State of Idaho
DEPARTMENT OF WATER RESOURCES
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DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 15, 2005

RE: Motion for Order of Interim Administration in Basins 31, 32 and 33

Dear Water User:

The enclosed documents relate to the State of Idaho's Motion for Order of Interim Administration, which seeks District Court authorization for administration of water rights in Basins 31, 32 and 33.

The purposes for the request are to obtain authority for the Director of the Idaho Department of Water Resources (IDWR) to create or revise water districts, and to provide for long-term administration of surface and ground water rights from hydraulically connected sources. 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 claimants (except those whose use is solely for de minimis domestic and/or stockwater purposes) in Basins 31, 32 and 33.

Enclosed with this mailing are the following documents: (1) Motion for Order of Interim Administration and Notice of Hearing; (2) Brief in Support of Motion for Order of Interim Administration; and (3) Affidavit of Tim Luke, Section Manager for the IDWR Water Distribution Section.

If you have any questions, please call the Idaho Department of Water Resources hot line at 1-800-451-4129.

Sincerely,

Karl J. Dreher
Director

Enclosures

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division
Office of the Attorney General
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ISB # 2207

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
	)	
	)	MOTION FOR ORDER OF
Case No. 39576	)	INTERIM ADMINISTRATION OF WATER RIGHTS
	)	IN BASINS 31, 32, AND 33 AND NOTICE OF
	)	HEARING
	)	

The State of Idaho moves this Court for an order of interim administration of water rights[1] in Snake River Basin Adjudication for Basins 31, 32 and 33, pursuant to Idaho Code § 42-1417, in accordance with the Director's Reports for Snake River Basin Adjudication Basins 31, 32 and 33 filed with the Court and partial decrees that have superseded the Director's Reports. 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

[1] This motion does not seek authorization for interim administration of domestic and stock water rights as defined under Idaho Code §§ 42-111 and 42-1401A(11).

accordance with the Director's Report and 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.

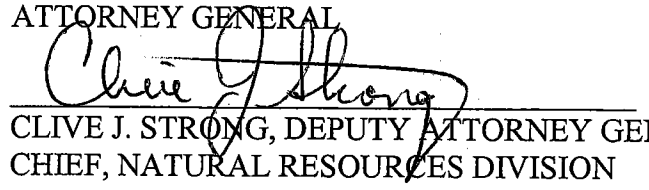
2. Interim administration of water rights in Basins 31, 32 and 33 is reasonably necessary because an efficient means of administering water rights from ground water sources and some surface water sources in these basins does not exist. The establishment of water districts for these basins will provide the watermasters with the ability to administer water rights in accordance with the prior appropriation doctrine as established by Idaho law.

3. In accordance with Idaho Code § 42-1417(2)(b), notice of this motion is being provided to all affected claimants in Basins 31, 32 and 33 by mailed notice.

THEREFORE, the State respectfully moves this Court for an order authorizing interim administration of water rights in Basins 31, 32 and 33 in accordance with the Director's Reports for these Basins and the partial decrees that have superseded the Director's Reports. The *Affidavit Of Timothy J. Luke In Support Of Motion For Order Of Interim Administration* and a brief in support of this motion are submitted herewith. Oral argument on this motion is requested.

DATED this 15th day of April 2005.

LAWRENCE G. WASDEN
ATTORNEY GENERAL



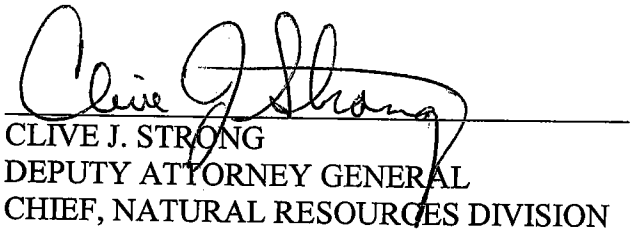
CLIVE J. STRONG, DEPUTY ATTORNEY GENERAL
CHIEF, NATURAL RESOURCES DIVISION

NOTICE OF HEARING

Notice is hereby given that the motion for interim administration for Basins 31, 32 and 33 will be heard on **the 21st day of July 2005 at 1:30 p.m.** at the SRBA District Court, 253 3rd Avenue North in Twin Falls, Idaho.

