

**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)	Subcases: See Attached Exhibits A, B, and C
)	
Case No. 39576)	SPECIAL MASTER'S RECOMMENDATION
)	DENYING MOTIONS TO SET ASIDE
)	PARTIAL DECREES

APPEARANCES:

Craig Pridgen, Esq. and Richard Harris, Esq. representing C.E. Brackett Cattle Co., Brackett Ranches, LTD, and Brackett Livestock, Inc. (hereafter collectively referred to as "Brackett Entitites")

Larry Brown, Trial Attorney, United States Dept. of Justice, representing the United States Bureau of Land Management.

Peter Ampe, Deputy Attorney General, representing the State of Idaho.

**I.
SUMMARY**

A. C.E. BRACKETT CATTLE CO.

On February 2, 2000, a *Notice of Motion and Motion to Set Aside Partial Decree Pursuant to I.R.C.P. § 60(b) and United States and Idaho Constitutions* along with the *Affidavit of Chester E. Brackett in Support of I.R.C.P. § 60(b) Motion to Set Aside Decree Entered by Default* was filed by C.E. Brackett Cattle Co. in each of the subcases listed on the attached Exhibit A. For the reasons discussed below, the *Motions to Set Aside Partial Decrees* filed by C.E. Brackett Co. are **denied**.

B. BRACKETT RANCHES LTD

On February 3, 2000, a *Notice of Motion and Motion to Set Aside Partial Decree Pursuant to I.R.C.P. § 60(b) and United States and Idaho Constitutions* along with the *Affidavit of Bert Brackett in Support of I.R.C.P. § 60(b) Motion to Set Aside Decree Entered by Default* was filed by Brackett Ranches LTD in each of the subcases listed on the attached Exhibit B. For the reasons discussed below, the *Motions to Set Aside Partial Decrees* filed by Brackett Ranches LTD are **denied**.

C. BRACKETT LIVESTOCK, INC.

On February 3, 2000, a *Notice of Motion and Motion to Set Aside Partial Decree Pursuant to I.R.C.P. § 60(b) and United States and Idaho Constitutions* along with the *Affidavit of Bert Brackett in Support of I.R.C.P. § 60(b) Motion to Set Aside Decree Entered by Default* was filed by Brackett Livestock, Inc. in each of the subcases listed on the attached Exhibit C. For the reasons discussed below, the *Motions to Set Aside Partial Decrees* filed by Brackett Livestock, Inc. are **denied**.

II.

MATTER DEEMED FULLY SUBMITTED

A hearing on the *Motions to Set Aside Partial Decrees* was held in Boise, Idaho on June 21, 2000, followed by supplemental pleadings by the parties. At the request of the parties, the decision on the *Motions to Set Aside Partial Decrees* was stayed pending decisions by Presiding Judge Burdick in like Motions before him. On May 1, 2001, Presiding Judge Roger Burdick issued a ***Memorandum Decision and Order on Motion to Set Aside Partial Decrees*** (subcases 55-02373 *et al.*). Therefore, the matter is deemed fully submitted for decision the next business day, or Wednesday, May 2, 2001.

III.

PROCEDURAL AND FACTUAL BACKGROUND

A. NOTICE COMMENCEMENT OF THE SNAKE RIVER BASIN ADJUDICATION

On November 19, 1987, a ***Commencement Order*** was issued joining all water right claimants as parties to the Snake River Basin Adjudication. The Findings of Fact set forth in

the **Commencement Order** outlined the procedures followed by the Director of the Idaho Department of Water Resources for publication of the Notice of Filing of a petition for the general adjudication. “The [D]irector published the Notice of Filing for three consecutive weeks in newspapers of general circulation in the following counties . . . Owyhee . . . Twin Falls. The last day of publication was on or before July 31, 1987.” **Commencement Order** at 2.

