

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

)	Subcase No.: 92-00021-27
)	
In Re SRBA)	ORDER DENYING MOTION FOR
)	EXPEDITED HEARING ON MOTION
Case No. 39576)	FOR INTERIM ADMINISTRATION
)	
)	ORDER RESETTING HEARING
)	
_____)	

**I.
APPEARANCES**

Clive Strong, Office of the Idaho State Attorney General, appearing on behalf of the State of Idaho

Peter Monson, appearing on behalf of the United States Department of Justice

Jeanette Wolfley, appearing on behalf of the Shoshone-Bannock Tribes

Jeffrey C. Fereday, Givens Pursley LLP, on behalf of the Idaho Ground Water Appropriators, Inc.

Daniel V. Steenson, Charles L. Honsinger, Ringert Clark Chartered, appearing on behalf of John W. Jones, Jr. and Deloris D. Jones, Billingsley Creek Ranch, Blue Lakes Trout Farm, Inc. and Western Legends, LLC (“Spring Users”)

John K. Simpson, Travis L. Thompson, Barker Rosholt & Simpson, LLP, appearing on behalf of the Twin Falls Canal Company and Clear Springs Foods, Inc.

J.Deer May, May Sudweeks & Browning LLP, appearing on behalf of Rangen, Inc.

II. PROCEDURE

A. On November 10, 2005, the Director of the Idaho Department of Water Resources (IDWR) filed the *Director's Report for Irrigation and Other Water Rights in Basin 27 (Director's Report)*.

B. On that same date, in accordance with I.C. § 42-1417, the State of Idaho filed a *Motion for Order of Interim Administration* of water right claims in Basin 27, together with an affidavit and brief in support. The State moved to have the *Motion* heard on an expedited basis. The State's *Motion* complied with service and notice requirements set forth in I.C. § 42-1417.

C. On November 16, 2005, the Idaho Ground Water Appropriators filed a *Notice of Intent to Participate*. On November 23, 2005, the Spring Users filed a *Notice of Intent to Participate and Request for Clarification*. On November 28, 2005, the Twin Falls Canal Company and Clear Springs Foods, Inc. filed a *Notice of Intent to Participate and Notice of Joinder in the Request for Clarification*.

D. Also on November 28, 2005, the United States and the Shoshone-Bannock Tribes (Tribes) filed an objection to the States' *Motion* being heard on an expedited basis, together with an affidavit in support. The United States and the Tribes' cited the lack of sufficient time to review the director's recommendations for water right claims potentially impacting the terms of the ***Partial Final Consent Decree*** issued August 2, 1995, which confirmed the terms of the *1995 Fort Hall Water Users' Agreement*. The United States and the Tribes also objected to interim administration on substantive grounds pending the implementation of various terms pertaining to administration as set forth in the *1995 Fort Hall Water Users Agreement*.

E. The objection period for the claims reported in the *Basin 27 Director's Report* expires on March 17, 2006. The response period expires on May 19, 2006.

F. On November 29, 2005, the State filed the *Affidavit of David R. Tuthill, Jr.* in support of its *Motion*. A hearing was held on both *Motions* (Interim Administration and Expedited Hearing) on November 29, 2005.

III.

LEGAL STANDARD FOR INTERIM ADMINISTRATION

Idaho Code § 42-1417 authorizes the Court to enter an order of interim administration of water rights during the pendency of an adjudication. The party moving for interim administration must meet specified notice and service requirements and show that such an order “is reasonably necessary to protect senior water rights”. I.C. § 42-1417(1)(c). Upon such a showing, the Court may order interim administration in accordance with the recommendations in the director’s report or as modified by the Court, or pursuant to superceding partial decrees. *Id.* The decision of whether to grant interim administration is discretionary with the Court.

IV.

DISCUSSION

The State is seeking interim administration so that water rights in Basin 27 can be included in a water district and IDWR can commence active administration of those rights in accordance with the provisions of Chapter 6, Title 42, Idaho Code. Although the State argues that interim administration is necessary to protect senior water rights, the Court need not reach the merits at this point in time.

At the hearing, this Court expressed the concern that the State’s *Motion* represents the first time a motion for order of interim administration was sought prior to the expiration of the objection period. As such, parties may have not had adequate opportunity to review either their recommendation or the recommendations of others for purposes of determining whether to contest interim administration. Presumably, if a party objects to the director’s recommendation, they would also object to the water right being administered according to the recommendation during the pendency of their objection being litigated. Based on the number of claims in Basin 27, Idaho Code provides for a 120-day objection period. Because of the expedited nature of the State’s *Motion*, parties had 19 days, including the service period, within which to review recommendations and determine whether or not to contest the States’ *Motion*. This Court acknowledges that in most basins where orders of interim administration have previously been entered objections were still pending. However, in those situations, the objection period had expired, a case management report had typically been prepared and the Court

had the benefit of knowing the number of outstanding objections and the types of issues raised in those objections.

Despite these concerns, the Court is not necessarily predisposed to deny a motion for interim administration prior to the expiration of the objection period in every case. In the forthcoming year, the objection periods for remaining director's reports will be "staggered" such that the objection periods in most cases will exceed statutory minimums. As such, it may be unreasonable in some cases to delay entertaining a motion for interim administration beyond an objection period. The Court also notes that in such proceedings there is typically legal representation by multiple groups ultimately comprising a wide spectrum of interests within a particular basin. If these groups fail to oppose interim administration, then this Court's concerns over a yet-to-be identified issue implicating a large number of claims would be somewhat mitigated. Finally, all parties reasonably affected by a motion for interim administration are provided actual notice in accordance with I.C. § 42-1417. Parties therefore have the onus of appearing in the proceedings and opposing the motion. Therefore, despite the Court's concerns, to the extent there are no objections to a motion for order of interim administration, the Court does not find that issuing such an order prior to the expiration of an objection period to be problematic *per se*.

In this particular case, however, the United States and the Shoshone-Bannock Tribes have opposed the *Motion*. The issues raised by their opposition are not only complex (interpretation of the *1995 Fort Hall Water Users Agreement*) but also potentially implicate a large number of water rights. From a due process, as well as from a judicial economy perspective, the United States and Tribes should be afforded the opportunity to meaningfully review the director's recommendations prior to having to defend against the State's *Motion*.

For these reasons, the State's *Motion for Expedited Hearing on Motion for Order of Interim Administration* is **denied** and will be heard as set forth below.

V.

NOTICE OF HEARING

NOTICE IS GIVEN that hearing on this matter is reset for **Tuesday, March 21, 2006 at 1:30 p.m. (MST), at the Snake River Basin Adjudication District Court, 253 3rd Avenue North, Twin Falls, Idaho.** Parties may participate by telephone by dialing the number 1-918-583-3445 and when prompted entering code 406128.

DATED December 13, 2005.

/s/ John M Melanson
JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication