

STATE OF IDAHO }
COUNTY OF KOOTENAI } ss
FILED.

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Joseph P. [Signature]

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

IN THE MATTER OF THE GENERAL)
DETERMINATION OF THE RIGHTS TO)
THE USE OF THE SURFACE WATERS)
OF TWIN LAKES, INCLUDING)
TRIBUTARIES AND OUTLETS.)

Civil No. 32572

THE STATE OF IDAHO,)
Department of Water Resources,)
Plaintiff,)

FINAL
DECREE

v.)
ABBOTT, Knox and Spouse; et al.,)
Defendants.)

This action is a general adjudication of rights to the use of surface waters of Twin Lakes, including tributaries and outlets. This action was commenced by order of the district court on January 10, 1975, pursuant to Idaho Code §42-1407 (1977).

The director of the Idaho Department of Water Resources (IDWR) filed a Proposed Finding of Water Rights in the Twin Lakes

- Rathdrum Creek Drainage Basin (Proposed Finding) on January 14, 1985, pursuant to Idaho Code §42-1410 (Supp. 1984). The Proposed Finding contains a list of defendants; an introduction including a list of definitions; general findings of fact and conclusions of law, including matters necessary for the efficient administration of water rights from the source to be adjudicated; a listing of water rights, including instructions for interpreting the listing of water rights; a list of claims submitted and recommended to be disallowed; a name index and a water right number index; and maps of the Twin Lakes - Rathdrum Creek Basin. (Note that there is a numbering error in the Proposed Finding; there is no page 92.) The Proposed Finding is incorporated herein by reference.

The Proposed Finding was twice amended. The first amendment was an Order to Amend Proposed Finding of Water Rights in the Twin Lakes Rathdrum Creek Drainage Basin (Order), filed October 22, 1986, which amended pages 95 and 149 of the Proposed Finding by deleting one water right from the Proposed Finding which was not properly included in the adjudication. An amended page 95 and an amended page 149 are attached hereto and incorporated herein by this reference. The second amendment was a Supplement to Report (Supplement), filed May 21, 1987, which added to the Proposed Finding Page 100A, entitled Claims Not Submitted. Page 100A is attached hereto and incorporated herein by reference.

Four objections were filed to the Proposed Finding, and responses were filed to the objections by IDWR. Trial on the objections was held May 12 - 14, 1988. A Memorandum Decision was entered February 22, 1989. The Memorandum Decision is adopted as

findings of fact and conclusions of law as permitted by IRCP 52(a), and is incorporated herein by reference. The Memorandum Decision directed IDWR to amend the general findings and conclusions in the Proposed Finding in accordance with the Memorandum Decision. The amended proposed findings and conclusions, consisting of pages xiii and xv to xx, are attached hereto and incorporated herein by reference.

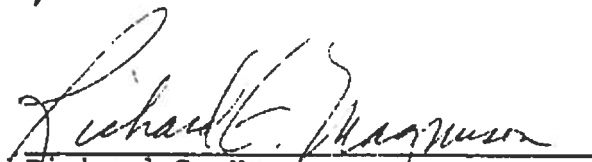
Idaho Code §42-1411(1)&(4) (Supp. 1988) describes a three-part director's report and a notice of filing the report which includes notice of a hearing on a partial decree of the uncontested portions of the report. Idaho Code §42-1412(8)&(9) (Supp. 1988) describes a partial decree of uncontested portions of the report and additional partial decrees after trial on objections. The Proposed Finding is not a three part director's report, and the procedures for obtaining a partial decree of uncontested matters was not followed in this adjudication because these provisions were not adopted until after the filing of the report and expiration of the period for filing objections and responses. This decree therefore decrees all matters, including uncontested matters pursuant to Idaho Code §42-1411(8) (Supp. 1988) and contested matters pursuant to Idaho Code §42-1411(9) (Supp. 1988), in this adjudication, and constitutes a final decree pursuant to Idaho Code §42-1412(10) (Supp. 1988).

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the rights to the use of surface water from the Twin Lakes - Rathdrum Creek Drainage Basin are as described in the Proposed Finding, amended

as set forth in pages xiii, xv to xx, ^{95,} ^{26W} 100A and 149 attached hereto.