The **Commencement Order** further outlined the procedures to be followed for service of the notice of order commencing a general adjudication. “The director shall service a notice of order commencing a general adjudication as provided in Idaho Code § 42-1408A(2) (a)-(e).” Idaho Code § 42-1408A(2) states:

(2) The director shall serve copies of the notice of order on the parties to the general adjudication as follows:

(a) the director shall serve the notice of order on the state of Idaho and the United States;

(b) the director shall serve the notice of order on claimants other than the persons in paragraph (a) of subsection (2) of this section, initially by publication once a week for three (3) consecutive weeks in a newspaper of general circulation published in each county in which any part of the water system, which is the subject of the general adjudication, is located. If there is no newspaper published within a county, then copies shall be published in a newspaper having general circulation in that county;

(c) the director shall post the notice of order in each county courthouse, county recorder’s office, and county assessor’s office in which any part of the water system is located. The director shall complete the posting on or before the date of the last publication within each county;

(d) the director shall serve the notice of order by ordinary mail on each person listed as owning real property on the real property assessment roll within the boundaries of the water system to be adjudicated at the address listed on the real property assessment roll; and

(e) the director shall file a copy of the notice of order commencing a general adjudication in the office of the county recorder in each county in which any part of the water system is located; notwithstanding the provisions of section 5-505, Idaho Code, the notice, from the time it is filed with the recorder for record, is constructive notice of the contents thereof within that county in which the notice is recorded, to subsequent purchases and mortgagees.

I.C. § 42-1408A(2) (Supp. 1987) (emphasis added).

The **Commencement Order** further states: “All classes of water uses and all hydrologic sub-basins within the system described, . . . shall be adjudicated as part of the Snake River Basin adjudication. . . . No uses of water are proposed to be excluded from the adjudication; however, the Court reserves ruling on whether domestic and stock water uses as defined by Idaho Code § 42-1401A(5) and (12) (Supp. 1987) will be adjudicated separately or processed under a separate method.” **Commencement Order** at 6, ¶¶ 5-6.

An *Affidavit of Service of Commencement Notice – Owyhee County* was filed on March 21, 1989, which asserts that Brackett Livestock, Inc., Brackett Ranches, LTD, Bert Brackett, Noy Brackett III, and Paula Brackett were served with actual notice by mail on October 14, 1988, of the commencement of the adjudication. An *Affidavit of Service of Commencement Notice – Twin Falls County* was filed on May 12, 1989, which asserts that Chester E. Brackett and C.E. Brackett Cattle Company were served with actual notice by mail of the commencement of the adjudication. Further, both *Affidavits of Service of Commencement Notice* for Owyhee and Twin Falls County show the dates of publications for the newspapers of general circulation in each respective county of the Commencement Notice.

B. DOCKET SHEET ORDER

On February 19, 1988, the Idaho Supreme Court issue Sup. Ct. No. 99143 *Supplemental Order Granting Powers to District Judge* that states:

[B]ecause of the number of claimants in this matter and because of the complexity of the case . . .

IT IS HEREBY ORDERED that District Judge Daniel C. Hurlbutt, Jr. is hereby granted the authority and power to modify the procedure for making service of pleadings, motions, notices of hearing and other documents and the procedure of giving notice of hearings and trials before the court or any masters appointed by the Court.

Supreme Court Order No. 99143 (Feb. 19, 1988).

On February 23, 1988, an **Order** was issued by then Presiding Judge Daniel C. Hurlbutt, Jr., setting forth a procedure for filing of service of pleadings and for providing notice of hearings in the Snake River Basin Adjudication. The **Order** states:

The provisions for service of documents and the use of a docket sheet as provided in the following procedures constitute a practical method of notice to

the parties of filed papers and pending hearings, and satisfies the due process requirements of the United States and Idaho constitutions.

Order at 2. The **Order** further required the Director of IDWR to “publish a notice in a newspaper of general circulation in each county within the boundaries of the adjudication advising the claimants of the entry of this Order.” The Director of IDWR was further required to inform claimants of the availability of the docket sheet in the Commencement Notice. Further the Director of IDWR was required to indicate on the Notice of Claim to a Water Right form that this **Order** had been entered and to provide a means for each claimant to elect whether to be included on the docket sheet mailing list.

C. COMMENCEMENT NOTICE

The Commencement Notice states:

The purpose of this notice is to inform you of the commencement of the adjudication and your legal responsibilities at this state of the adjudication.

Idaho Code § 42-1409 requires all persons owning water rights within the boundaries of the Snake River Basin water system in Idaho to file a Notice of Claim with the Idaho Department of Water Resources (IDWR) for each water right, except for certain water rights specifically excluded by law. ‘Water rights within the boundaries of the Snake River Basin water system in Idaho’ includes rights to the use of water from any water source, including streams, springs, lakes, ground water, developed water, waste water, or any other source within the boundaries of the Snake River Basin water system in Idaho.

