

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

**IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 75-15015 IN THE)
NAME OF ALAN B GLASSBURN) REQUEST FOR BRIEFS
AND GRACE P A GLASSBURN)**

On April 12, 2021, Alan B. Glassburn and Grace P. A. Glassburn filed Application for Permit No. 75-15015 ("Application 75-15015"), seeking a permit to divert 0.04 cfs from Jesse Creek tributary to the Salmon River for domestic use. The Department published notice of Application 75-15015 on May 20 and 27, 2021. A protest was filed by Robert L. Blackadar.

The Blackadar protest states:

I hereby protest the application of Alan Glassburn (75-15015) to divert water from the source stated in the application. The reason for protest is that that source is not Jesse Creek, it's Pollard Canyon (aka Pollard Creek or Pollard Canyon Creek).

During the Snake River Basin adjudication IDWR added the word Creek to Pollard Canyon saying that they could not divert water from a canyon, it had to be a creek. IDWR was successful in the SRBA in calling Pollard Canyon Jesse Creek below the confluence of Jesse Creek and Pollard Canyon (Creek.) However it is not shown to be that way on USGS maps and Google Maps. In order to change the name of Pollard Canyon to Jesse Creek, there is a detailed procedure thru USGS and the State of Idaho Historical Society and that procedure has yet to be enacted. Therefore, it's still Pollard Canyon and not Jesse Creek and the applicant can only divert from Pollard Canyon and not Jesse Creek.

On September 22, 2009, Terrance A. Dolan, Special Master for the Snake River Basin Adjudication, issued a *Special Master Report and Recommendation* in a consolidated proceeding for sixteen contested subcases known as the Jesse Creek subcases. Mr. Blackadar was a party to that consolidated proceeding and raised arguments similar to those stated in his protest to Application 75-15015.

Pursuant to Rule 602 of the Department's Rules of Procedure (IDAPA 37.01.01), the presiding officer will take official notice of the following documents in the water right records of the Department:

Special Master Report and Recommendation – Jesse Creek Subcases (9/22/2009)
Memorandum prepared by Monica Van Bussum (11/28/2008)
Supplemental Director's Report – Jesse Creek Subcases (2/27/2009)

Copies of these official notice documents have been provided to the parties as an attachment to this order and are also available to the public in the water right files of the Department.

Pursuant to Rule 564 of the Department's Rules of Procedure (IDAPA 37.01.01), a presiding officer may request briefs from the parties setting forth arguments and positions on any questions of law in a contested case. The protest filed by Mr. Blackadar presents a legal question about the applicability of the doctrine of collateral estoppel. Before proceeding with a hearing for this contested case, the hearing officer would like the parties to file briefs addressing the following questions of law:

Does the doctrine of collateral estoppel (also known as issue preclusion) prevent Mr. Blackadar from pursuing the arguments set forth in his protest? If so, should the protest filed by Mr. Blackadar be dismissed?

Briefs shall be filed on or before September 3, 2021. Response briefs are not requested and will not be considered by the hearing officer.

Dated this 2nd day of August, 2021.



James Cefalo
Hearing Officer

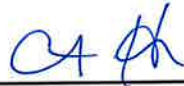
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of August 2020, true and correct copies of the documents described below were served by placing a copy of the same with the United States Postal Service, postage prepaid and properly addressed to the following:

**Documents Served: Request for Briefs
Official Notice Documents**

ALAN GLASSBURN
GRACE GLASSBURN
1418 ROOSEVELT AVE
SALMON, ID 83467

ROBART BLACKADAR
10 N CHEROKEE RD
SALMON, ID 83467



Christina Henman
Administrative Assistant