

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

<p>In Re SRBA</p> <p>Case No. 39576</p>	<p>) Subcase No.: 00-92021-37</p> <p>) (Interim Administration)</p> <p>)</p> <p>) ORDER GRANTING STATE OF IDAHO'S</p> <p>) AMENDED MOTION FOR ORDER OF</p> <p>) INTERIM ADMINISTRATION OF</p> <p>) SURFACE AND GROUND WATER RIGHTS</p> <p>) IN BASIN 37, PARTS 2 AND 3</p> <p>)</p>
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I.

PROCEDURAL BACKGROUND

1. On December 5, 2006, the Idaho Department of Water Resources ("IDWR") filed its *Director's Report, Irrigation and Other Uses, Reporting Area 16, IDWR Basin 37 Pt. 2* with the SRBA District Court.

2. On February 21, 2007, IDWR filed its *Director's Report, Irrigation and Other Uses, Reporting Area 16, IDWR Basin 37 Part 3* with the SRBA District Court.

3. On February 1, 2013, the State of Idaho filed an *Amended Motion for Order of Interim Administration of Surface and Ground Water Rights in Basin 37, Parts 2 and 3* ("Amended Motion"). The *Amended Motion* was supported with a *Brief in Support* as well as the *Affidavit of Timothy J. Luke*. The *Amended Motion* requests that this Court enter an order authorizing interim administration in Basin 37, parts 2 and 3, in accordance with the *Director's Reports* for those water rights or in accordance with the *Partial Decrees* that have superseded the *Director's Reports* issued by the SRBA District Court. The *Amended 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), or in stream stock water rights as defined under Idaho Code § 42-113(1).

4. On February 7, 2013, the State of Idaho filed a *Certificate of Service* evidencing service of its *Amended Motion* and related documents on those claimants in IDWR Basin 37, parts 2 and 3, reasonably determined to be adversely affected by the entry of the requested *Order*.

5. A hearing was held on the State's *Amended Motion* on February 19, 2013. No objections were filed in response to the State's *Amended Motion*, and no one appeared in opposition to the *Amended Motion*.

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 (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 supersede the *Director's Report*.

III.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court having heard the *Amended 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 its *Amended Motion* and related documents on those claimants in IDWR Basin 37, parts 2 and 3, reasonably determined to be adversely affected by the entry of the requested *Order*.

2. Interim administration of surface and ground water rights in IDWR Basin 37, parts 2 and 3, in accordance with the *Director's Reports* for those water rights or in accordance with the *Partial Decrees* that have superseded the *Director's Reports* issued by the SRBA District Court is reasonably necessary to efficiently administer water rights and to protect senior water rights.

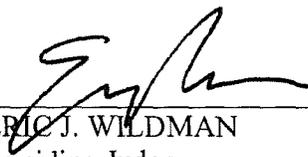
3. Basin 37, parts 2 and 3, are a nearly completed basins, and are closed to the taking of late claims except for *de minimis* domestic and stockwater claims and late claims required to resolve pending litigation. SRBA *Director's Reports* or the *Partial Decrees* that supersede the *Director's Reports* for those surface and ground water rights located in Basin 37, parts 2 and 3, reflect the most accurate and up-to-date records of water rights in Basin 37, parts 2 and 3. Therefore the Court finds it appropriate for such rights to be distributed according to the *Director's Reports* or the *Partial Decrees* that supersede the *Director's Reports* for those water rights.

IV.
ORDER

Based on the foregoing, and pursuant to Idaho Code § 42-1417, the State of Idaho's *Amended Motion for Order of Interim Administration of Surface and Ground Water Rights in Basin 37, Parts 2 and 3* is hereby **granted**. The Court authorizes the distribution of surface and ground water in Basin 37, parts 2 and 3, pursuant to chapter 6, title 42, Idaho Code, in accordance with the *Director's Reports* for those water rights or in accordance with the *Partial Decrees* that have superseded the *Director's Reports* issued by the SRBA District Court, except for domestic and stock water rights as defined under Idaho Code §§ 42-111 and 42-1401A(11), or in stream stock water rights as defined under Idaho Code § 42-113(1).

IT IS SO ORDERED.

Dated: February 20, 2013.



ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DATED: February 20, 2013.



ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication

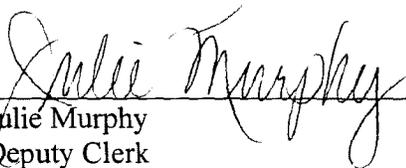
CERTIFICATE OF MAILING

I hereby certify that true and correct copies of the **ORDER GRANTING STATE OF IDAHO'S AMENDED MOTION FOR INTERIM ADMINISTRATION OF SURFACE AND GROUND WATER RIGHTS IN BASIN 37, PARTS 2 AND 3** were mailed on February 20, 2103, 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

United States Department of Justice
Environment & Natural Resources Div.
550 West Fort Street, MSC 033
Boise, ID 83724



Julie Murphy
Deputy Clerk