



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

January 10, 2011

RE: Motion for Order of Interim Administration for Surface Water Rights in Basin 63

Dear Water Right Holder:

The enclosed documents relate to the State of Idaho's Motion for Order of Interim Administration, which seeks District Court authorization for administration of surface water rights in Basin 63.

The purpose for the request is to obtain authority for the administration and delivery of surface water rights in Basin 63, including existing Basin 63 surface water districts, in accordance with the more recent partial decrees issued by the Snake River Basin Adjudication District Court rather than the older or outdated historic records. One step in this process is the notification of potentially affected water right holders. Therefore, this mailing is being sent to all recorded Snake River Basin Adjudication surface water claimants or right holders (except those whose use is solely for de minimis domestic and/or stock water purposes) in Basin 63. Please note that some claimants or right holders receiving this notice may have rights that are not included within an existing surface water district.

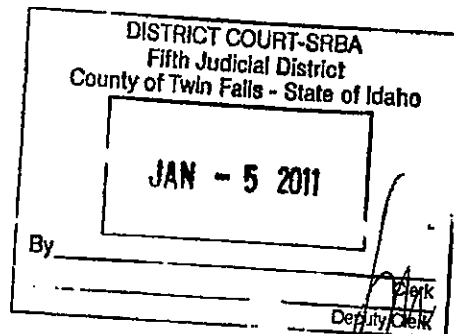
Enclosed with this mailing are the following documents: (1) Order Setting Hearings on State of Idaho's Motion's for Interim Administration and Requests for Expedited Hearing; (2) Motion for Order of Interim Administration for Surface Water Rights in Basin 63; (3) Brief In Support of Motion for Order of Interim Administration; and (4) Affidavit of Tim Luke, Manager for the IDWR Water Distribution Section. Please note that the Snake River Basin Adjudication District Court has scheduled a hearing for this matter on Tuesday, February 15, 2011, at 2:00 p.m., at the Snake River Basin Adjudication Court, 253 3rd Avenue North, Twin Falls, Idaho.

If you have any questions concerning this matter, please call IDWR at 208-287-4800.

Sincerely,

Gary Spackman
Interim Director

Enclosures



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) Subcases: 00-92021-63 & 00-92021-65
Case No. 39576)
)
) ORDER SETTING HEARING ON
) STATE OF IDAHO'S MOTIONS FOR
) INTERIM ADMINISTRATION AND
) REQUESTS FOR EXPEDITED
) HEARING
)
)

On January 4, 2011, the State of Idaho filed *Motions for Order of Interim Administration of Surface Water Rights*, pursuant to I.C. § 42-1417, seeking administration of surface water rights located in all or portions of Administrative Basins 63 and 65, in accordance with the *Partial Decrees* that have been issued by this Court in the Snake River Basin Adjudication. A *Request for Expedited Hearing*, pursuant to *AOI 6f(2)*, for each basin was also included with the *Motions*.

Because of the unusually large number of parties requiring service of these *Motions*, and in an effort accomplish service in a single-round by including a copy of this *Order* with the service of the *Motions*, the State of Idaho filed these *Motions* with the Court prior to serving copies on other parties. This practice is customarily used in the SRBA with respect to *Motions for Interim Administration*. The Court, in exercising its discretion, finds this to be a reasonable manner of proceeding provided compliance with the service requirements set forth below. I.R.C.P. 5(d)(1).

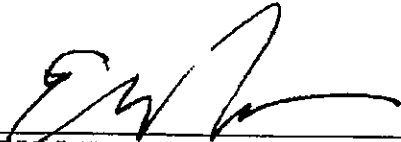
THEREFORE, THE FOLLOWING ARE HEREBY ORDERED:

