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## A&B Irrigation Dist. v. Idaho (In re SRBA, Case No. 39576, Subcase 00-91017), 336 P.3d 792 (Idaho 2014)

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natural resources. The doctrine imposes significant duties on those who would use water resources, and the government agencies charged with protection of those resources.” Accordingly, Recktenwald argued for a public trust doctrine that starts with an analysis of the statutory or regulatory duties placed on the agency, then examines the additional duties imposed by the public trust doctrine, and finally requires the agency to reasonably assess the applicant’s compliance with processes required by other agencies.

*Kylie Wyse*

## IDAHO

**A&B Irrigation Dist. v. Idaho (*In re* SRBA, Case No. 39576, Subcase 00-91017), 336 P.3d 792 (Idaho 2014)** (holding that (i) the Snake River Basin Association (“SRBA”) court abused its discretion in defining an issue as basin-wide where it did not promote judicial economy, and (ii) the SRBA court did not abuse its discretion by ruling that the director of the Idaho Department of Water Resources may determine when storage water rights are considered “filled”).

This case evolved out of several individual SRBA cases that dealt with whether storage water rights holders may refill reservoirs, under priority, to account for water released for flood control when junior appropriators have not filled their rights for the first time. The State of Idaho and the Bureau of Reclamation argued that a remark was necessary to authorize storage water right holders to refill after releases of floodwater excess. Storage right decrees already existed without a remark for several irrigation districts across the Snake River Basin, and these districts worried that a remark requirement could negatively affect their storage water rights. Because the issue was so pervasive, the SRBA court combined dockets to adjudicate the issues in a basin-wide proceeding. The SRBA court designated Basin-Wide Issue 17 as whether “Idaho law require[s] a remark authorizing storage water rights to ‘refill’ under priority, space vacated for flood control.”

The SRBA court found that Basin-Wide Issue 17 was a question of law and accordingly stated that it would not consider any specific factual scenarios in ruling on the issue, noting that circumstances would differ from reservoir to reservoir. The SRBA court reasoned that it cannot consider specific facts in a basin-wide issue. The SRBA court ultimately found that a remark was unnecessary because a storage water right cannot be refilled until junior appropriators have satisfied their allotments. The SRBA court did not address when a storage water right is considered filled because such a determination would require the development of a factual record.

The Supreme Court of Idaho (the “Court”) addressed two predominant issues on appeal. The Court first considered if the SRBA court correctly designated whether “Idaho law require[s] a remark authorizing storage rights to ‘refill,’ under priority, space vacated for flood control” as a basin-wide issue. Next, the Court considered whether the SRBA court abused its discretion by declining to define when a storage water right has been filled, leaving that determination to the discretion of the Idaho Department of Water Resources (“IDWR”).

In addressing the first issue, the Court confirmed the SRBA court's authority to designate a basin-wide issue. SRBA Administrative Order 1 gives the SRBA court the authority to combine cases with similar interests and claims into a basin-wide issue to promote judicial economy. Basin-Wide Issue 17 addressed whether water released for flood control counts towards the storage water right owner's allotment. That is, the SRBA court sought to clarify whether refilling a reservoir after flood control releases counted as an initial or secondary fulfillment of the water storage right. The SRBA court determined that the question should be addressed exclusively as a matter of law in a basin-wide proceeding, and would not develop a factual record in order to answer it.

However, the Boise Project Board, the Surface Water Coalition, and others (the "Coalitions") wanted the SRBA court to rule on when a storage water right is considered filled, not if the storage water right was considered filled under the circumstances articulated in Basin-Wide Issue 17. Fundamentally, the Coalitions never raised the question the SRBA court ultimately answered. Consequently, the Court found that the SRBA court's designation of Basin-Wide Issue 17 did not promote judicial economy and therefore was made in error.

The Court clarified its first holding by explaining that the SRBA court did not abuse its discretion "in declining to designate the question of whether flood control releases count toward the 'fill' of a water right as a basin-wide issue"; the Court also agreed with the SRBA Court that the question of fill presents a mixed question of law and fact. Because this question requires a factual record, however, the SRBA court can only address it on a case-by-case basis and not in a basin-wide proceeding. Whether floodwater release counts towards reservoir fill would be an issue of first impression for the Court to consider, and could have extensive repercussions. Thus, the Court declined to issue such an important decision with no alleged injury and without a complete factual record.

