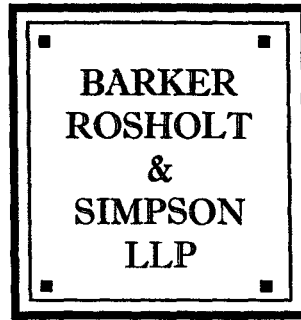


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September 11, 2013

RECEIVED

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DEPARTMENT OF
WATER RESOURCES

VIA US MAIL

Carter Fritschle
Manager, Adjudication Section
Idaho Department of Water Resources
322 East Front St.
P.O. Box 83720
Boise, ID 83720-0098

Re: Response to Request for Additional Data for Water Right Claim Nos. 63-33737
and 63-33738

Dear Carter:

Pursuant to the Department's request for additional data supporting the claimed priority dates and quantity for the above-listed water rights claims, the Boise Project Board of Control provides the following.

The Boise Project Board of Control is the operating agent for its constituent irrigation districts and made the late claims, referenced above, on behalf of Boise-Kuna Irrigation District, New York Irrigation District, Wilder Irrigation District and Big Bend Irrigation District. Nampa-Meridian Irrigation District chose not to participate in the claim. The volume claimed under right no. 63-33737 represents the combined storage allocation in Arrowrock Reservoir assigned to the four Districts. The volume claimed under right no. 63-33738 represents the combined storage allocation in Anderson Ranch reservoir of the four Districts. The priority dates claimed correspond to the priority dates for water right nos. 63-303, Arrowrock in 1911, and 63-3614, Anderson Ranch in 1940. The annual flow of the river has been estimated at over 4 million acre feet, and since the reservoir system on the Boise, including Lucky Peak, is only approximately 1 million acre feet, then water has historically naturally passed through the reservoirs, or was stored and released for flood control purposes, prior to the reservoirs being filled and the water being beneficially used in those irrigation seasons when the inflows exceeded the capacity of the reservoirs.

In 1974 the Idaho Department of Water Resources discussed what it defined as “available refill volume.” In analyzing what changes the Department believed needed to be made to the Bureau of Reclamation and Corps of Engineers pre-1974 flood control operations, the Department stated:

Hydrologic data from 1928 through 1973 were examined to determine the amount of water that would be available for refill of storage space each year under the present system operation. This volume is equal to the total natural runoff less required releases for irrigation and flow maintenance from a given date until the reservoirs reach maximum content for the year. The volume, or ‘available refill,’ was derived for each year of the 46-year period from November through July. By determining the frequency of occurrence of various volumes of available refill, one possible procedure was developed to effect earlier season releases.

See 1974 Boise River Flood Control Management Report, p. 56 (enclosed.) There were no materials in the 1974 report representing the examination of the hydrologic data for the years 1928 through 1973. However, the 1990 Comprehensive State Water Plan: South Fork Boise River Sub-Basin at Tables C-1 through C-F does summarize the discharge for several upper Boise River reach gains in the Anderson Ranch to Arrowrock portion of the river for the years 1912 through 1988. This data may prove helpful in your examination of the claims.

Further, the 1974 report concluded that a new Boise River Operations Manual should be created, but prior to that action recommended that detailed studies of the impacts of any change in flood control operations on irrigated agriculture and recreation be undertaken. *Id.* at p. 70. No such study reports have been located. If the Department has any such studies please provide them to us as well. It is clear from the 1974 report, however, that the Department knew at that time that risk to refill of the reservoir due to flood control operations would impact the fill of the storage holders rights because they rely upon reservoir refill in order to satisfy their storage rights.

It is also clear that by 1990 the State of Idaho had declared the Boise River basin above Lucky Peak dam to be fully allocated. In the 1990 Comprehensive State Water Plan: South Fork Boise River Sub-Basin, the Idaho Water Resource Board states “[b]ecause of downstream development and existing water rights, little or no opportunity exists within the basin for future development using natural flows.” 1990 Comprehensive State Water Plan: South Fork Boise River Sub-Basin, p. 4. Later in the Report the Board states:

Since January 1980, the Idaho Department of Water Resources has issued no water right permits for consumptive uses of water during the period June 15 to November 1 on the Boise River and its tributaries above Lucky Peak Reservoir. Water in the affected area has been judged to be fully appropriated, and therefore no additional consumptive uses can be permitted.

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Id., p. 21.

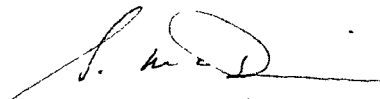
As Claimant understands the position of the Attorney General in SRBA sub-case no. 00-91017 (BW 17) the Attorney General appears to be now arguing against the Department's long-held position that the Boise River is fully appropriated. We are not aware that the Department, itself, has changed this position. Indeed, the Department's moratorium on new diversions remains in place for the Boise River. However, based upon the Attorney General's adoption of the position that all water entering the reservoir, whether stored for the beneficial use of irrigation from storage or not, is counted toward the "fill" of the irrigation from storage component of the Bureau of Reclamation water rights, the logical consequence is that the Boise River is not fully appropriated. This new position that the Attorney General is taking suggests that the Boise River is not fully appropriated and that there is room for new and additional consumptive uses from the system.

For this reason, the Claimant makes the claims to fill the reservoirs in accordance with the historic practice since construction of the reservoirs, after flood control releases (whether pass through or store and release). The quantity and priority of the claims appears to be sufficient to secure the water necessary to continue to serve Claimant's patrons in the manner in which the Boise River system has historically been operated.

Please contact me if you have further question, or require additional explanation concerning these claims.

Very truly yours,

BARKER ROSHOLT & SIMPSON LLP



Shelley M. Davis

Enc.

cc: Tim Page, Manager, Boise Project Board of Control

Review of

*Attached to
this was an
apparently
complete copy
of "Boise River Flood
Control Management"
IDWR Nov. 1974*

Boise River Flood Control Management



November 1974