

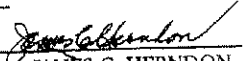
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DEC 19 2006

DEPARTMENT OF
WATER RESOURCES

FILED IN CHAMBERS AT BLACKFOOT,
BINGHAM COUNTY, IDAHO

December 14, 2006 AT
11:30 a.m.


JAMES C. HERNDON
District Judge

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

IN THE MATTER OF CREATING THE)
UPPER SALMON RIVER BASIN WATER)
DISTRICT (DESIGNATED AS WATER)
DISTRICT NO. 170))

Case No. CV 2006-66

THOMPSON CREEK MINING)
COMPANY,)

Petitioner,)

**ORDER DENYING PETITIONER'S
MOTION TO CLARIFY SERVICE
LIST**

vs.)

IDAHO DEPARTMENT OF WATER)
RESOURCES,)

Respondent.)

BEFORE THIS COURT is the Motion of Petitioner Thompson Creek Mining Company (hereinafter "Thompson Creek") to Clarify Service List.¹ This case, which is an appeal of an administrative order, involves the creation of Water District No. 170 by Respondent, the Idaho

¹ Motion to Clarify Service List, *In re Creating the Upper Salmon River Basin Water District*, Custer County case no. CV 2006-66 (filed November 1, 2006) (hereinafter "Thompson Creek's Motion").

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Department of Water Resources (the "IDWR").² Water users within IDWR's Administrative Basins 71 and 72 are affected by the creation of Water District No. 170, and therefore shall receive notice of this administrative appeal and an opportunity to opt into the proceeding.³ In its Motion, Thompson Creek argues that water users within IDWR's Administrative Basins 73, 74 and 75 should also receive notice of this administrative appeal because IDWR "has consistently stated that it intends to expand Water District No. 170 to include Basins 73, 74 and 75."⁴

IDWR objects to Thompson Creek's Motion to Clarify on the grounds that the water rights of water users within Administrative Basins 73, 74 and 75 have not been implicated at this time by the creation of Water District No. 170 and expanding the service list to include those water users causes potential confusion among the water users and the record.⁵

Having reviewed Thompson Creek's Motion, IDWR's Response, and Thompson Creek's Reply,⁶ this Court is of the opinion that expansion of the service list to include water users in Administrative Basins 73, 74 and 75, based on a future probability of action by IDWR, is premature. Whereas water users in Administrative Basins 73-75 may be affected by IDWR's actions in the future, their right to notice and an appearance is properly left for that future action, rather than the proceeding at bar.

² See: Thompson Creek Mining Company's Petition for Judicial Review of Idaho Department of Water Resources' Amended Final Order Creating Water District No. 170, *In re Creating the Upper Salmon River Basin Water District*, Custer County case no. CV 2006-66 (filed May 5, 2006).

³ Thompson Creek's Motion, at p. 2; Order Requiring Notice of Intent to Participate in Appeal, *In re Creating the Upper Salmon River Basin Water District*, Custer County case no. CV 2006-66 (filed in Chambers at Blackfoot, Idaho on September 26, 2006).


⁴ Thompson Creek's Motion, at p. 2.

⁵ Memorandum in Response to Motion to Clarify Service List, *In re Creating the Upper Salmon River Basin Water District*, Custer County case no. CV 2006-66 (filed November 13, 2006).

For these reasons, this Court shall **deny** Thompson Creek's Motion to Clarify.

IT IS SO ORDERED.

DATED this 14th day of December, 2006.



James C. Herndon
District Judge

⁶ Reply to Memorandum in Response to Motion to Clarify Service List, *In re Creating the Upper Salmon River Basin Water District*, Custer County case no. CV 2006-66 (filed November 17, 2006).

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on 12-14-06, I served a true copy of the foregoing Order Denying Petitioner's Motion to Clarify on the persons listed below by mailing, first class, postage prepaid, or by hand delivery.

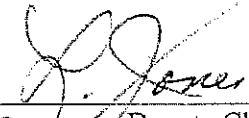
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ETHEL PECK, District Court Clerk

By: 
Deputy Clerk