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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	)	Subcase No. 55-10055
	)	
Case No. 39576	)	MEMORANDUM IN SUPPORT OF MOTION
	)	TO AMEND PARTIAL DECREE
	)	
_____	)	

INTRODUCTION

The State of Idaho, Department of Lands, filed its Motion to Amend Partial Decree in subcase no. 55-10055 to implement a settlement agreement that the State reached with Joseph E. Black regarding the water right on State Public Endowment Land. Claimant Black filed notice of claim 55-10055 that included State Public Endowment land within the claimed point of diversion and place of use, and this Court entered a partial decree in accordance with the notice of claim. The State of Idaho disputed that claimant Black had the authority to file a claim that included State Public Endowment Land. The settlement agreement resolves that dispute by

MEMORANDUM IN SUPPORT OF MOTION TO AMEND PARTIAL DECREE

Black's abandonment of the water rights insofar as they relate to the State Public Endowment land.

STATEMENT OF THE CASE

A. The Nature of the Case

The State of Idaho Department of Lands filed this motion to amend the partial decree entered regarding water right no 55-10055 to reflect changes in the use of water subsequent to entry of the partial decree in 1998.

B. The Course of Proceedings

Joseph E. Black filed notice of claim no. 55-10055 in the Snake River Basin Adjudication. The Director of the Idaho Department of Water Resources recommended notice of claim no. 55-10055. The point of diversion was described in the Director's Report as follows:

T09S	R02W	S14	NESESW
		S22	SWNWSE
		S23	SESWNE
			SESENE
			SWSWNW
			SENWSW
			NENESE
		S24	NWNWSW

The place of use was described in the Director's Report as follows:

Stockwater		Within Owyhee County
T09S	R02W S14	SESW
	S22	NWSE
	S23	SWNW
		NWSW
Stockwater from Storage		Within Owyhee County
T09S	R02W S23	SWNE
		NESE
	S24	NWSW

The District Court entered a partial decree for water right no 55-1055 on January 30, 1998.

The State of Idaho filed the present Motion to Amend Partial Decree. The hearing was set for April 20, 2004.

C. Statement of Facts

The State of Idaho acquired from the United States the following described land upon approval of Clear List No. 35 on February 19, 1923:

T09S R02W	S22	NWSE
	S23	SWNE
		SENE
		SWNW
		NWSW
		NESE
	S24	NWSW

A true and correct copy of Clear List No. 35 is attached Attachment I to the **AFFIDAVIT OF LORNA K. JORGENSEN DATED JANUARY 26, 2004**, and incorporated herein by this reference. The State of Idaho received this land as a part of the grant in the Idaho Admission Act for the Public School Endowment and manages this land in accordance with its trust responsibilities imposed by the Idaho Constitution and the Idaho Admission Act.

After the State of Idaho Department of Lands became aware that a private claimant had filed a notice of claim for stockwater use on the land described above and that the Court had entered a partial decree, the IDL advised the claimant that the claimant had no authority to claim such a water right and negotiated a resolution of this dispute with the claimant in the **SETTLEMENT AGREEMENT BETWEEN THE STATE OF IDAHO (IDAHO DEPARTMENT OF LANDS) AND JOSEPH E. BLACK** dated November 24, 2003.

Claimant Black agreed to abandon his water right and has abandoned his water rights insofar as it concerns the state land in Township 09 South, range 02 West, Boise Meridian. In furtherance of this settlement, claimant Black sent a letter to the Director of the Idaho

Department of Water Resources advising that agency of his partial abandonment of this water right. A true and correct copy of this letter that the Director of the Idaho Department of Water Resources received is attached as Attachment II to the **AFFIDAVIT OF LORNA K. JORGENSEN DATED JANUARY 26, 2004.**

ARGUMENT

I. THE DISTRICT COURT SHOULD AMEND THE PARTIAL DECREE ENTERED FOR WATER RIGHT NO. 55-1055 IN ACCORDANCE WITH THE SETTLEMENT AGREEMENT.

A. Introduction

AO1 § 14d requires that parties in the SRBA “seeking to modify a partial decree shall comply with I.R.C.P. 60(a) or 60(b). I.R.C.P. 60(b) states, in part, as follows:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: . . . (5) the **judgment** has been satisfied, **released**, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;
....

(Emphasis added). The motion must also be brought within a reasonable timeframe. *Id.* Here, the State of Idaho Department of Lands has two separate bases for amendment of the partial decree. First, the settlement agreement constitutes a partial release of the water rights in partial decree no. 55-10055 under I.R.C.P. 60(b)(5). Second, the amendment is permissible because “it is no longer equitable that the judgment should have prospective application” when claimant Black has received valuable consideration for his partial abandonment of water right in partial decree no. 55-10055.

b. The Settlement Agreement and Subsequent Payment by the State of Idaho Department of Lands to Claimant Black Constitutes a Release of a Judgment.

