

RECEIVED
FEB 23 2011
DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

FEB 22 2011

By _____ Clerk
Deputy Clerk

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.: 00-92021-65
Case No. 39576) (Interim Administration)
)
) ORDER GRANTING STATE OF IDAHO'S
) MOTION FOR ORDER OF INTERIM
) ADMINISTRATION OF DECREED
) SURFACE WATER RIGHTS IN BASIN 65
)
)

I.
PROCEDURAL BACKGROUND

1. On September 18, 2001, the Idaho Department of Water Resources (IDWR) filed its *Director's Report for Irrigation and Other Uses ("Director's Report")*, IDWR Basin 65, Part III with the SRBA District Court.¹

2. On January 4, 2011, the State of Idaho filed a *Motion for Interim Administration of Surface Water Rights in Basin 65 ("Motion")*; *Brief In Support of Motion for Interim Administration of Surface Rights in Basin 65* and the *Affidavit of Timothy J. Luke In Support of Motion for Order of Interim Administration*.

¹ The *Director's Reports* for Basin 65 irrigation and other rights were issued in a series of three parts, the final part in the series being Part III.

3. On January 13, 2011, a *Certificate of Service* evidencing service of the State's *Motion* and related documents on those claimants in IDWR Basin 65 reasonably determined to be adversely affected by the entry of the requested *Order*.

4. A hearing was held on the State's *Motion* on February 15, 2011. Although objections were filed in response to the State's *Motion* all concerns raised in the objections were addressed and resolved at the hearing to the satisfaction of the objector.

II. LEGAL STANDARDS FOR INTERIM ADMINISTRATION

1. Idaho Code § 42-1417 authorizes the district court to order interim administration of water rights and provides, in part, as follows:

- (1) The district court may permit the distribution of water pursuant to chapter 6, title 42, Idaho:
 - (a) in accordance with the director's report or as modified by the court's order;
 - (b) in accordance with applicable partial decree(s) for water rights acquired under state law;
 - (c) in accordance with applicable partial decree(s) for water right established under federal law.
- (2) The district court may enter the order only:
 - (a) upon motion by a party;
 - (b) **after notice by the moving party** by mail to the director and **each claimant** from the water system or portion there of **that could reasonably be determined be adversely affected by entry of the order**; and
 - (c) **upon a determination by the court, after hearing, that the interim administration of water rights in accordance with the report, or as the report is modified by the court's order, and in accordance with any partial decree(s), is reasonably necessary to protect senior water rights.**

Idaho Code § 42-1417(1996) (emphasis added).

2. Idaho Code § 42-1417 therefore requires the district court to make the following determination: (1) a party filed a motion for interim administration, (2) the moving party served

by mail each claimant that could reasonably be determined to be adversely affected, (3) interim administration is reasonably necessary to protect senior water rights, and (4) the water rights should be administered in accordance with the director's report, as modified by the district court, or in accordance with partial decrees that supercede the *Director's Report*.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court having heard the motion and reviewed the pleadings, makes the following findings of fact and conclusions of law.

1. The State of Idaho satisfied the notice and service requirements of Idaho Code § 42-1417(2)(b) by serving the State's *Motion* and related documents on those claimants in IDWR Basin 65 reasonably determined to be adversely affected by the entry of the requested *Order*.

2. Interim administration of surface water rights in IDWR Basin 65 in accordance with the *Partial Decrees* for water rights is reasonably necessary to efficiently administer water rights and to protect senior water rights.

3. Basin 65 is a nearly completed basin. At present, surface rights in much of the basin are being administered according to historic decrees and water right records. SRBA *Partial Decrees* reflect the most accurate and up-to-date records of water rights in Basin 65. Therefore the Court finds it appropriate for such rights to be distributed according to the *Partial Decrees*.

4. The inclusion of decreed water rights into existing water districts in Basin 65 will provide current watermasters with the ability to administer, regulate and enforce water rights in accordance with the *Partial Decrees* issued in the SRBA.

IV.
ORDER

Based on the foregoing, and pursuant to Idaho Code § 42-1417, the State of Idaho's *Motion for Order of Interim Administration of Surface Water Rights in Basin 65*, for which *Partial Decrees* have been issued in the SRBA, is hereby **granted**. The Court authorizes the distribution of surface water pursuant to chapter 6, title 42, Idaho Code in accordance with the *Partial Decrees* that supercede the *Director's Reports* in Basin 65.

IT IS SO ORDERED.

Dated: February 22, 2011



ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I hereby certify that true and correct copies of the **ORDER GRANTING STATE OF IDAHO'S MOTION FOR ORDER OF INTERIM ADMINISTRATION OF DECREED SURFACE WATER RIGHTS IN BASIN 65** were mailed on February 22, 2011, by first-class mail to the following:

DIRECTOR OF IDWR
PO Box 83720
Boise, ID 83720-0098

State of Idaho
Chief Natural Resources Division
Office of the Attorney General
PO Box 44449
Boise, ID 83711-4449

Leo & Leona Reeve
5155 Hwy 95
Fruitland, ID 83619


Julie Murphy
Deputy Clerk