DATED this 15th day of April 2005.

LAWRENCE G. WASDEN
ATTORNEY GENERAL



CLIVE J. STRONG
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ISB # 2207

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**
	)	**BRIEF IN SUPPORT OF MOTION FOR**
Case No. 39576	)	**ORDER OF INTERIM ADMINISTRATION**
	)	**FOR WATER RIGHTS IN BASINS 31, 32, AND 33**
	)	

DESCRIPTIVE SUMMARY

This document is the State of Idaho's brief in support of its Motion for Order of Interim Administration, which seeks authorization for administration of water rights pursuant to chapter 6, title 42, Idaho Code, in Basins 31, 32, and 33 in accordance with the most current Director's Report,[1] or in accordance with partial decrees that have superseded the Director's Reports.

[1] The Director's Report for Basin 31 was filed with the SRBA district court on May 10, 2001. The Director's Report for Basin 32 was filed on October 18, 1999. The Director's Report for Basin 33 was filed on February 1, 2000.

BRIEF

I. INTERIM ADMINISTRATION OF 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 statutory mechanism for distribution of water in accordance with the prior appropriation doctrine in Idaho is through creation of a water district and the office of 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.*

The Director has the authority to create a water district upon entry of a court decree that determines the water rights within the geographic boundaries of the proposed water district, Idaho Code § 42-604, or upon entry of an order from the district court that authorizes the use of a Director's Report for purposes of interim administration. Idaho Code § 42-1417. Under Idaho Code § 42-1417, the SRBA district court may order interim administration in accordance with the Director's Report 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 both surface and ground water rights pursuant to chapter 6, title 42, Idaho Code,

The State of Idaho previously filed motions for interim administration for all, or portions, of Basins 29, 34, 35, 36, 37, 41, and 43.[2] The SRBA district court granted interim administration

[2] *See* State's Motion(s) For Order Of Interim Administration, dated November 19, 2001; August 30, 2002; and July 11, 2003.

within these Basins.[3] The State intends to file motions for interim administration for the remaining Basins in which Director's Reports will be filed in the SRBA.

B. Interim Administration is reasonably necessary for efficient administration of water rights.

Interim administration of water rights in Basins 31, 32 and 33 is reasonably necessary because an efficient means of administering water rights from ground water sources and some surface water sources in these basins does not exist. The establishment of water districts for these basins will provide the watermasters with the ability to administer water rights in accordance with the prior appropriation doctrine as established by Idaho law. In order to fully and adequately deliver water rights, the Director needs to have all ground water rights and surface water rights organized into water districts pursuant to chapter 6 of title 42, Idaho Code. The purpose of this motion is to combine ground water rights and surface water rights in Basins 31, 32 and 33 into a water district or districts so that they may be administered conjunctively.[4]

C. Facilitating the implementation of conjunctive administration is a major purpose of the SRBA.

Resolving the legal relationship between ground and surface waters was one of the main reasons for commencement of the SRBA. In the 1994 Interim Legislative Committee Report on the Snake River Basin Adjudication the Committee stated the following goals for the SRBA:

> All water rights within the Snake River Basin should be defined in accordance with Chapter 14, Title 42 so that all users can predict the risks of curtailment in times of shortage. It is vital to all water users that they have as high a degree of certainty as possible with respect to their water rights. Uncertainty discourages

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[3] *See* SRBA Court's Order(s) Granting State Of Idaho's Motion For Order Of Interim Administration dated November 19, 2002; January 8, 2002; and October 29. 2003. *See Also* Permanent Order For Interim Administration In Reporting Area 1 (Basin 34) dated December 20, 1995.

[4] The State of Idaho's motion for interim administration does not seek administration of domestic and stockwater rights as defined under Idaho Code §§ 42-111 and 42-1401A(11).

