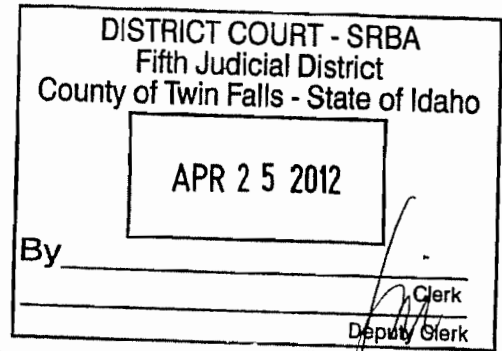




IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA) **Basin-Wide Issue 16**
Case No. 39576) **Subcase No: 00-92099**
) **(In Re: Form and Content of Final Unified**
) **Decree)**
)
) **ORDER CLOSING CLAIMS TAKING**
) **BASINS 21, 22, 29, 32, 33, 65, 67, 69, 71,**
) **72, 73, 74, 75, 77, 78 and 79 AND**
) **DISALLOWAL OF UNCLAIMED**
) **WATER RIGHTS**
)

I.

PROCEDURAL BACKGROUND

This Court issued an *Order Setting Initial Status Conference Re: Form and Content of Final Decree* on January 13, 2011. On July 15, 2011, this Court entered its *Order Establishing Steering Committee and Notice of First Scheduled Meeting*. "The steering committee ("Committee") is charged with identifying issues and sub-issues pertaining to the form and content of the final decree to be entered upon completion of the SRBA." *Id.* at 1. The Committee is also "charged with recommending a logical order and time frame in which these issues and sub-issues should be decided." *Id.*

In the *State of Idaho's Initial Comments on Form and Content of Final Unified Decree*, filed May 17, 2011, the State of Idaho ("State") recommended the Court "establish a schedule for closing claims taking in each of the reporting basins . . . [i]n order to allow sufficient time for development of general provisions and preparation of the final decree" *Id.* at 6. On July 18, 2011, the State filed its *Supplemental Comments on Form and Content of Final Unified Decree*, in which it proposed a schedule for closure of taking of late claims in the SRBA basins. The proposed schedule

divided the SRBA basins into three groups based on the following criteria: (i) the amount of subcase activity within each basin, (ii) regional distribution of the closures to spread the workload out for IDWR, and (iii) SRBA basins that represented an entire drainage basin. At its initial meeting, the Committee reviewed the State's proposed basin closure procedure and recommended that this Court implement that procedure.

On January 31, 2012, the Court issued its *Order Establishing Deadline for Late Claim Filings in Basins 21, 22, 29, 32, 33, 65, 67, 69, 71, 72, 73, 74, 75, 77, 78 and 79* ("Deadline Order"). This Court found that the Committee's proposal for closure of taking of late claims within basins based on subcase activity, staging of IDWR's workload, and drainage basins was a logical and necessary step in the completion of the SRBA, and ordered that claims takings in basins 21, 22, 29, 32, 33, 65, 67, 69, 71, 72, 73, 74, 75, 77, 78 and 79 be closed on March 30, 2012.

II. DISCUSSION

Completion of claims taking in individual basins is an essential first step to completion of the SRBA. Without it, completion of the SRBA will not occur.

Based on the criteria identified above, the *Deadline Order* provided that "except for *de minimis* domestic and stockwater uses and late claims required to resolve pending litigation on the date of this *Order* in the SRBA, that the last date to file a MOTION TO FILE LATE CLAIM in Basins 21, 22, 29, 32, 33, 65, 67, 69, 71, 72, 73, 74, 75, 77, 78 and 79 shall be March 30, 2012." *Deadline Order* at 4. Exhibit 1 to the *Deadline Order* included a list of *non-de minimis* water rights from IDWR's water rights database that IDWR determined were required to be claimed in the SRBA. The preparation of this list was undertaken as a courtesy to the water users, not as an additional due process requirement. The *Deadline Order* provided that "[i]f unclaimed, these water right will be decreed as disallowed." *Id.* at 3.

Claimants in each of these basins previously received extensive first-round and second-round *Notice of Filing Requirements* in the SRBA. *See* Idaho Code § 42-1408. These notice procedures meet constitutional due process requirements. *LU Ranching Co. v. U.S.*, 138 Idaho 606 (2003).

As of March 30, 2012, eight motions for late claim in basins 21, 22, 29, 32, 33, 65, 67, 69, 71, 72, 73, 74, 75, 77, 78 and 79 were received by the Court.