IT IS FURTHER ORDERED that IDWR shall provide to the Clerk of the District Court a service list, stamped addressed envelopes, and sufficient copies of this judgment together with all attachments, for service of conformed copies of this judgment upon the parties to the trial on objections. IDWR shall prepare a notice of entry of decree, and provide to the Clerk of the District Court a service list, stamped addressed envelopes, and sufficient copies of the notice of entry of decree for service of conformed copies of the notice of entry of decree upon all other claimants in this adjudication. Upon receipt of these materials from IDWR, the Clerk of the District Court shall serve the conformed copies of the judgment and the conformed copies of the notice of entry of the decree on the persons listed in the service lists by mailing in the U.S. Mail. This further order is made pursuant to Idaho Code §42-1412(8) and (9), and IRCP 77(d).

DATED this 19th day of April, 1989.


Richard G. Magnuson
District Judge

FINDINGS OF FACT

1. Twin Lakes, formerly known as Fish Lakes, is a body of water comprised of two lakes joined by a natural channel which flows from the upper lake into the lower lake, with Fish Creek being the major inlet of the lakes and Rathdrum Creek the only outlet. Twin Lakes is located approximately three miles north of the City of Rathdrum at the foot of the Selkirk Mountain Range. The Twin Lakes-Rathdrum Creek Drainage Basin contains over forty-eight square miles, most of which is mountainous timberland, in which the streams feeding Twin Lakes and Rathdrum Creek originate. These tributaries are contained within Kootenai County, except for an intermittent tributary of Fish Creek which originates in the State of Washington on the eastern slopes of Shadow Mountain. Boundaries of the Twin Lakes-Rathdrum Creek Drainage Basin include all of the drainage basin located in Idaho, as shown in Both Exhibit 1 and Figure 1.
2. Beneficial use rights from surface water sources are those rights which were commenced by diversion and application of water to a beneficial use prior to May 20, 1971. All surface water rights with priority dates later than May 20, 1971, must have been initiated by application and permit filed with the Department of Water Resources or its predecessor agency, the Department of Water Administration.
3. The mean consumptive irrigation requirement for irrigated lands is found to be 2.1 acre-feet per acre per annum. (Reference: Allen, R.G. and C.E. Brockway, 1983, "Estimating Consumptive Irrigation Requirements for Crops in Idaho", Research Technical Completion Report, Idaho Water and Energy Resources Research Institute, University of Idaho.)
4. Water is found to be beneficially used for irrigation during the period of each year when the chance of a 28° F frost is fifty (50) percent or less. For the Twin Lakes area, this period is 246 days, from March 15 to November 15 each year. (Reference: Stevlingson, David J and Dale O. Everson, Spring and Fall Freezing Temperatures in Idaho, University of Idaho Agricultural Experiment Station, Bulletin 494.)
5. The amount of water required for stockwatering purposes is found to be 12 gallons of water per day per head for cows, calves and horses; 35 gallons per day per head for dairy cattle; and 2 gallons per day per head for sheep. (Reference: U.S. Environmental Protection Agency, 1974, Manual of Individual Water Supply Systems.)
6. The diversion requirement for domestic use is found to be 0.02 CFS for household needs and/or 0.02 CFS for the irrigation of up to one half acre of land and stockwater for domestic animals kept with and for the use of the household.
7. "Fire Protection" is an alternate use to which any water right can be beneficially applied.

8. Regulation of the diversion and use of water within the Twin Lakes-Rathdrum Creek Drainage Basin requires that each user who diverts must install a means for the watermaster to measure and control the diversion, with the exception that for diversions of less than 0.20 cfs, a means of measurement is not required.

9. May 23, 1977, was the final day for filing claims in this action. Seven (7) claims were filed after that date.

<u>Claim No.</u>	<u>Claimant(s)</u>	<u>Date Filed</u>
95-0970	Alfred and/or Ruby Hesterman	May 5, 1978
95-0971	Lawrence and/or Judy McIntosh	January 12, 1980
95-0972	Terry Kiefer	June 27, 1980
95-4357	Park, Inc.	December 2, 1981
95-0975	Russell Del and/or Susan May Reed	June 7, 1983
95-0976	Robert G. Bishop	June 8, 1983
95-0977	Robert L. and/or Margaret M. Simon	September 9, 1983

These claims were treated as though they were filed in a timely fashion.