- 1) Service of the *Motions* and this *Order* by the State of Idaho: In serving copies of the *Motions for Order of Interim Administration and Requests for Expedited Hearing*, and any supporting briefing and affidavits on all affected parties, the State of Idaho shall forthwith comply with service requirements of I.C. § 42-1417(2)(b)(service requirements for interim administration) and AOI 6f(2)(expedited hearings); and file a certificate of service of the same with the Court. **A copy of this *Order* shall be served with the copies of the *Motions*.**
- 2) Hearing on *Requests for Expedited Hearing*: The *Requests for Expedited Hearing* shall be heard on **Tuesday, February 15, 2011, at 2:00 p.m.** at the SRBA District Court, 253 – 3rd Avenue North, Twin Falls, Idaho. Parties may participate by telephone by dialing the number 1-215-446-0193 and when prompted entering code 406128, followed by the # sign. Any party objecting to the *Motion for Order of Interim Administration* proceeding on an expedited basis will have the opportunity to state objections and present argument at said hearing.
- 3) Hearing on *Motions for Order of Interim Administration*: The *Motions for Order of Interim Administration* shall be heard on **Tuesday, February 15, 2011, at 2:00 p.m.**, at the SRBA District Court, , 253 – 3rd Avenue North, Twin Falls, Idaho, with telephone participation as outlined above. In the event objections are filed to hearing the *Motions* on an expedited basis and the Court grants the relief requested in the objections at the hearing, then hearing on the *Motions for Interim Administration* will be according to docket sheet notice and will be heard on Tuesday, April 19, 2011, at 3:00 p.m., with telephone participation as outlined above.
- 4) Objections and/or Briefing in Opposition: Any party seeking to file an objection to the State of Idaho's *Requests for Expedited Hearing* and/or *Motions for Order of Interim Administration* or who seeks to lodge any briefing in opposition shall file/lodge the same with the Court no later than 5:00 p.m., on February 11, 2011. Copies shall be served on the State of Idaho, the Idaho Department of Water Resources, and the United States Department of Justice. See *AOI* § 6e(2)(a)-(c). In accordance with I.R.C.P. 5(c), which establishes alternative service requirements in actions involving large numbers of defendants, service of copies on other parties will not be required at this

time, as the State of Idaho's representation in responding at the hearing to any pre-filed objections will be deemed sufficient to represent the interests of other parties also supporting the State of Idaho's *Motions*. Following the hearing on the merits, if deemed necessary, the Court will determine whether to allow any post-hearing or responses by participating parties.

5) Subcase number designation for *Motions*: For purposes of identifying documents in the above-captioned matter, documents shall be filed/lodged under the subcase number designations of 00-92021-63 and 00-92021-65 respectively.

DATED: January 5, 2011.


ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER SETTING
~~HEARING ON STATE OF IDAHO'S MOTIONS FOR INTERIM ADMINISTRATION~~
AND REQUESTS FOR EXPEDITED HEARING was mailed on January 05,
2011, with sufficient first-class postage to the following:

STATE OF IDAHO

Represented by:

STATE OF IDAHO

PO BOX 44449

BOISE, ID 83711-4449

Phone: 208-334-2400

INTERIM ADMINISTRATION
BASIN 63

INTERIM ADMINISTRATION
BASIN 65

DIRECTOR OF IDWR

PO BOX 83720

BOISE, ID 83720-0098

ORDER

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/S/ JULIE MURPHY
Deputy Clerk

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

SHASTA KILMINSTER-HADLEY, ISB #7889
Deputy Attorney General
Natural Resources Division
Office of the Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 334-2690

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)	Subcase No. 00-92021-63
)	
)	MOTION FOR ORDER OF INTERIM
)	ADMINISTRATION OF SURFACE
Case No. 39576)	WATER RIGHTS IN BASIN 63
)	
)	
_____)	

The State of Idaho moves this Court for an order of interim administration of surface water rights in the Snake River Basin Adjudication (“SRBA”) for Administrative Basin 63, pursuant to Idaho Code § 42-1417, in accordance with partial decrees issued by the SRBA District Court. The grounds for this motion are as follows:

1. Idaho Code § 42-1417 provides that the district court may, by order, permit the distribution of water pursuant to chapter 6, title 42, Idaho Code, through water districts in accordance with the partial decrees for water rights acquired under state law or established under federal law. Idaho Code § 42-1417 provides that the district court may

enter the order after notice and hearing, if the district court determines that interim administration of water rights is reasonably necessary to protect senior water rights.

2. This Court's adjudication of water rights in Basin 63 is nearing completion. The court is close to resolving the remaining 80 contested water rights recommendations in the SRBA. There are three late claims that were recently recommended, for which the objection deadline runs on January 24, 2011. There are nineteen late claims that are expected to be recommended in upcoming late claim reports.
3. Surface water rights in much of Basin 63 are currently being administered using historic decrees and other historic water right records. An order granting interim administration of surface water rights in Basin 63 is necessary so that the Idaho Department of Water Resources can transition from administration per the historic records to administration per the more recent SRBA partial decrees. Administration based upon the partial decrees is necessary to protect senior water rights.
4. There are three active water districts in Basin 63 administering surface water rights, including Water District 63, Boise River, Water District 63-B, Smith Creek (Elmore County), and Water District 63-T, Warm Springs Creek (Canyon County). Thus, an order granting interim administration for surface water in Basin 63 will provide the current watermasters in these water districts with the ability to administer water rights in accordance with the partial decrees issued by this Court.
5. In accordance with Idaho Code § 42-1417(2)(b), notice of this motion is being provided to all affected claimants in Basin 63 by mailed notice.

