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Department of Water Resources

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JAN 14 2004

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



SRBA

Case No. 39576

ROBERT DREYER,

Plaintiff,

vs.

GEOFFREY C. SMITH,

Defendant.

Subcase No. 92-00017

STIPULATION FOR REGULATION OF
WATER RIGHT CLAIMS UNTIL
DIRECTOR'S REPORTS ARE FILED

DESCRIPTIVE SUMMARY

This is a stipulation between the parties in the above-captioned subcase,
resolving the issues raised in Plaintiff's Verified Complaint.

STIPULATION

COME NOW, the Plaintiff, Robert Dreyer, and the Defendant, Geoffrey C. Smith,
in the above-captioned matter, by and through their attorneys of record, and stipulate
and agree as follows:

STIPULATION FOR REGULATION OF WATER RIGHT
CLAIMS UNTIL DIRECTOR'S REPORTS ARE FILED - 1

COPY

1. Smith shall divert no more than .32 cfs, or 16 inches, into his ditch from the artesian well and collector pond located in the NE NE NE, Sec. 12, T. 1 S., R. 1E E., B.M., Blaine County, pursuant to SRBA Claim No. 37-04159 and an additional .48 cfs, or 24 inches, into the same diversion system pursuant to the unnumbered claim from the same source with a priority date of June 1, 1959.
2. Dreyer shall divert no more than 2.0 cfs, or 100 inches, into his ditch from said artesian well and collector pond, pursuant to SRBA Claim Nos. 37-02614 and 37-14289. ~~Dreyer~~ Dreyer shall be entitled to divert this quantity of water prior to Smith's diversion of any additional water under the unnumbered claim referred to in paragraph 1 above.
3. Neither party shall interfere with the other party's diversion and use of water under their respective water right claims, or necessary access to the artesian well and pond, or their respective diversion works and ditches.
4. The parties shall install headgates and rating flumes, or other regulating and measuring devices, at the inlet of their respective ditches, sufficient to regulate and verify the amount of water diverted during the irrigation season. Said regulating and measuring devices shall be installed and verified by an independent engineer, under the supervision of the parties, on or before June 15, 2002. The regulating and measuring devices shall be approved by the Idaho Department of Water Resources and/or the Watermaster for Water District No. 37. Each party shall be responsible for their own costs in installing and maintaining their respective regulating and measuring devices.

5. Said regulating and measuring devices shall be set to provide for delivery of water consistent with paragraphs 1 and 2 above and according to the priority of these four rights as claimed, as between those four groundwater right claims.
6. Each party agrees that adjustments to the regulating and measuring devices shall be made by the Idaho Department of Water Resources, the Watermaster for Water District No. 37, or the Watermaster's agents. Neither party will adjust or interfere with the other party's regulating or measuring devices without prior written approval from the other party and authorization from the Idaho Department of Water Resources, the Watermaster for Water District No. 37, or the Watermaster's agents.
7. The parties further agree that IDWR, the Watermaster for Water District No. 37, or the Watermaster's agents are voluntarily consenting to make said adjustments. The parties understand and agree that IDWR, the Watermaster for Water District No. 37, or the Watermaster's agents are under no legal obligation or compulsion to regulate said measuring devices until (1) these claims are recommended or partially decreed in the SRBA and the SRBA Court has entered an order for interim administration pursuant to Idaho Code § 42-1417 or (2) these claims have been decreed and incorporated into a water district organized pursuant to Chapter 6, Title 42, Idaho Code. Additionally, the parties agree that IDWR, the Watermaster for Water District No. 37, or the Watermaster's agents will not regulate delivery of water under these claims in such a manner as to cause injury to other water rights.

