

REPORTING REGARDING OWNERSHIP ELEMENT
OF WATER RIGHT NO. 36-02080

In Re SRBA
Twin Falls County Civil Case No. 39576
Subcase No. 36-02080

Report to the SRBA District Court

Prepared by the Idaho Department of Water Resources
Karl J. Dreher, Director
David R. Tuthill, Jr., Acting Adjudication Bureau Chief

September 3, 1996

REPORT REGARDING OWNERSHIP ELEMENT OF WATER RIGHT NO. 36-02080

The Director of the Idaho Department of Water Resources (IDWR) submits this report regarding the ownership element of water right no. 36-02080 in response to the request of Special Master Terrence A. Dolan and pursuant to Idaho Code §42-1414(4). This report was prepared under the supervision of Karl J. Dreher, Director, and David R. Tuthill, Jr., Acting Adjudication Bureau Chief for IDWR. IDWR submits this report to supplement the Standard Form 5 (SF5) for water right no. 36-02080.

Both the US and A&B filed notices of claim for water right no. 36-02080. IDWR recommended the right to the United States, acting through the Regional Director of the Pacific Northwest Region of the Bureau of Reclamation. Both A&B and the US objected to various aspects of the right as recommended. The SF5 resolves both parties' objections. This report explains IDWR's basis for concurring with the US and A&B that the following paragraph, not contained in the right as originally recommended but now contained in the SF5, should be included in the decree in the description of the ownership element:

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.

One of the elements which every water right that IDWR recommends, and the court decrees, must contain is a description of the name and address of its owner.¹ A&B and the US have disagreed as to the correct description of this element of the water right. To resolve their dispute and avoid further litigation they have agreed to inclusion of the language quoted above, which describes to their mutual satisfaction the nature of A&B's interest in the water right.

If the court should reject the parties' agreed-upon resolution of this dispute, it is probable, in IDWR's estimation, that A&B and the US will take this issue forward to resolution through further litigation, since the legal issue of the nature of an

¹ IDWR relied upon the following in reaching its conclusion: Idaho Code §42-1411(2), which provides that the director shall determine various elements of the right, including the name and address of the claimant, to the extent the director deems *appropriate and proper* to define and administer the water rights acquired under state law, and Idaho Code §42-1412(6) which provides that the decree shall contain or incorporate a statement of each element of the water right as stated in §42-1411(2), as contrasted with language later in section 42-1412 providing for the inclusion of general provisions to the extent *necessary* to define and administer water rights..

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irrigation district's interest in water rights in a federal reclamation project is very important to both of them. Should this happen, the court could end up including within its decree of this water right language similar to the language in question in any case. IDWR believes that interests of judicial economy and the efficient resolution of disputes through negotiated settlement favor the court's accepting the parties' agreed-upon resolution of this issue.

IDWR therefore concludes that inclusion of this language in the description of the water right appropriately describes A&B's interest in the water right and is necessary to resolve the legal dispute between the parties over this element of the right.

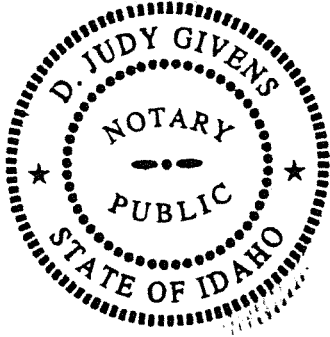
STATE OF IDAHO)
) ss.
County of Ada)

DAVID R. TUTHILL, JR., being first duly sworn upon oath, deposes and says:

That I am the Acting Adjudication Bureau Chief for IDWR, and that I have read the foregoing report, know its contents, and that the statements contained therein are true to the best of my knowledge and belief.

David R. Tuthill, Jr.
DAVID R. TUTHILL, JR.
Acting Adjudication Bureau Chief

SUBSCRIBED AND SWORN to before me this 4th day of September, 1996.



D. Judy Givens
NOTARY PUBLIC FOR IDAHO
Residing at: Meridian ID
Commission expires: 8/12/2002

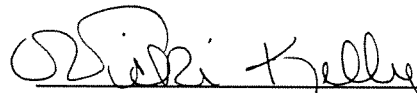
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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of September, 1996, I served a true and correct copy of the foregoing report entitled DESCRIPTION OF OWNERSHIP ELEMENT on each of the following persons by first class mail, postage prepaid, to the addresses listed below.

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