III. CONCLUSION

In accordance with the *Deadline Order*, the Court has determined that except for *de minimis* domestic and stockwater uses and late claims required to resolve pending litigation on the date of this *Order* in the SRBA, that claims taking should be closed in basins 21, 22, 29, 32, 33, 65, 67, 69, 71, 72, 73, 74, 75, 77, 78 and 79. Further, the Court has determined that unclaimed water rights represented by the water right numbers listed on Exhibit 1 to this *Order*, except for any deferrable domestic and/or stockwater portion of such rights, should be decreed as disallowed.

This *Order* does not alter the deferrable nature of *de minimis* domestic and stockwater rights as provided for in “Findings of Fact, Conclusions of Law, and Order Establishing Procedures for Adjudication of Domestic and Stock Water Uses” (January 17, 1989).

This *Order* does not preclude filing of late claims related to the resolution of litigation pending at the time of this *Order* in basins 21, 22, 29, 32, 33, 65, 67, 69, 71, 72, 73, 74, 75, 77, 78 and 79.

IV. ORDER

For the reasons stated above, IT IS HEREBY ORDERED that, except for *de minimis* domestic and stockwater uses and late claims required to resolve pending litigation on the date of this *Order* in the SRBA,¹ claims taking in basins 21, 22, 29, 32, 33, 65, 67, 69, 71, 72, 73, 74, 75, 77, 78 and 79 is closed. No late claims will be accepted for filing in basins 21, 22, 29, 32, 33, 65, 67, 69, 71, 72, 73, 74, 75, 77, 78 and 79, except as expressly provided by this *Order*.

¹ “Pending litigation” refers to an active, related subcase(s) pending at the time of the basin closure deadline wherein an additional late claim(s) is required to resolve the related water right(s).

IT IS FURTHER ORDERED that all unclaimed water rights represented by the water right numbers listed on Exhibit 1, except for any deferrable domestic and/or stockwater portion of such rights, are hereby decreed as disallowed.

The Clerk of the Court is hereby instructed to file a copy of the *Order Closing Claims Taking in Basins 21, 22, 29, 32, 33, 65, 67, 69, 71, 72, 73, 74, 75, 77, 78 and 79 and Disallowal of Unclaimed Water Rights* in the above captioned subcase and in the SRBA main case 00-39576.

Dated April 25, 2012.


ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication

EXHIBIT 1

Basin 74

Basin 74 Potentially Unclaimed Water Rights

Water Right No.	Basis	Priority Date	Rate	Source(s)	Water Use(s)	Owner(s) of Record
74-361	Decreed	5/12/1883	1.20	LEE CREEK	IRRIGATION	ARAVE, PARLEY A; HEMMING, ROBERT T
74-362	Decreed	5/1/1906	4.10	LEE CREEK	IRRIGATION	ARAVE, PARLEY A; HEMMING, ROBERT T
74-363	Decreed	5/12/1883	1.00	LEE CREEK	IRRIGATION	ARAVE, PARLEY A; HEMMING, ROBERT T
74-364	Decreed	6/1/1900	1.30	LEE CREEK	IRRIGATION	ARAVE, PARLEY A; HEMMING, ROBERT T
74-365	Decreed	5/12/1883	1.20	LEE CREEK	IRRIGATION	ARAVE, PARLEY A; HEMMING, ROBERT T
74-367	Decreed	5/12/1883	0.60	LEE CREEK	IRRIGATION	ARAVE, PARLEY A; HEMMING, ROBERT T
74-368	Decreed	11/5/1909	5.80	LEE CREEK	IRRIGATION	ARAVE, PARLEY A; HEMMING, ROBERT T
74-390	Decreed	4/1/1914	0.54	SPRINGS	IRRIGATION	BOWMAN, CHESTER; BOWMAN, LUCILLE
74-427	Decreed	1/1/1901	0.02	SPRINGS	IRRIGATION, STOCKWATER	STRICKLAN, MARGARET I; STRICKLAN, ROY T
74-439	Decreed	7/27/1888	0.02	LEMHI RIVER	IRRIGATION, STOCKWATER	MATHEWS, ADA H
74-446	Decreed	6/1/1950	0.02	WASTE WATER	IRRIGATION	BROWN, SCOTT
74-450	Decreed	7/27/1888	0.45	LEMHI RIVER	IRRIGATION	MILLER, HUBERT G; MILLER, LORRAINE M
74-479	Decreed	7/27/1888	0.05	WASTE WATER	IRRIGATION	STAN HAVEN INC
74-491B	Decreed	3/1/1871	0.03	WASTE WATER	IRRIGATION	STRICKLAN, JOHN E; STRICKLAN, LINDA K
74-496	Decreed	6/13/1890	0.02	WASTE WATER	IRRIGATION	PROFFIT, ELEANOR; PROFFIT, JAMES H
74-506B	Decreed	6/1/1871	0.12	LEMHI RIVER	IRRIGATION	WHITING, EDNA K; WHITING, L ELMER
74-526	Decreed	7/27/1888	0.04	LEMHI RIVER	IRRIGATION	LEE, MARY
74-528	Decreed	7/24/1901	0.02	WASTE WATER	IRRIGATION	SMITH, FLOSSIE I
74-529	Decreed	7/27/1888	0.12	LEMHI RIVER	IRRIGATION	WINKLEBLACK, GLEN; WINKLEBLACK, LADDIE
74-545	Decreed	7/27/1888	0.15	LEMHI RIVER	IRRIGATION	WELLARD, FRANK J; WELLARD, NORMA J
74-561	Decreed	8/15/1954	0.04	GROUND WATER	IRRIGATION	SOUTH, JEAN P; SOUTH, PETER J
74-562	Decreed	7/27/1888	0.03	LEMHI RIVER	IRRIGATION	BROG, PAUL A; SOUTH, PETER J
74-563	Decreed	6/1/1963	0.04	GROUND WATER	IRRIGATION, STOCKWATER	BROG, PAUL A; SOUTH, PETER J
74-566	Decreed	7/27/1888	0.02	LEMHI RIVER	IRRIGATION	SMITH, EDGAR W; SMITH, GLADYS PATTEE
74-582	Decreed	6/1/1961	0.04	GROUND WATER	IRRIGATION, STOCKWATER	BELLER, CLAUD F; BELLER, LAVERN M
74-584	Decreed	6/19/1961	0.03	WASTE WATER	IRRIGATION	GUTH, PAULA; GUTH, WILLIAM R
74-585	Decreed	7/19/1893	0.05	KENNEY CREEK	IRRIGATION	WENTWORTH, B E; WENTWORTH, LA NELLE
74-611	Decreed	4/1/1932	0.07	LEMHI RIVER	IRRIGATION	BLODGETT, CLAUDE; BLODGETT, DIXIE LEE
74-614	Decreed	6/1/1954	0.03	GROUND WATER	IRRIGATION	GOTT, BETTYE; GOTT, IRMAN
74-626	Decreed	6/26/1883	0.04	WASTE WATER	IRRIGATION, STOCKWATER	ALDOUS, BEULAH O; ALDOUS, JOSEPH H
74-640	Decreed	3/1/1959	0.04	GROUND WATER	IRRIGATION	HEMMERT, MARIE D; HEMMERT, MAX F
74-653	Decreed	4/1/1870	0.02	SPRINGS	IRRIGATION, STOCKWATER	NEAL, HENRY F