8. Each party agrees that, while the water addressed by this Stipulation has its source as groundwater and is not presently regulated by the Watermaster for Water District No. 37, the water is commingled in a pond and, to some undefined extent, its use may impact surface flows in Willow Creek, a stream historically regulated by the Watermaster. Therefore, the parties shall cooperate in filing documents and seeking judicial and administrative approval for interim regulation of the claims consistent with this Stipulation pending their investigation, recommendation, and determination in the SRBA. It is understood and agreed that any water from the artesian well and collector pond in excess of that which is diverted by the parties pursuant to their respective water rights will be allowed to flow to Willow Creek. The parties each agree to pay the Idaho Department of Water Resources, the Watermaster For Water District No. 37, or the Watermaster's agents for administration according to the rates and charges made by the respective entity for administration within Water District No. 37.
9. Each party reserves the right to object to or contest, in the Snake River Basin Adjudication or elsewhere, the other's claims that are identified in paragraphs 1 and 2 above after Director's Reports are filed.
10. Concurrence with the Stipulation by IDWR shall not be construed as recognition of the validity of any of the four claims listed in paragraphs 1 and 2. The parties agree that the validity of these claims will be determined in the SRBA.
11. This Agreement may be specifically enforced by the parties, as damages at law are not an adequate remedy, by filing for an order to show cause before the presiding judge of the Snake River Basin Adjudication. The parties agree to

waive any right to contest the jurisdiction of this Court regarding enforcement of this Agreement. The parties reserve all other rights and remedies. This paragraph shall not be construed as a limitation on such other rights and remedies.

12. If the commencement of any further judicial, administrative, or other legal action is required to enforce the terms of this Stipulation, the offending party shall pay the costs and attorney fees incurred by the other party in pursuing said action.
13. Each party shall pay their own costs and attorney fees incurred to date in the above-captioned subcase.
14. The parties jointly move the SRBA District Court for an order consistent with this Stipulation, including any order for interim regulation of these rights according to this Stipulation.
15. This Stipulation may not be modified, except as agreed to in writing by the parties.
16. Upon entry of an order by the Court consistent with this Stipulation, the parties agree to dismissal of the current action, without prejudice.

DATED this 10 day of January 2002.

PLAINTIFF

By: [Signature]

NORMAN M. SEMANKO

DEFENDANT

By: [Signature]

PATRICK D. BROWN

CONCURRENCE BY IDWR

By: [Signature]

NICHOLAS SPENCER

STIPULATION FOR REGULATION OF WATER RIGHT
CLAIMS UNTIL DIRECTOR'S REPORTS ARE FILED - 5

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

4 x3
JAN 28 2002

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

By Clerk
Deputy Clerk

In Re SRBA

Case No. 39576

ROBERT DREYER,

Plaintiff,

vs.

GEOFFREY C. SMITH,

Defendant.

Subcase No. 92-00017

ORDER APPROVING STIPULATION
FOR REGULATION OF WATER RIGHT
CLAIMS UNTIL DIRECTOR'S REPORTS
ARE FILED

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I.

DESCRIPTIVE SUMMARY

This is an order adopting the stipulation between the parties in the above-captioned subcase, resolving the issues raised in Plaintiff's Verified Complaint.

II.

PROCEDURAL BACKGROUND

1. On May 15, 1998, Robert Dreyer filed a verified complaint seeking a preliminary injunction against Geoffrey C. Smith.

ORDER APPROVING STIPULATION FOR REGULATION OF WATER RIGHT CLAIMS UNTIL
DIRECTOR'S REPORTS ARE FILED - 1

JAN 25 2002 4:56 PM FR

2. On May 19, 1998, an order to show cause as to why the preliminary injunction should not issue was issued and hearing set for May 28, 1998. As of May 28, 1998, the parties submitted to the Court a stipulated motion to vacate the hearing.
3. On July 10, 2001, a status conference was held. An additional status conference was held on October 11, 2001 and another Order to Show Cause was issued as of that same date. The show cause hearing was scheduled for January 14, 2002.
4. *A Stipulation for Regulation of Water Right Claims until Director's Reports are Filed* ("Stipulation") executed by the parties involved was submitted to the Court on January 10, 2002. IDWR also concurred with this stipulation as evidenced by the signature of Nicholas Spencer. The Order to Show Cause hearing was thus vacated by order issued January 11, 2002.

III.

ORDER RE: STIPULATION FOR REGULATION OF WATER RIGHT CLAIMS UNTIL DIRECTOR'S REPORTS ARE FILED

In accordance with the *Stipulation* filed in this above captioned subcase, which is attached hereto and incorporated herein by reference, the Court accepts the written stipulation in its entirety and hereby orders:

1. Smith shall divert no more than .32 cfs, or 16 inches, into his ditch from the artesian well and collector pond located in the NE NE NE, Sec. 12, T. 1 S., R. 18 E., B.M., Blaine County, pursuant to SRBA Claim No. 37-04159 and an additional .48 cfs, or 24 inches, into the same diversion system pursuant to the unnumbered claim from the same source with a priority date of June 1, 1959.
2. Dreyer shall divert no more than 2.0 cfs, or 100 inches, into his ditch from said artesian well and collector pond, pursuant to SRBA Claim Nos. 37-02614 and 37-14289. Dreyer

ORDER APPROVING STIPULATION FOR REGULATION OF WATER RIGHT CLAIMS UNTIL
DIRECTOR'S REPORTS ARE FILED - 2

shall be entitled to divert this quantity of water prior to Smith's diversion of any additional water under the unnumbered claim referred to in paragraph 1 above.

3. Neither party shall interfere with the other party's diversion and use of water under their respective water right claims, or necessary access to the artesian well and pond, or their respective diversion works and ditches.
4. The parties shall install headgates and rating flumes, or other regulating and measuring devices, at the inlet of their respective ditches, sufficient to regulate and verify the amount of water diverted during the irrigation season. Said regulating and measuring devices shall be set to provide for delivery of water consistent with paragraphs 1 and 2 above and according to the priority of these four rights as claimed, as between those four groundwater right claims. Said regulating and measuring devices shall be installed and verified by an independent engineer, under the supervision of the parties, on or before June 15, 2002. The regulating and measuring devices shall be approved by the Idaho Department of Water Resources and/or the Watermaster for Water District No. 37. Each party shall be responsible for their own costs in installing and maintaining their respective regulating and measuring devices.
5. Adjustments to the regulating and measuring devices shall be made by the Idaho Department of Water Resources, the Watermaster for Water District No. 37, or the Watermaster's agents.
6. Neither party will adjust or interfere with the other party's regulating or measuring devices without prior written approval from the other party and authorization from the Idaho Department of Water Resources, the Watermaster for Water District No. 37, or the Watermaster's agents.

JAN 25 2002 4:57 PM FR

7. The parties shall cooperate in filing documents and seeking judicial and administrative approval for interim regulation of the claims consistent with the *Stipulation* pending their investigation, recommendation, and determination in the SRBA.
8. Any water from the artesian well and collector pond in excess of that which is diverted by the parties pursuant to their respective water rights will be allowed to flow to Willow Creek. The parties shall pay the Idaho Department of Water Resources, the Watermaster For Water District No. 37, or the Watermaster's agents for administration according to the rates and charges made by the respective entity for administration within Water District No. 37.
9. Concurrence with the *Stipulation* by IDWR shall not be construed as recognition of the validity of any of the claims listed in paragraphs 1 and 2. The parties agree that the validity of these claims will be determined in the SRBA.
10. The *Stipulation* may be specifically enforced by the parties, as damages at law are not an adequate remedy, by filing for an order to show cause before the presiding judge of the Snake River Basin Adjudication. The parties agree to waive any right to contest the jurisdiction of this Court regarding enforcement of the *Stipulation*. The parties reserve all other rights and remedies. This paragraph shall not be construed as a limitation on such other rights and remedies.
11. The parties shall act consistently and in accordance with all terms and provisions of the *Stipulation*.

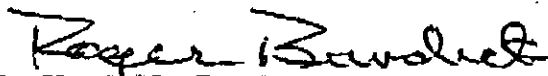
IT IS FURTHER HEREBY ORDERED that the action between these two parties identified as subcase 92-00017 is hereby dismissed without prejudice.

ORDER APPROVING STIPULATION FOR REGULATION OF WATER RIGHT CLAIMS UNTIL
DIRECTOR'S REPORTS ARE FILED - 4

JAN 25 2002 4:57 PM FR

IT IS SO ORDERED.

DATED 1-28-02


ROGER S. BURDICK
Presiding Judge
Snake River Basin Adjudication

ORDER APPROVING STIPULATION FOR REGULATION OF WATER RIGHT CLAIMS UNTIL
DIRECTOR'S REPORTS ARE FILED - 5