WHEREFORE, the State respectfully requests as follows:

1. That this Court enter an order authorizing interim administration of surface water

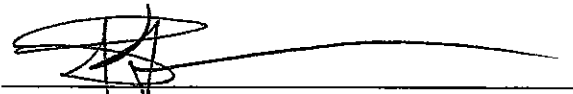
rights in Basin 63 in accordance with the partial decrees issued by this Court.

2. That the Court hold an expedited hearing on this motion.
3. That Court grant such other and further relief that the Court deems just and proper.

DATED this 4th day of January 2011.

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CLIVE J. STRONG
DEPUTY ATTORNEY GENERAL
STATE OF IDAHO



SHASTA KILMINSTER-HADLEY
Deputy Attorney General
Natural Resources Division

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

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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)	Subcase No. 00-92021-63
)	
)	BRIEF IN SUPPORT OF MOTION FOR
)	ORDER OF INTERIM ADMINISTRATION
Case No. 39576)	OF SURFACE WATER RIGHTS IN BASIN 63
)	
)	
_____)	

The State of Idaho submits this brief in support of its *Motion for Order of Interim Administration of Surface Water Rights in Basin 63*. Idaho Code § 42-1417 sets forth the provisions of law that authorize the District Court to enter an order of interim administration. This brief will demonstrate compliance with those requirements.

I. INTERIM ADMINISTRATION OF SURFACE WATER RIGHTS IS REASONABLY NECESSARY TO PROTECT SENIOR WATER RIGHTS.

A. Introduction

Administration of water rights is the distribution of water to water users in accordance with the prior appropriation doctrine as set forth in Idaho law. The primary mechanism for distribution of water in accordance with the prior appropriation doctrine in Idaho is through a water district (and the watermaster within that district), under the supervision of the Director (hereinafter "Director") of the Idaho Department of Water Resources (hereinafter "IDWR"). Idaho Code § 42-602 *et seq.*

Under Idaho Code § 42-1417, this Court may order interim administration in accordance with the Court's partial decrees upon a determination that administration is reasonably necessary to protect senior water rights. As demonstrated below, the purpose for seeking interim administration is to provide a legal mechanism for the Director to administer water rights in Basin 63 consistent with the partial decrees issued by this Court.

B. Interim Administration is Reasonably Necessary for Efficient Administration of Water Rights.

This Court's adjudication of water rights in Basin 63 is nearing completion. The court is close to resolving the remaining 80 contested water rights recommendations in the SRBA. There are three late claims that were recently recommended, for which the objection deadline runs on January 24, 2011. There are nineteen late claims that are expected to be recommended in upcoming late claim reports.

Currently, surface water rights in much of Basin 63 are being administered using historic decrees and other historic water right records. An order granting interim administration of surface water rights in Basin 63 is necessary so that IDWR can transition from administration per

the historic records to administration per the more recent SRBA partial decrees. Administration based upon the partial decrees is necessary to protect senior water rights because, to fully and adequately deliver water rights, the Director needs to administer water rights based upon the most updated records, which are the partial decrees issued by this Court pursuant to chapter 14 of title 42, Idaho Code. As the Court's adjudication of the water rights in Basin 63 is nearly complete, it is an appropriate time to have IDWR begin administering water rights per the partial decrees.

II. THE DIRECTOR'S REPORTS AND PARTIAL DECREES PROVIDE AN ADEQUATE LIST OF WATER RIGHTS FOR PURPOSES OF INTERIM ADMINISTRATION.

Chapter 6 recognizes that distribution of water requires an accurate listing of water rights. Idaho Code § 42-604, providing for the creation of water districts, applies only to "streams or water supplies" whose priorities of appropriation have been adjudicated by courts having jurisdiction thereof. The Idaho Supreme Court has recognized the importance of an accurate list containing the description of the water rights to be administered. In *Nettleton v. Higginson*, 98 Idaho 87, 558 P.2d 1048 (1977), the Idaho Supreme Court stated: "Only by having a specific list reciting the names of water users, with their dates of priority, amounts, and points of diversion can a system be administered." *Id.* at 91, 558 P.2d at 1052, quoting *DeRousse v. Higginson*, 95 Idaho 173, 505 P.2d 321 (1973).

Before the court can issue the order of interim administration, it must find that the individual partial decrees are an adequate listing of the owners of and the elements of the water rights for the purposes of interim administration of a water source. Idaho Code § 42-1417 contemplates that the partial decrees provide an adequate listing of water rights for purposes of interim administration because these rights have not only been investigated by state officials, but

have also withstood the scrutiny of court review. Thus, the partial decrees constitute an adequate listing for the purpose of administration pending the completion of the adjudication. Upon entry of an order for interim administration, the distribution of water thereunder will occur in accordance with the normal administrative mechanism created by chapter 6, title 42, Idaho Code.