A release is “[t]he relinquishment, concession, or giving up of a right, claim, or privilege, by the person in whom it exists or to whom it accrues, to the person against whom it might have been demanded or enforced.” Black’s Law Dictionary (Rev. 7th Ed. 1999) p. 1292. Here, claimant Black held partial decree no. 55-10055 that purported to give him the right to divert and use water on State Public Endowment Land. Claimant Black, by execution of the settlement agreement, agreed to and did in fact abandon his right to divert and use water on the State Public Endowment land described in partial decree no. 55-10055. Thus, the partial decree for water right no. 55-10055 is partially released under I.R.C.P. 60(b)(5) insofar as it concerns the diversion and use of water on State Public Endowment Land.

Since the SRBA Court treats a 60(b) motion similarly to a motion to set aside a default judgment, the Court has required a moving party in the past to meet the meritorious defense requirement, in addition to the requirements of I.R.C.P. 60(b). *Memorandum Decision and Order to Set Aside Partial Decree*, 8 (May 2, 2001), at 8. The standard for a meritorious defense requires the party making the motion to allege facts, which if established would constitute a defense to the action, and the facts supporting the defense must be detailed. *Id.*¹

The State is able to satisfy the meritorious defense requirement. Claimant Black received the partial decree no. 55-10055 on January 30, 1998 for water right claims on land owned by the State with a priority date of March 1, 1930. The State received partial decree no. 55-13823 for the water rights on the same State land on February 27, 2002, with a priority date of February 19,

¹ The Court explained: “The policy behind pleading a meritorious defense is founded on the doctrine that ‘it would be an idle exercise for a court to set aside a default judgment if there is in fact no justiciable controversy.’” *Memorandum Decision and Order to Set Aside Partial Decree*, 8 (May 2, 2001), at 9, citing *McFarland v. Curtis*, 123 Idaho 931, 854 P.2d 274 (1993). Here, this policy rationale does not apply because the person who could exercise the water right on state land has elected to abandon that right for a valuable consideration.

1923. Since discovering partial decree no. 55-10055, the State has questioned whether claimant Black had authority to even make water right claims for springs wholly on State land. Idaho Code section 42-212 provides that if a spring “is located or situated wholly or entirely upon the lands of a person or corporation” the Department of Water Resources is prohibited from issuing or granting a permit to divert or appropriate the water without the owner’s consent. The State believes the springs in sections 22, 23 and 24 of T09S, R2W are located entirely on State land and since claimant Black did not receive State authorization to divert or appropriate, the Department was precluded from recommending a decree of a water right. While claimant Black disputed this contention, the settlement agreement avoided litigation of the matter.

The resolution of disputes by compromise is regarded with favor by the courts, and settlement agreements are enforced unless good cause to the contrary is shown. *Kohring v. Robertson*, 137 Idaho 94, 44 P.3d 1149 (2002). This Court should enforce the settlement agreement between the State of Idaho and claimant Black by amending partial decree no. 55-10055 as requested.

c. The Court Should Modify Partial Decree No. 55-1055 Because Prospective Application of the Decree Would be Inequitable.

ICRP 60(b)(5) allows modification of a final order if the prospective application of that order would have an inequitable effect. *See Devine v. Cluff*, 111 Idaho 476, 479, 725 P.2d 181, 184 (Ct. App. 1986). Water right decrees are conclusive as to allocation of water in the future, thus the partial decree is prospective in nature. It would be inequitable for this court to enforce the prospective application of partial decree no. 55-10055 because there has been a change of circumstances for the parties. Claimant Black no longer claims water rights on State land. Claimant Black has stated his intent to abandon and has signed a declaration that he has in fact abandoned those water rights decreed to him on State land through partial decree no. 55-10055.

However, claimant Black has not abandoned and has no intent to abandon his water rights that were claimed on his own property that are also listed in partial decree no. 55-10055. In order for this Court to clarify the rights of Black and the State, it should modify the Black partial decree to reflect that the decree only pertains to those water rights claimed in T09S, R02W Section 14.²

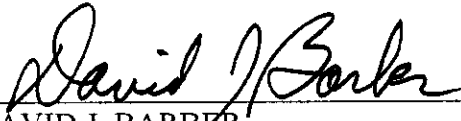
CONCLUSION

The Court should amend partial decree no. 55-10055 in accordance with the Settlement Agreement by deleting the State Public Endowment Land from the legal description for the point of diversion and place of use.

DATED this 26th day of January 2004.

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division



DAVID J. BARBER
Deputy Attorney General

² Under this Court's prior MEMORANDUM DECISION AND ORDER ON MOTION TO SET ASIDE PARTIAL DECREES (Subcases 55-02373 et al., the State of Idaho would also have to plead the existence of a "meritorious defense." Our prior discussion of this issue is incorporated by reference.

CERTIFICATE OF SERVICE

I certify that on this 26th day of January 2004, I caused the original and the copies of the MEMORANDUM IN SUPPORT OF MOTION TO AMEND PARTIAL DECREE to be filed and served on the following persons parties by the method designated:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

U.S. MAIL

2. One copy to the owner of the water right at the following address:

Joseph E. Black
Star Rte, Box 49
Hammett, ID 83627

U.S. MAIL

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

STATEHOUSE MAIL

Chief of Natural Resource Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

(not applicable)

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, Idaho 83724

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