A Notice of Claim must be filed for all water rights based upon Idaho state law. . . . A Notice of Claim or negotiated agreement must be filed for all water rights based upon federal law.

Commencement Notice. This Notice further explained where to find additional information for claims that have been filed in the adjudication, as well as information on the Docket Sheet. The Commencement Notice for Twin Falls County stated the filing deadline for claims was January 11, 1989. The Commencement Notice for Owyhee County stated the filing deadline for claims was January 19, 1989.

C. CLAIMS FILED BY BRACKETT ENTITIES

Various claims were filed in the Snake River Basin Adjudication by the Brackett entities, to wit:

Entity	Claim Number	Date Filed
Bert Brackett	51-00096	1/13/1989
Bert Brackett	51-00097	1/13/1989
Bert Brackett	51-00107	1/13/1989
Bert Brackett	51-00108	1/13/1989
Bert Brackett	51-04100	1/13/1989
Bert Brackett	51-07085	1/13/1989
Bert Brackett	51-10180	1/13/1989
Bert Brackett	51-10184	1/13/1989
Bert Brackett	51-12895A	10/1/1998
Bert Brackett	51-12895B	10/1/1998
Bert Brackett	51-12896A	10/1/1998
Bert Brackett	51-12896B	10/1/1998
Brackett Livestock, Inc.	51-00095	1/13/1989
Brackett Livestock, Inc.	51-00101	1/13/1989
Brackett Livestock, Inc.	51-00106	1/13/1989
Brackett Livestock, Inc.	51-00117	1/13/1989
Brackett Livestock, Inc.	51-00123	1/13/1989
Brackett Livestock, Inc.	51-04045	1/13/1989
Brackett Livestock, Inc.	51-10180	1/13/1989
Brackett Livestock, Inc.	51-10181	1/13/1989
Brackett Livestock, Inc.	51-10182	1/13/1989
Brackett Livestock, Inc.	51-10185	1/13/1989
Brackett Livestock, Inc.	51-10345	1/13/1989
Brackett Livestock, Inc.	51-10346	1/13/1989
Brackett Livestock, Inc.	51-12897A	10/1/1998
Brackett Livestock, Inc.	51-12897B	10/1/1998
Brackett Livestock, Inc.	51-12898A	10/1/1998

Entity	Claim Number	Date Filed
Brackett Livestock, Inc.	51-12898B	10/1/1998
Brackett Ranches LTD	51-00116	1/11/1989
Brackett Ranches LTD	51-00116	1/11/1989
Brackett Ranches LTD	51-00136	1/11/1989
Brackett Ranches LTD	51-02141	1/11/1989
Brackett Ranches LTD	51-02220	1/11/1989
Brackett Ranches LTD	51-02221	1/11/1989
Brackett Ranches LTD	51-02222	1/11/1989
Brackett Ranches LTD	51-10183	1/13/1989
Brackett Ranches LTD	51-12894	9/29/1998
C.E. Brackett Cattle Co.	51-00115	1/13/1989
C.E. Brackett Cattle Co.	51-10202	1/13/1989
C.E. Brackett Cattle Co.	51-10344	1/13/1989
C.E. Brackett Cattle Co.	51-12747	9/30/1993
C.E. Brackett Cattle Co.	51-12884	7/15/1998
C.E. Brackett Cattle Co.	51-12891	9/8/1998

Bert Brackett is a general partner of Brackett Ranches, LTD, a limited partnership duly organized and existing pursuant to the laws of the State of Idaho. *Affidavit of Bert Brackett* (Mar. 15, 2000). The address of Brackett Ranches, LTD is Flat Creek Ranch, Rogerson, Idaho 83302. *Affidavit of Peter J. Ampe, Exhibit A* (Apr. 3, 2000). The Certificate of Limited Partnership on file with the Secretary of State of Idaho lists Noy E. Brackett, III, and Paula Ann Brackett as general partners. Both Noy's and Paula's address is listed as Flat Creek Ranch, Rogerson, Idaho 83302. *Affidavit of Peter J. Ampe, Exhibit A* (Apr. 3, 2000).

Brackett Livestock, Inc. is a corporation duly organized and existing pursuant to the laws of the State of Idaho. Bert Brackett is a shareholder of that corporation. *Affidavit of Bert Brackett* (Mar. 15, 2000). The Annual Report Forms for the years 1997, 1998, and 1999 on file with the Secretary of State list Bert Brackett as the President of Brackett Livestock, Inc.

