE

I certify that on the 5th day of September, 1996, I served the original and copies of the Joint Submission of Parties suupporting elements of Water Right included in SF 5, to the following persons by hand or by faxing 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
PO Box 2707
Twin Falls, Idaho 83303-2707
BY FAX: 208/736-2121

2. Copies to:

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