Water Right No.	Basis	Priority Date	Rate	Source(s)	Water Use(s)	Owner(s) of Record
74-691	Decreed	7/27/1888	0.02	LEMHI RIVER	IRRIGATION	NELSON, HUGH; NELSON, LAVINA
74-697	Decreed	4/1/1932	0.02	LEMHI RIVER	IRRIGATION	BARRETT, GERTRUDE; BARRETT, LE ROY
74-728	Decreed	6/6/1888	0.34	LEMHI RIVER	IRRIGATION	MAIER, ALBERT; MAIER, VERNA MARIE
74-823	Decreed	4/26/1910	0.32	SPRINGS	IRRIGATION	JOLLEY, EDNA Z; JOLLEY, ELDON
74-841	Decreed	6/13/1890	0.22	WASTE WATER	IRRIGATION	STODDARD, JAMES F; STODDARD, JEAN L
74-853	Decreed	4/1/1962	0.04	LEMHI RIVER	IRRIGATION	DESPRES, MARGARET
74-907	Decreed	5/1/1940	0.40	SPRINGS	IRRIGATION, STOCKWATER	SIMS, SANDY H
74-922	Decreed	4/1/1930	0.08	LEMHI RIVER	IRRIGATION	HORTON, BEVERLY J; HORTON, FRANK W
74-925	Decreed	4/1/1910	0.04	GROUND WATER	COMMERCIAL, DOMESTIC	LINDSKOG, ELEANOR I; LINDSKOG, ORION E
74-938	Decreed	4/1/1945	0.04	GROUND WATER	COMMERCIAL	MEAD, DONNA G; MEAD, WILLIAM H
74-1002	Decreed	4/1/1914	0.16	SPRINGS	IRRIGATION	STRUPP, ALOIS; STRUPP, AMOS
74-1039	Decreed	4/1/1922	0.04	GROUND WATER	COMMERCIAL, DOMESTIC	OHLSON, MINA
74-1046B	Decreed	4/1/1917	0.15	WASTE WATER	IRRIGATION	ADAMS, RACHEL; ADAMS, RALSTON W
74-1138	Decreed	4/1/1935	0.04	GROUND WATER	DOMESTIC, IRRIGATION	SOUTH LEMHI SCHOOL DISTRICT #292
74-1149	Decreed	4/1/1936	0.04	SPRINGS	DOMESTIC, IRRIGATION	HUTCHINGS, LEO S
74-1604	Decreed	4/1/1956	0.02	LEMHI RIVER	IRRIGATION	STRICKLAN, WILLIAM A
74-1615	Decreed	4/1/1919	2.45	EVERSON CREEK	IRRIGATION	PETERSON, ALBERT
74-1631	Decreed	4/1/1890	0.05	LEMHI RIVER	IRRIGATION	MONIDA REACTOR FUEL INC
74-1632	Decreed	4/1/1890	0.05	LEMHI RIVER	IRRIGATION	MONIDA REACTOR FUEL INC
74-1658	Decreed	4/1/1877	0.02	LEMHI RIVER	IRRIGATION	MOORE, RALPH V
74-1874	Decreed	1/1/1938	0.04	GROUND WATER	COMMERCIAL, DOMESTIC	UDY, GEORGE CARL
74-2195B	Decreed	12/11/1915	1.40	EVERSON CREEK	IRRIGATION	ANDERSON, BOBBIE E; ANDERSON, DORIS
74-2261B	Decreed	12/21/1941	1.00	LEE CREEK	IRRIGATION FROM STORAGE, IRRIGATION STORAGE, IRRIGATION	ANDERSON, BOBBIE E; ANDERSON, DORIS
74-2339B	Decreed	12/21/1941	1.00	LEE CREEK	IRRIGATION FROM STORAGE, IRRIGATION STORAGE, IRRIGATION	ANDERSON, BOBBIE E; ANDERSON, DORIS
74-2351	Decreed	1/9/1963	0.55	EVERSON CREEK	IRRIGATION	PETERSON, ALBERT
74-2352	License	3/18/1949	3.20	EVERSON CREEK	IRRIGATION	PETERSON, JOHN
74-2353	License	11/29/1962	0.12	LEMHI RIVER	IRRIGATION	TURNER, MARY
74-4009	Statutory Claim	4/1/1952	0.04	GROUND WATER	IRRIGATION	WALDAL, EDWARD C
74-4011	Statutory Claim	3/1/1951	0.04	GROUND WATER	DOMESTIC	COCKRELL, RAYMOND
74-4012	Statutory Claim	3/1/1951	0.08	GROUND WATER	DOMESTIC, STOCKWATER	COCKRELL, RAYMOND
74-4014	Statutory Claim	5/10/1951	1.57	SPRINGS	IRRIGATION, STOCKWATER	WHITTAKER, F JAMES
74-4015	Statutory Claim	5/10/1955	1.57	SPRINGS	IRRIGATION, STOCKWATER	WHITTAKER, F JAMES
74-4039	Statutory Claim	6/28/1934	3.05	PRATT CREEK	STOCKWATER, WILDLIFE	UNITED STATES OF AMERICA ACTING THROUGH
74-7055	License	3/7/1977	0.01	GROUND WATER	IRRIGATION	ALDOUS, BEULAH O; ALDOUS, JOSEPH H

Water Right No.	Basis	Priority Date	Rate	Source(s)	Water Use(s)	Owner(s) of Record
74-7088	Permit	7/25/1980	12.20	WEST FORK SANDY CREEK	IRRIGATION	FREEL, CHARLES D; MC CONNAGHY, JOHN T; SCHAFFNER, HENRY A
74-7094	License	12/15/1980	1.48	LEMHI RIVER	IRRIGATION	SELLS, CAROL B
74-7199	License	8/10/1983		UNNAMED STREAM	STOCKWATER, WILDLIFE	UNITED STATES OF AMERICA ACTING THROUGH
74-7225	License	8/1/1983	0.04	SPRING	DIVERSION TO STORAGE, STOCKWATER STORAGE, WILDLIFE STORAGE	UNITED STATES OF AMERICA ACTING THROUGH
74-7228	License	10/20/1983	0.11	WASTE WATER	IRRIGATION	ENGLAND, CURTIS VERNON