The following individuals are listed as officers or directors: Noy Brackett, Paula Brackett, Ira

Brackett, Gus Brackett. The address for all individuals listed as officers or directors is Flat Creek Ranch, Rogerson, Idaho 83302. *Affidavit of Peter J. Ampe*, Exhibits B, C, and D (Apr. 3, 2000).

C.E. Brackett Cattle Co. is a Subchapter S corporation duly organized and existing pursuant to the laws of the State of Idaho. Chet Brackett and his wife, Kim Brackett own all of the stock of the corporation. Chet Brackett is the president of the corporation and Kim Brackett is the secretary. *Affidavit of Chester Brackett* (Mar. 15, 2000).

D. PROCEDURES FOR ADJUDICATION OF DOMESTIC AND STOCKWATER USES

On January 17, 1989, the Court issued ***Findings of Fact, Conclusions of Law, and Order Establishing Procedures for Adjudication of Domestic and Stock Water Uses (Deferral Order)***. The ***Deferral Order*** stated that election of the deferral procedure would not result in a loss of the domestic or stockwater claim and that a deferring claimant would not be precluded from establishing the requisite elements of the deferred claims at a subsequent proceeding. ***Deferral Order*** at 5. The ***Deferral Order*** also states:

Any objections which a *de minimus* [sic] claimant or any other claimant may have to any and all claims being adjudicated in this proceeding **must be timely raised** in the proceeding in accordance with Idaho Code § 42-1412 (supp. 1988) **or be forever barred**.

Deferral Order at 3 (emphasis added).

On March 22, 1995, an ***Order Governing Procedures in the SRBA for Domestic and Stockwater Uses*** was issued. In that document, then Presiding Judge Daniel C. Hurlbutt, Jr., outlined different procedures for those areas where a Director's Report had been filed versus where a Director's Report had not been filed. In those areas where a Director's Report had not been filed, claimants who wished to reinstate their notice of claim needed to comply with Idaho Code § 42-1409(8) (1990). The ***Order*** further explained that in those areas where a Director's Report had been filed, persons who wished to file a notice of claim for domestic or stockwater use and later deferred or withdrew claims could reinstate those notices of claim by filing a *Standard Form 4, Motion to File a Late Notice of Claim*. No late charges were to be assessed, nor was there an appearance fee for those claimants who reinstated their notices of claim. Finally, Judge Hurlbutt indicated that use of the deferral procedure did not constitute

forfeiture or abandonment of the domestic or stockwater claims deferred pursuant to the **Deferral Order**.

E. DIRECTOR'S REPORT FOR REPORTING AREA 6

On July 31, 1997, IDWR filed its *Director's Report for Domestic and Stockwater, Reporting Area 6* (hereafter *Director's Report*) along with *Notice of Filing Director's Report Reporting Area 6 (IDWR Basins 51, 55 and 61) for Small Domestic and Stock Water Rights*. The *Director's Report* contained recommendations for pending small domestic and stockwater claims in Basins 51, 55 and 61, including recommendations for claims for Brackett Ranches LTD and a recommendation for claim 51-12747 for C E Brackett Cattle Co. Because Brackett Ranches LTD and C E Brackett Cattle Co. had claims recommended in the *Director's Report*, both entities received IDWR's recommendations for their claims and the *Notice of Filing Director's Report* via first-class mail.

The *Notice of Director's Report* provided instructions for reviewing water rights contained in the *Director's Report*. Specifically, the *Notice* described where copies of the full complete *Director's Report* were located. Further, the *Notice* specifically stated that in the complete *Director's Report* "are descriptions of the United States claims for domestic and stockwater under federal law." The *Notice* set forth the deadline of December 5, 1997, for filing Objections to the *Director's Report*.

On August 7, 1997, the SRBA Court published a **Docket Sheet** listing documents filed with the SRBA District Court during the month of July 1997. The **Docket Sheet** informed all SRBA parties that the *Director's Report for Reporting Area 6, Basins 51, 55 and 61* was filed with the SRBA Court on July 31, 1997.

**IV.
DECISION**

A. MEMORANDUM DECISION AND ORDER ON MOTION TO SET ASIDE PARTIAL DECREES (Subcases 55-02373 et al.)

On May 1, 2001, Presiding Judge Roger Burdick issued **Memorandum Decision and Order on Motion to Set Aside Partial Decrees** in subcases 55-02373 et al. (hereafter referred to **LU Ranching**). All issues raised by the Brackett entities in the instant *Motions* have been

addressed by Judge Burdick in **LU Ranching** and the cases cited therein, and are dispositive of such *Motions*.