Next, the Court ruled that the SRBA court was correct not to address when a storage water right is considered filled because that determination is an administrative function of the IDWR. The Coalitions argued that a storage water right is a property right that can only be dispensed by decree. Accordingly, they questioned whether the director of the IDWR ("the Director") was determining property rights that should instead be determined by law. The Court noted that the Director must allocate water rights based on the constitutional principal of beneficial use and according to the prior appropriation doctrine. Idaho Code section 42-602 requires the Director to be highly credentialed and to have at least five years of experience in specific fields including civil or agricultural engineering, geology, or hydrology. Tempered by these high standards, the law also affords the Director a high degree of deference in choosing a methodology to determine when a storage water right has been filled. Because the determination of storage water rights is allocated by law and overseen by a highly qualified officer, the Court noted that the Director does not choose to whom the storage water rights belong, but rather to whom the law has allocated those rights. The Court further emphasized that the discretion to determine when those rights have been filled is implicit in the Director's duty to allocate storage water rights according to the doctrine of prior appropriation.

Accordingly, the Court ruled that the SRBA court abused its discretion in designating Basin-Wide Issue 17 because doing so did not promote judicial

economy. However, the Court held that the SRBA court did not abuse its discretion in declining to address when a storage water right is filled, because that duty is reserved to the IDWR Director.

*Robert Montgomery*

**Telford Lands LLC v. Cain, 303 P.3d 1237 (Idaho 2013)** (holding that (i) the servient landowners were not denied due process, (ii) there was reasonable necessity for condemnation of an irrigation pipeline easement, (iii) the irrigators' beneficial use of water allowed them to exercise eminent domain, (iv) the irrigators only needed to make the required good faith effort to purchase property prior to filing a lawsuit, and (v) the district court erred in dismissing the servient landowners' counterclaim for trespass).

This case involved three ranchers: Telford Lands LLC ("Telford Lands"), Mitchell D. Sorensen, and PU Ranch (collectively, "the Ranchers"). In 2009 the Ranchers collectively constructed pipelines to carry water from their respective wells to a ditch in an unused portion of the Moore Canal, which conveyed the water to the Ranchers' farmlands. One of the pipelines, disputed here, crossed a one-hundred-foot-wide strip of land owned by Donald and Carolyn Cain ("the Cains"). The Ranchers contended that the Cains gave them oral permission to run the pipeline across their property, but the Cains protested the pipeline's location in August 2009. After unsuccessful attempts to negotiate an easement purchase, in May 2010 the Cains dug up the pipeline, punctured a hole in it to disable its flow, and sent a letter to the Ranchers informing them of their actions. Thereafter, the Ranchers filed an action against the Cains seeking damages, condemnation of an easement across the Cains' property for the pipeline, and specific performance pursuant to the Cains' oral agreement. The Cains subsequently filed an answer and a counterclaim for trespass.

The Ranchers filed a motion for partial summary judgment regarding the condemnation claim, which the Cains matched with their own motion for summary judgment seeking the dismissal of all of the Ranchers' claims. The Seventh Judicial District of Butte County ("district court") granted the Ranchers' motion for summary judgment regarding the condemnation claim and dismissed the Ranchers' remaining claims. The Cains appealed.

On appeal, the Supreme Court of Idaho (the "Court") first reviewed whether the Cains were denied due process of law. The Cains argued they were denied due process of law when the Ranchers constructed a pipeline across their property before paying just compensation. The Cains further argued that because the Ranchers were in possession of the Cains' land before initiating a condemnation proceeding, the district court should have ruled on the Cains' trespass claim. The Court, however, concluded that because the Cains did not raise the issue of due process in the district court but waited until after the district court entered a judgment for condemnation, the Cains waived their right to raise the issue.

Second, the Court reviewed whether the district court erred in holding that there was a reasonable necessity for condemning a pipeline easement. The Cains argued that Telford Lands and PU Ranch voluntarily gave up their respective transport agreements and should not be able to create the necessity for condemning an easement by giving up the alternative means for transporting