10. Twin Lakes originally consisted of two distinct natural bodies of water. Near the turn of the century Upper Twin Lake was hydraulically connected to lower Twin Lake by a man-made channel, and a dam and outlet structure was constructed at the outlet of Lower Twin Lake. ~~that provided the capability to raise the level of the lakes.~~ In 1969, a decision of the District Court of the First Judicial District of the State of Idaho in Kootenai County, Case No. 18420, entitled Twin Lakes Improvement Assoc., Inc., vs. East Greenacres Irrigation District; (affirmed on appeal to the Idaho Supreme Court, 93 Idaho 922), established minimum and maximum levels for the lakes. The minimum level was held to be 6.4 feet on the Staff Gauge which correlates to 2,308.39 mean sea level elevation (per U.S. Bureau of Reclamation datum in publications after 1966). The maximum level was held to be 10.4 feet on the Staff Gauge which correlates to 2,312.39 mean sea level elevation.

There are three distinct blocks of storage identified within Twin Lakes:

- a. The first block of storage is the natural lake storage located between the bottom of the lake and Staff Gauge height 0.0 feet. No water right has been developed for the use of this water because it provides a base for the overlying storage rights.
- b. The second block of storage is located between Staff Gauge height 0.0 feet and 6.4 feet. A ~~portion of~~ This storage water was at one time part of the natural lake storage, but was made available for appropriation by excavation of the outlet from lower Twin Lakes. The right to use this water for recreational purposes was confirmed by the 1969 district court decision, which held that a lowering of the water level below 6.4 feet would constitute an infringement upon the rights of the plaintiff, Twin Lakes Improvement Association. The water right for this block of storage is Right No. 95-0974 in the amount of 5360 acre-feet. This water right has been claimed in this adjudication by the Twin Lakes Improvement Association.

- c. The third block of storage is located between Staff Gauge heights 6.4 feet and 10.4 feet. This storage water was also at one time part of the natural lake storage, but was made available for appropriation by excavation of the outlet from Lower Twin Lakes. The water right by which East Greenacres Irrigation District (EGID) used this water for irrigation purposes, No. 95-0973, was confirmed by the 1969 district court decision. However in 1974, EGID ceased using water from Twin Lakes, and conveyed ownership of their storage water right and the outlet works to the U.S. Department of Interior, Bureau of Reclamation (BOR). The BOR has entered into a fifty-year lease agreement with Kootenai County which gives the county the responsibility of operating the outlet facilities in a manner to benefit recreation and fish and wildlife enhancement.
11. On August 23, 1982, the BOR filed with the Department an application for transfer to change the nature of use of storage Water Right No. 95-0973 from irrigation storage to recreation and wildlife storage. The application was advertised and protested. On January 10, 1983, the BOR amended the application for transfer to include direct flow Water Right No. 95-2059. The proposed use of the direct flow was to provide "make up" water to replace depletions of storage caused by evaporation and seepage from Twin Lakes. A hearing regarding the application was held on March 24, 1983, and the transfer application was subsequently approved, in part, by the Director on August 1, 1984. The change in nature of use of storage Water Right No. 95-0973 from irrigation storage to recreation and fish and wildlife enhancement was approved. The change in nature of use of direct flow Water Right No. 95-2059 was denied, and no appeal to the decision was subsequently filed.
12. Water rights identified herein with the source of Twin Lakes tributary to Rathdrum Creek are categorized as either storage water rights or direct flow water rights. Only Water Right No. 95-0973 in the name of the BOR, and No. 95-0974 in the name of Twin Lakes Improvement Association are storage water rights. All other water rights that divert from Twin Lakes are direct flow water rights. Storage water rights utilize the storage capacity of the lake. Direct flow water rights utilize the flows passing through the lake and are established on a priority basis.
13. Within the Twin Lakes - Rathdrum Creek Drainage Basin many sources are hydraulically related. For example, Fish Creek is tributary to Twin Lakes which is tributary to Rathdrum Creek. The rate of flow provided by these sources fluctuates from day to day and from season to season.
14. There are periods during most years since 1906 when the seepage and evaporation losses from Twin Lakes exceed the natural tributary inflow.
15. This Proposed Finding of Water Rights includes permit rights initiated by application and permit from the Department of Water Resources. These permit rights are subject to the requirement that proof of beneficial use of the water must be submitted to the Department and the rights will be limited to and confirmed by such licenses as may subsequently be issued by the Department.

