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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho
DEC 21 2006
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.: 92-00021-27 (Groundwater)**
	)	**(Interim Administration)**
Case No. 39576	)	
	)	**ORDER GRANTING IN PART - AS TO**
	)	**GROUNDWATER RIGHTS - THE STATE**
	)	**OF IDAHO'S MOTION FOR ORDER OF**
	)	**INTERIM ADMINISTRATION OF WATER**
	)	**RIGHTS IN BASIN 27**
	)	

I.
PROCEDURAL BACKGROUND

1. On November 10, 2006, the Idaho Department of Water Resources (IDWR) filed its *Director's Report for Irrigation and Other Uses ("Director's Report"), IDWR Basin 27* with the SRBA District Court.

2. Also on November 10, 2006, the State of Idaho filed a *Motion and Brief in Support of Motion for Order of Interim Administration ("Motion") and* the *Affidavit of Timothy J. Luke In Support of Motion for Order of Interim Administration.*

3. On November 10, 2006, a *Certificate of Service* was also filed evidencing service of the State's *Motion* and related documents on those claimants in IDWR Basin 27 reasonably determined to be adversely affected by the entry of the requested ***Order***.

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5. Objections were filed to the State's *Motion* by the United States and the Shoshone-Bannock Tribes. Several other parties filed notices of intent to participate in the proceedings.

6. A hearing was held on the State's *Motion* on March 21, 2006. Following the hearing, the Court denied the *Motion* because of the large number of objections to individual surface water right recommendations filed in Basin 27 by the United States and the Shoshone-Bannock Tribes. The Court stated however, that it would revisit the issue after the objections had been reviewed and it could be determined whether groundwater was implicated by the objections.

7. Pursuant to notice, the matter was reset and heard on December 19, 2006. At that time the United States and Shoshone-Bannock Tribes withdrew their opposition to the State's *Motion*. No other party appeared in opposition. The parties represented to the satisfaction of the Court that numerous objections filed to surface water claims did not directly implicate groundwater claims.

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 rights 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 has complied with 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 27 reasonably determined to be adversely affected by the entry of Requested ***Order***. Interim administration of groundwater rights in IDWR Basin 27 in accordance with the *Director's Reports* and the ***Partial Decrees*** for water rights is reasonably necessary to efficiently administer water rights and to protect senior water rights. The establishment of a water district for Basin 27 will provide the watermasters with the ability to administer water rights in accordance with the prior appropriation doctrine as established by Idaho law.

2. The creation of a water district will provide for a mechanism for administration, regulation, and enforcement of water rights, including ground and surface water rights.

3. Interim administration of groundwater rights in IDWR Basin 27 in accordance with the *Director's Reports* and the ***Partial Decrees*** for water rights will facilitate the implementation of conjunctive administration of all water rights diverting from hydraulically connected water sources.

4. The objection and response period for Basin 27 has expired and no issues were identified or are otherwise anticipated which pending resolution would impede or delay the administration of groundwater on an interim basis. Any such issues can be addressed on a case-by-case basis as may be necessary.

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 those water rights located within IDWR Basin 27 is hereby **granted in part as to groundwater only.** The Court authorizes the distribution of water pursuant to chapter 6, title 42, Idaho Code in accordance with the *Director's Reports* and the ***Partial Decrees*** that supercede the *Director's Reports* for groundwater rights in IDWR Basin 27.

IT IS SO ORDERED.

Dated: December 21, 2006

JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING IN PART THE STATE OF IDAHO'S MOTION FOR ORDER OF INTERIM ADMINISTRAT IN BASIN 27 was mailed on December 21, 2006, with sufficient first-class postage to the following:

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INTERIM ADMINISTRATION
BASIN 27

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/S/ JULIE MURPHY
Deputy Clerk