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Department of Water Resources

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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
Case No. 39576

SUBCASE NUMBERS 65-05033C, 65-03681

MEMORANDUM IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT

Comes now Claimants Fredrick D. and Gloria J. Ringel, by and through their attorneys of record, Ringert Clark, Chartered, and hereby submit this Memorandum in support of the Motion for Summary Judgment submitted herewith. This Memorandum is supported by the Affidavit of Charles L. Honsinger submitted herewith, and the record herein.

FACTS

Water right nos. 65-05033 and 65-03681 were decreed in the Payette River Adjudication on October 29, 1986.¹ Affidavit of Charles L. Honsinger, Exhibit A. Ira L. Peterson filed a claim to water right no. 65-05033 on November 18, 1988. Mr. Peterson filed his claim to water right

¹ The Payette River Adjudication was subsumed by the SRBA, and its files are now a part of the SRBA. Order Consolidating the Payette Adjudication, In Re SRBA, Case No. 39576 (Feb 8, 2001)

no. 65-03681 on the same day, November 18, 1988. Subsequently, Mr. Peterson conveyed interests in water right nos. 65-05033 and 65-03681 to Claimants herein, Fredrick D. and Gloria J. Ringel. Affidavit of Charles L. Honsinger, Exhibit B. The Idaho Department of Water Resources recommended water right nos. 65-03681 and 65-05033C to the Ringels. Objections to the water rights were filed by Kyle F. and Derroll K. Ellis ("Ellis") on March 20, 2000, and by Larry and Lynn Beskoon ("Beskoon") on March 22, 2000.

After the Court granted Ringels' Motion to File Amended Notice of Claim to water right no. 65-05033C, IDWR lodged its Amended Director's Report on November 2, 2001. Subsequently, Ellis filed their objection to the Amended Director's Report on December 31, 2001.

The Beskoon objections to IDWR's recommendations of water right nos. 65-03681 and 65-05033C on March 22, 2000 both state that there is "insufficient water for irrigation" or for "current uses," and that if the "water use is approved, Chipps Creek will no longer exist." In addition, in their objection to water right no. 65-03681, Beskoons indicate that the water right should not exist. The Ellis' March 20, 2000 objection to water right no. 65-03681 and December 31, 2001 objection to water right no. 65-05033C similarly indicate that neither of the water rights should exist because they have been forfeited.

STANDARDS

Motions for summary judgment are governed by IRCP 56 which provides in pertinent part that judgment "shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and

that the moving party is entitled to a judgment as a matter of law.” I.R.C.P. 56(c); *Friel v. Boise City Housing Authority*, 126 Idaho 484, 485, 887 P.2d 29, 30 (1994). Generally, the court must liberally construe the facts in the light most favorable to the party opposing the motion, drawing all reasonable inferences and conclusions in that party’s favor. *Friel*, 126 Idaho at 485, 887 P.2d at 30 (citing *Farm Credit Bank of Spokane v. Stevenson*, 125 Idaho 270, 272, 869 P.2d 1365, 1367 (1994); *Harris v. Dept. of Health and Welfare*, 123 Idaho 295, 298, 847 P.2d 1156, 1159 (1992)). If reasonable people could reach different conclusions or draw conflicting inferences from the evidence, a summary judgment motion must be denied. *Stevenson*, 125 Idaho at 272, 869 P.2d at 1367. The moving party is entitled to summary judgment when the non-moving party fails to make a showing sufficient to establish the existence of an element essential to that party’s case on which that party will bear the burden of proof at trial. *Badell v. Beeks*, 115 Idaho 101, 765 P.2d 126 (Ct.App. 1988) (citing *Celotex v. Catrett*, 477 U.S. 317, 322 (1986)).

ARGUMENT

Ringel’s Motion for Summary Judgment must be granted because forfeiture of a water right decreed in 1986 and subsequently claimed in the SRBA in 1988 is precluded by the law of the case. The SRBA District Court’s Presiding Judge has held that the Forfeiture Tolling Rule is the “law of the case” in the SRBA. Memorandum Decision and Order on Challenge; and, Order of Partial Decree (*Wood v. Trout*), at pp. 8 - 11 (Subcase No. 65-05663B) (May 9, 2002) (hereinafter “Forfeiture Tolling Decision”). The Forfeiture Tolling Rule provides that the forfeiture provisions of I.C. §42-222 are tolled once a claimant files a claim in the SRBA for a particular water right. Forfeiture Tolling Decision, at fn.6, pp. 14 -15, *citing* Order on Challenge

(Consolidated Issues) of "Facility Volume" Issue and "Additional Evidence" Issue (Subcases 36-02708 *et al.*) (Dec. 29, 1999).

In this case, the forfeiture provision of I.C. §42-222 was tolled when the claims to the water rights were filed on November 18, 1988. As of the date of the tolling, only two years had passed since the water rights were confirmed in the Payette River Adjudication on October 29, 1986. Thus, there has been no five year period within which forfeiture of the water rights could have legally occurred since October 29, 1986. Accordingly, this Court must grant summary judgment to Ringels, and dismiss the objections filed by Beskoon and Ellis.

DATED this 20th day of November, 2002.

RINGERT CLARK CHARTERED

By: Charles L. Honsinger
Charles L. Honsinger

CERTIFICATE OF MAILING

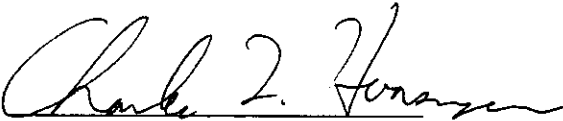
I hereby certify that service of the within and foregoing document was made this 20th day of November, 2002, by mailing a copy thereof, postage prepaid, to each of the parties listed below.

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