16. Among the various water rights and the numerous permits, licenses, and claims to water rights recorded in the files of the Department are several which describe rights which were unclaimed by the present landowner. These recorded rights represent uses which no longer exist due to forfeiture or abandonment.
17. The Department has historically taken the position that because a water right must generally have both a diversion and a beneficial use, the in-stream watering of livestock does not constitute a water right. New guidance has been provided on stock water rights in the case of R. T. Nahas Co. vs. Hulet, Idaho, 674 P.2d 1036 (App. 1983), and Section 42-113, Idaho Code. A total of six (6) claims to water rights for the purpose of in-stream watering of livestock were submitted in this proceeding. However, based on its understanding of the law at the time of claim-taking, the Department did not attempt to obtain and record all in-stream livestock watering uses within the Twin Lakes-Rathdrum Creek Drainage Basin.
18. With the exception of the in-stream watering of livestock, the Department investigated all claimed diversions and uses of surface water in the Twin Lakes-Rathdrum Creek Drainage Basin when claim-taking was completed on May 23, 1977. Water has been found to be diverted and applied to a beneficial use as described in the "Listing of Water Rights".
19. The unnamed stream that is currently tributary to Twin lakes immediately above the outlet at the lower end of Lower Twin Lake was tributary to Rathdrum Creek immediately below the outlet prior to completion of construction of the dam and outlet at the lower end of Lower Twin Lake on April 5, 1906.
20. At the time Water Right No. 95-0734 was created in 1875 there was sufficient direct flow water in Rathdrum Creek, in its then natural condition, furnished from the water of Twin Lakes, to provide 0.07 cfs to the appropriator on a continuous year-round basis. Since completion of construction of the dam and outlet structure at the lower end of Lower Twin Lake on April 5, 1906, when evaporation and seepage from Twin Lakes exceed the natural tributary inflow to Twin Lakes, Twin Lakes is not a significant source of water to Rathdrum Creek.

CONCLUSIONS OF LAW

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1. This recommended decree includes all the existing rights to the surface waters within the Twin Lakes and Rathdrum Creek Drainage Basin defined by Exhibit 1 as of May 23, 1977, and upon its adoption supersedes all prior judgments of the Court. Any water user who heretofore diverted surface water within the Basin or who owns land to which previously established water rights were appurtenant and who, upon being joined in this action, failed to claim such water rights, has forfeited such water rights as provided in Section 42-1411, Idaho Code.
2. The consumptive irrigation requirement for irrigated lands in the Twin Lakes-Rathdrum Creek Drainage Basin is 2.1 acre-feet per acre per annum. Regulation of diversion by the watermaster shall be on the basis of the rates of diversion herein specified rather than by the acre-foot allotment.
3. The normal irrigation season is from March 15 to November 15 of each year. Water rights used for irrigation shall be allowed to be diverted during both the pre-irrigation and post-irrigation seasons, provided:
 - a. The waters so diverted are applied to a beneficial use; and
 - b. Water rights for existing and future uses are satisfied.
4. The duty of water for stockwatering purposes is 12 gallons of water per day per head for cows, calves, and horses; 35 gallons per day per head for dairy cattle; and 2 gallons per day per head for sheep.
5. The duty of water for domestic uses is 0.02 cubic feet per second for household needs and/or 0.02 cubic feet per second for irrigation of up to one half acre of land and stockwater for domestic animals kept with and for the use of the household.
6. "Fire Protection" is an additional, implied use for each water right herein, to the extent of the maximum rate of diversion for the right.
7. Water users whose rights are described herein are required to install a means of measurement and control acceptable to the Department at the point(s) of diversion for use by the watermaster with the exception that for diversion of less than 0.20 CFS, a means of measurement is not required.
8. No water right exists for the natural storage below the level of 0.0 feet on the Staff Gauge located at the outlet of Lower Twin Lake. Water Right No. 95-0974 for 5360 acre-feet of recreation storage maintains the reservoir at a minimum level of 6.4 feet on the Staff Gauge.