> development, undermines the ability of agencies to protect stream systems and fosters further litigation.

1994 *Interim Legislative Committee on the Snake River Basin Adjudication* at 32. The Committee went on to state, "In fact, the Snake River Basin Adjudication was filed in 1987 pursuant to I.C. § 42-1406A, in large part to resolve the legal relationship between the rights of ground water pumpers on the Snake River Plain and the rights of Idaho Power at its Swan Falls Dam." 1994 *Interim Legislative Committee* at 36.

It was initially expected that upon completion of the SRBA, water districts would be created pursuant to chapter 6, title 42, Idaho Code, to, among other functions, protect senior water rights from injury caused by junior water rights diverting from hydraulically connected sources within the Snake River Basin in Idaho. The legislature recognized that there might be a need for earlier interim administration of water rights during the pendency of the general adjudication and, therefore, authorized the SRBA district court to "permit" the Director to distribute "water pursuant to chapter 6, title 42, Idaho Code" in accordance with applicable partial decree(s) and/or with Director's Report(s) upon a finding that such administration is reasonably necessary to protect senior water rights. Idaho Code § 42-1417.

D. Creation Of Water Districts Is Reasonably Necessary to Protect Senior Water Rights.

As Tim Luke, Section Manager for the Water Distribution Section for IDWR, states in his affidavit, the existing water districts in Basins 31, 32 and 33 include only part of the rights from surface sources and few or none of the rights from ground water sources. *Affidavit of Timothy J. Luke*, at 3. While IDWR has created water measurement districts in these areas, the measurement districts' authority is limited to measurement and reporting of diversions and does not include authority for the administration of water rights, or the enforcement of water right

conditions. *Id.* at 3. The formation of water districts will allow water to be distributed in accordance with the prior appropriation doctrine as established by Idaho law.

The creation of water districts is an important step in the administration of water rights. Water districts provide mechanisms for administration, regulation, and enforcement of water rights. *Id.* They also provide a means for incorporating regular measurement and reporting of diversions, including ground water diversions. *Id.* In addition, water districts provide for local and timely response to general calls for water distribution and provide a system whereby a local watermaster can provide timely assistance and expertise to water users and respond to their complaints. *Id.* Furthermore, water districts provide for improved management of water rights records, specifically maintaining current ownership information. *Id.* Creation of water districts provides an equitable funding mechanism for these services. *Id.* The water users will fund the costs of the watermasters as provided for by Idaho Code §§ 42-605A and 42-612.

Because all of the water rights in these basins are partially decreed in the SRBA or recommended in Director's Reports, it is appropriate that water districts be established to administer the water rights within Basins 31, 32, and 33. Establishment of water districts also will enable the Director and participating water right holders to take further steps toward long-term administration of the resource.

The watermaster duties in the new water districts will be to (1) curtail illegal diversions (i.e., any diversion without a water right or in excess of the elements or conditions of a water right); (2) measure and report the diversions under water rights; and (3) curtail out-of-priority diversions determined by the Director to be causing injury to senior water.

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 that supersede the Director's Report for individual recommendations and the latest filing of Director's Reports where partial decrees have not been issued 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 Director's Reports constitute an adequate listing, since all the claims have been investigated by state officials and reported to the court. The statute assures procedural due process by requiring notice to the claimants and by allowing the court to modify the Director's Report for purposes of interim administration. The statute also 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 Director's Reports and the partial decrees meet the need for administration pending the

completion of the adjudication. Upon entry of an order for interim administration, the creation of water districts and 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.

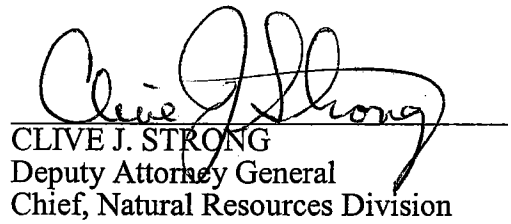
Idaho Code § 42-1417 requires that notice be given to "each claimant of water from the water system or portion thereof that could reasonably be determined to be adversely affected by entry of the order . . . ." The State of Idaho is mailing notice of this motion to all claimants who may be subject to 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 Basins 31, 32 and 33 as required by Idaho Code § 42-1417. The Director's Reports for these Basins and the partial decrees that supersede the Director's recommendations are based on examination of the claims and the water system as required by Idaho Code § 42-1411. As such, the Director's Reports and 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 water rights pursuant to chapter 6, title 42, Idaho Code, in Basins 31, 32 and 33 in accordance with the definition of water rights listed in the Director's Reports and, where superseded, in accordance with the partial decrees.

DATED this 15th day of April 2005.

LAWRENCE WASDEN
Attorney General



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ISB # 2207

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**
	)	
Case No. 39576	)	**AFFIDAVIT OF TIMOTHY J. LUKE**
	)	**IN SUPPORT OF MOTION FOR ORDER**
	)	**OF INTERIM ADMINISTRATION**
	)	

STATE OF IDAHO)
) ss.
County of Ada)

Timothy J. Luke, being first duly sworn upon oath deposes and states as follows:

1. My name is Timothy J. Luke. I am the Section Manager for the Water Distribution Section for the Idaho Department of Water Resources (IDWR). My work address is Idaho Department of Water Resources, 322 East Front Street, Boise, Idaho 83720-0098. I reside in Boise, Idaho.

2. My education background includes a Bachelor of Arts degree in Geography from West Virginia University in 1982 and a Master of Science degree in Geography and Natural Resource Management from the University of Idaho in 1992. My education/training

Attachment A

since college has included, but is not limited to, participation in seminars and courses related to water management such as Ground Water and Surface Water Relationships, Hydraulics, Water Management Workshop, Field Hydrogeology, Irrigation System Design and several water law 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 the water measurement program, provide assistance to water districts, periodic training of watermasters, and assistance or resolution of water distribution/water right disputes.

7. I have personal knowledge of the water supply conditions and water rights in Basins 31, 32 and 33 through my work with IDWR's Water Distribution Section.

8. The general reasons for the creation or enlargement of a water district are:

- Provide a mechanism for administration, regulation and enforcement of water rights;
- Provide a means for regular measurement and reporting of diversions, including ground water diversions.
- Provide a more local and immediate response to general calls for water delivery;
- Provide for improved management of water rights and keeping water rights current with respect to ownership and water use;
- Provide a system whereby local watermasters or deputy watermasters can provide for local and timely response to general calls for water distribution; and
- Water district administration and regulation can be accomplished by assessing water users directly through the districts.

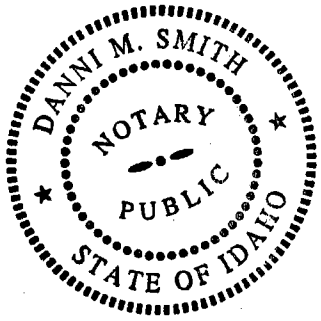
9. The specific reasons for creation or enlargement of water districts in Basins 31, 32 and 33 are:

- Existing water districts in these basins are limited to surface water sources and do not include ground water sources. Additionally, some surface water sources in these basins may not be included in any water district.
- All of the water rights claimed in Basins 31, 32 and 33 have been reported or partially decreed in the SRBA as required under I.C. § 42-1417.
- Some areas of the basins are in either water measurement districts or existing water districts, or no district at all. Certain rights and sources (primarily ground water) within water districts have not been subject to administration or regulation by the water district, and measurement districts are limited to measurement and reporting only, not regulation or enforcement of rights.
- The establishment of water districts will provide watermasters with the ability to administer water rights in accordance with the prior appropriation doctrine as established by Idaho law.
- The establishment of water districts will provide watermasters the means to protect senior water rights.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

TIMOTHY J. LUKE

SUBSCRIBED AND SWORN to before me this 15 day of April, 2005.



Notary Public for Idaho
Residing at: Boise, Idaho
My commission expires: 12/05/06

Attachment A