III. NOTICE IS BEING PROVIDED TO EACH CLAIMANT THAT WILL BE SUBJECT TO THE INTERIM ADMINISTRATION ORDER.

Idaho Code § 42-1417 requires that notice be given to “each claimant of water from the water system or portion thereof that could reasonably be determined to be adversely affected by entry of the order” The State of Idaho is mailing notice of this motion to all claimants who may be subject to interim administration if this motion is granted. Therefore, the notice provisions of Idaho Code § 42-1417 are satisfied.

CONCLUSION

Interim administration, as requested in the State’s motion, is reasonably necessary to prevent injury to senior water rights in Basin 63 as required by Idaho Code § 42-1417. The partial decrees are based on examination of the claims and the water system as required by Idaho Code § 42-1411 and have withstood the scrutiny of court review. As such, the partial decrees constitute an adequate listing of water rights for purposes of administration of water rights pending entry of a final decree of the water rights. Therefore, the State requests that the Court enter an order permitting the administration of surface water rights in Basin 63 in accordance with the partial decrees issued by this Court.

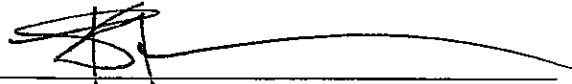
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RESPECTFULLY SUBMITTED this 4th day of January 2011.

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CLIVE J. STRONG
DEPUTY ATTORNEY GENERAL
STATE OF IDAHO

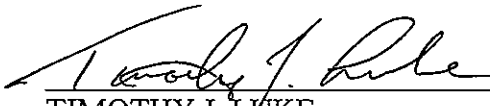
A handwritten signature in black ink, appearing to read 'SHASTA KILMINSTER-HADLEY', written over a horizontal line.

SHASTA KILMINSTER-HADLEY
Deputy Attorney General
Natural Resources Division

related to water management such as Ground Water and Surface Water Relationships, Hydraulics, Field Hydrogeology, Irrigation System Design and several water law and water management workshops.

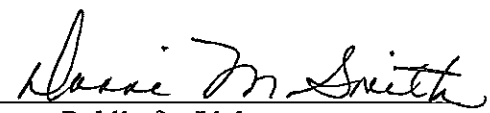
3. I worked from September 1988 to August 1991 for IDWR as a Senior Water Rights Agent. My duties included, but were not limited to the review, analysis, recommendation and processing of water right transfers, and the review and processing of applications to reallocate water held in trust under the Swan Falls agreement.
4. From September 1991 to February 1992, I worked for IDWR as a Hydrologist-in-Training, in the Water Permits Section. My duties included, but were not limited to water district assistance, field inventory and measurement of diversions, and water right analysis.
5. I worked from March 1992 to February 1997 for IDWR as a Hydrologist in the Water Permits and Water Distribution Sections. My duties included, but were not limited to, assisting in the implementation of the water measurement program, field inventory and measurement of diversions, water district assistance, water right analysis, reduction and analysis of hydrologic data and preparation of reports, and investigation of water distribution complaints and water right disputes.
6. From March 1997 to the present, I have served as the Section Manager for the Water Distribution Section. My primary responsibilities are the implementation and management of water measurement programs, enforcement of water rights, and assistance to water districts including periodic training of watermasters and watermaster guidance regarding water distribution/water right disputes.
7. I have personal knowledge of the water supply conditions and water rights in Basin 63 through my work with IDWR's Water Distribution Section.

8. There are currently three active water districts administering surface water rights in Basin 63. Water District No. 63 includes all of the Boise River and tributaries, excluding Water District No. 63-B, Smith Creek, and Water District No. 63-T, Warm Springs Creek. Most of the water use and watermaster regulation activity in Water District No. 63 is limited to the Boise River from Lucky Peak Dam to the Snake River.
9. Current administration of surface water rights in Basin 63 water districts is based on decreed or other administrative water rights as recorded with IDWR prior to the issuance of partial decrees in Basin 63 by the Snake River Basin Adjudication (SRBA) District Court. Many of these historic water right records do not accurately reflect current water uses provided in partial decrees issued by the SRBA Court. Proper administration of surface water rights in Basin 63 water districts is dependent upon use of the most updated water right records as reflected by the partial decrees issued by the SRBA Court or as recommended by the Director of IDWR to the SRBA Court.
- FURTHER YOUR AFFIANT SAYETH NAUGHT.


TIMOTHY J. LUKE

SUBSCRIBED AND SWORN to before me this 4th day of January, 2011.




Notary Public for Idaho
Residing at: Boise, Idaho
My commission expires: Dec 12, 2012