9. The nature of use of Water Right No. 95-0973 in the name of the BOR is storage for recreation and fish and wildlife enhancement. This water right is for 3,730 acre-feet, between Staff Gauge heights 6.4 and 10.4 feet.
10. Water Right No. 95-2059 in the name of BOR has been forfeited or abandoned, and is of no further force or effect.
11. An appropriator is entitled to maintenance of the stream conditions substantially as they were at the time the appropriator made his or her appropriation, if a change in the stream conditions would interfere with the proper exercise of the water right.
- ~~11-~~ 12. Only two water rights identified herein, Nos. 95-0973 and 95-0974, are entitled to store water and to make beneficial use of stored waters in Twin Lakes. All other water rights with source of Twin Lakes tributary to Rathdrum Creek are direct flow water rights and are entitled to divert, on the basis of priority, a combined rate of flow equal to the inflow to the lakes. Stated in another manner, direct flow water rights can be utilized to divert from Twin Lakes only if the diversions do not injure the storage water rights in Twin Lakes.
From November 1 of each year until March 31 of the next year, the two storage water rights enable Twin Lakes to be filled to the level of 10.4 feet on the Staff Gauge. From April 1 to October 31 of each year, the rights to fill tie lakes is superseded by the right of existing and future direct flow water rights to divert natural inflows to the lakes. Thus from April 1 to October 31 of each year the level of Twin Lakes will decrease due to evaporation and seepage losses, during the periods when direct flow water rights divert the natural inflows.
- ~~12-~~ 13. The priority system of water rights within the Twin Lakes - Rathdrum Creek Drainage Basin applies to all water rights on sources that are hydraulically connected. For example, an early priority water right on Rathdrum Creek is senior to a later priority water right on Fish Creek.
- ~~13-~~ 14. When seepage and evaporation losses from Twin Lakes exceed the total natural tributary inflow to Twin Lakes, no water will be released from the lakes to satisfy downstream water rights, with the exception of Water Right No. 95-0734. When this occurs, Water Right No. 95-0734 and water rights that divert from Twin Lakes and from the tributaries to Twin Lakes may divert the natural flow, but not the stored waters, on the basis of water right priority.
- ~~14-~~ 15. Based on new statutory and case law, the six (6) claims to water rights for the purpose of in-stream watering of livestock are found to represent valid water rights. In addition, there may exist other valid water rights for this purpose within the Twin Lakes-Rathdrum Creek Drainage Basin which will not be recorded as part of this proceeding.

~~15.~~ 16. Water has been diverted and applied to a beneficial use as described in the "Listing of Water Rights".

17. With respect to those rights to the use of water from Rathdrum Creek with a priority prior to April 5, 1906, the unnamed stream that is currently tributary immediately above the outlet at the lower end of Lower Twin Lake will be administered as if the stream were tributary to Rathdrum Creek immediately below the outlet.

CLAIMS SUBMITTED

RECOMMENDED TO BE DISALLOWED

NUMBER	NAME ADDRESS	REMARKS
95-0970	MESTERMAN, ALFRED HESTERMAN, RUBY ROUTE 1, BOX 616 RATHDRUM, ID 83858	NO DIVERSION WORKS.
95-0975	REED, RUSSELL DEL REED, SUSAN MAY BOX 464 RATHDRUM, ID 83858	NO DIVERSION WORKS.
95-0976	BISHOP, ROBERT G. E. 8523 COURTLAND SPOKANE, VA 99212	NO DIVERSION WORKS.
95-2002	UNCLAIMED	NO BENEFICIAL USE FOUND-USE FORFEITED OR ABANDONED.
95-2005	HEITMAN, CHARLES L. RATHDRUM, ID 83858	NO BENEFICIAL USE FOUND-USE FORFEITED OR ABANDONED.
95-2024	CHICAGO MILWAUKEE RAILROAD 640 SKINNER BLDG. SEATTLE, VA 98901	NO BENEFICIAL USE FOUND-USE FORFEITED OR ABANDONED.
95-2059	U. S. DEPARTMENT OF INTERIOR BUREAU OF RECLAMATION FEDERAL BLDG. BOX 043, 550 WEST FORT STREET BOISE, ID 83724	NO BENEFICIAL USE FOUND-USE FORFEITED OR ABANDONED.
95-2071	FRANKLIN, CLARA RATHDRUM, ID 83858	NO BENEFICIAL USE FOUND-USE FORFEITED OR ABANDONED.
95-7018	PITTSLEY, ERNEST H. RT. 1 RATHDRUM, ID 83858	PERMIT LAPSED.