B. DUE PROCESS AS APPLIED TO BRACKETTS' PARTICULAR CIRCUMSTANCES

The Brackett entities do not contend that they were not served with the Notice of Commencement of the SRBA. In fact, the Brackett entities filed claims in the SRBA as indicated in paragraph III C above. By virtue of filing claims in the SRBA, the Brackett entities became parties to the SRBA litigation.

Brackett Ranches, LTD and C E Brackett Cattle Co. had claims recommended in the *Director's Report for Domestic and Stockwater, Reporting Area 6*, and received copies of IDWR's recommendations for their claims along with the *Notice of Filing Director's Report* via first-class mail. This is the same *Director's Report* that included the recommendations for the claims of the federal government that are the subject of the instant *Motions*. Further, Brackett Ranches, LTD and C E Brackett Cattle Co. received the *Notice of Director's Report* that provided instructions for reviewing water rights contained in the *Director's Report*. Specifically, the *Notice* described where full and complete copies of the *Director's Report* were located and that included in the *Director's Report* were "descriptions of the United States claims for domestic and stockwater under federal law."

Brackett Ranches, LTD did not have claims reported in the *Director's Report for Reporting Area 6*, however, the **Docket Sheet** published on August 7, 1997, informed all SRBA parties that the *Director's Report for Reporting Area 6* was filed with the SRBA Court on July 31, 1997.

It is implicit in Bracketts' *Motions* that they wish the court to assume that each subcase is a separate case for purposes of notice and due process. However, the Snake River Basin Adjudication is a single lawsuit. It was statutorily created by the Idaho Legislature to comport with the McCarran Amendment (43 U.S.C. § 666). Each and every subcase in the SRBA is part of a single lawsuit, Case No. 39576. Once each of the Brackett entities became a party to the SRBA (by filing claims in January 1989) the due process requirements for notice are substantially different than if they were effective strangers to the suit. Thus, they are bound by the **Commencement Order** and by the **Docket Sheet** process and may not, as the Bracketts'

Motions attempt to do, treat each of the United States' subcases as if it were a separate lawsuit to which they were legal strangers.

Therefore, IT IS RECOMMENDED that the *Notice of Motion and Motion to Set Aside Partial Decree Pursuant to I.R.C.P. § 60(b) and United States and Idaho Constitutions* filed by C.E. Brackett Cattle Co., Brackett Ranches LTD, and Brackett Livestock Inc. be **denied**.

DATED June 21, 2001.

THOMAS R. CUSHMAN
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the **Order** was mailed on June 21, 2001, with sufficient first-class postage prepaid to the following:

Director of IDWR
PO Box 83720
Boise, ID 83720-0098

U.S. Department of Justice
Environment & Natural Resources Div.
550 W Fort St., MSC 033
Boise, ID 83724

Chief, Natural Resources Div.
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449

Craig Pridgen
McQuaid, Metzler, Bedford, VanZandt
221 Main St, 16th Floor
San Francisco, CA 94105

Richard L. Harris
PO Box 1438
Caldwell, ID 83606

(Deputy Clerk

EXHIBIT A

MOTIONS TO SET ASIDE PARTIAL DECREE

Filed by: C.E. Brackett Cattle Company

51-02289

51-02326

51-02356

51-02358

51-02360

51-02393

51-04062

51-04063

51-04064

51-04067

51-04068

51-04070

51-11901

51-11903

51-11904

51-11905

51-11920

51-11953

51-11954

51-11958

51-12094

51-12097

51-12452

EXHIBIT B

**MOTIONS TO SET ASIDE PARTIAL DECREE
Filed by: Brackett Ranches LTD**

51-02299
51-02300
51-02313
51-02326
51-02328
51-04067
51-04079
51-04082
51-11899
51-11920
51-11953
51-11954
51-11958
51-12834
51-12835

Exhibit C

**MOTIONS TO SET ASIDE PARTIAL DECREE
Filed by: Brackett Livestock Inc.**

51-02283
51-02301
51-02302
51-02317
51-02318
51-02356
51-04065
51-04066
51-11889
51-12167
51-12376
51-12451