CLAIMS NOT SUBMITTED

The following people were summoned, but did not submit adjudication claims on their respective statutory claims.

NUMBER	NAME	REMARKS
95-4043	Ray Kempton	
95-4201	N. F. Rouleau	Recommended as 95-2032B
95-4308	Louis R. Becker	Recommended as 95-0811

NUMBER INDEX

NUMBER	NAME	PRIORITY DATE	SOURCE OF WATER	TRIBUTARY TO
95-0962	KERN, ALBERT V. KERN, RUTH J.	04-01-1947	TWIN LAKES	RATHDRUM CREEK
95-0963	JONES, ROBERT O.	05-15-1961	TWIN LAKES	RATHDRUM CREEK
95-0964	GALBRAITH, LARRY E.	05-01-1042	SPRING BRANCH CREEK	RATHDRUM CREEK
95-0965	SCHRAMM, ROGER H. SCHRAMM, JUNE G.	05-01-1949	TWIN LAKES	RATHDRUM CREEK
95-0966	CITY OF RATHDRUM	01-01-1880	SPRING BRANCH CREEK	RATHDRUM CREEK
95-0967	STATE OF IDAHO	06-01-1971	SPRING BRANCH CREEK, S. FORK SPRING BRANCH CREEK, N. FORK	SPRING BRANCH CREEK SPRING BRANCH CREEK
95-0968	MUNRO, HERBERT B. MUNRO, MARYAN E.	01-06-1958	TWIN LAKES	RATHDRUM CREEK
95-0969	FARMERS WATER INC.	05-01-1902	SPRINGS	SPRING BRANCH CREEK
95-0970	WESTERMAN, ALFRED WESTERMAN, RUBY	DISALLOWED		
95-0971	MC INTOSH, LAWRENCE V. MC INTOSH, JUDY	05-01-1958	TWIN LAKES	RATHDRUM CREEK
95-0972	KIEFEK, TERRY	05-01-1957	TWIN LAKES	RATHDRUM CREEK
95-0973	U.S. DEPT. OF INTERIOR	03-23-1906	TWIN LAKES	RATHDRUM CREEK
95-0974	TWIN LAKES IMPROVEMENT ASSN.	03-23-1906	TWIN LAKES	RATHDRUM CREEK
95-0975	REED, RUSSELL DEL REED, SUSAN MAY	DISALLOWED		
95-0976	BISHOP, ROBERT G.	DISALLOWED		
95-0977	SIMON, ROBERT L. SIMON, MARGARET H.	06-01-1965	TWIN LAKES	RATHDRUM CREEK
95-2002	UNCLAIMED	DISALLOWED		
95-2005	HEITMAN, CHARLES L.	DISALLOWED		
95-2024	CHICAGO MILWAUKEE RAILROAD	DISALLOWED		
95-2032A	SPRING WATER ASSOCIATION, INC.	03-13-1917	SPRINGS	TWIN LAKES
95-2032B	EXCELSTOR BEACH ASSN., INC.	03-13-1917	SPRING	TWIN LAKES
95-2055	CRANER, FRED V. CRANER, SALLY A.	06-22-1914	UNNAMED STREAM	TWIN LAKES
95-2059	U.S. DEPARTMENT OF INTERIOR	DISALLOWED		
95-2071	FRANKLIN, CLARA	DISALLOWED		
95-2096	PARK, CHESTER R. PARK, NAOMI	06-28-1952	RATHDRUM CREEK	SINKS