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FILED
TWIN FALLS CO., IDAHO

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: 61-00293B, 61-00293C
	)	and 61-00293D
	)	
Case No. 39576	)	ORDER ON MOTION FOR INTERIM
	)	ADMINISTRATION; ORDER ON
	)	MOTION TO DISMISS

I. PROCEDURAL BACKGROUND

A. PROCEEDINGS ON MOTIONS

Mary Batruel, Paul Batruel, and Batruel Dairy (hereafter Batruels) filed a *Motion for Order of Interim Administration* in Subcases 61-00293B, 61-00293C, and 61-00293D on April 21, 2000.

Carlene Viner Smith filed a *Motion to Dismiss Batruel's Motion for Order of Interim Administration* on April 27, 2000.¹ Both *Motions* were heard on April 28, 2000.

B. ELMORE COUNTY PROCEEDINGS

In 1982, Carlene Viner Smith and her late husband (hereafter Viners) filed suit in Fourth District Court against the Batruels over the same water rights at issue in parent right 61-00293. *Viner v. Batruel*, No. CV OC 82-08224 (Elmore Co. District Court). The case was tried before Fourth District Judge Robert M. Rowett from October 15 to 19, 1984. At the conclusion of the trial, Judge Rowett issued a *Judgment* (Oct. 1, 1985) (hereafter "*Rowett Judgment*"). The *Rowett Judgment* permanently enjoined Batruels from interfering with Viners' right to one-half of the water rising and flowing in Sand Springs Gulch above the historical diversion point.²

1 Respondents Roger L. Jones, dba RJT Farming, Inc., filed a *Memorandum in Support of Motion to Dismiss Batruel's Motion for Order of Interim Administration, or, in the Alternative, Objection to motion for Interim Administration*.

2 Batruels were also enjoined from interfering with Viners' right to the water flowing into Sand Springs Gulch below the point of diversion and from interfering with Viners' use of the ditch which extends from Sand Springs Gulch. ORDER ON MOTION FOR INTERIM ADMINISTRATION; ORDER ON MOTION TO DISMISS

After the *Rowett Judgment* was entered, the parties filed motions resulting in entry of an *Amended Findings of Fact, Conclusions of Law and Judgment* (Dec. 1, 1986) and a *Second Amended Findings of Fact, Conclusions of Law and Judgment* (July 13, 1987). The Snake River Basin Adjudication commenced November 19, 1987. *Commencement Order* (Nov. 19, 1987). After the *Commencement Order* issued, beginning the SRBA, the Fourth District Court case continued for many years.

A *Memorandum Decision* (April 5, 1989) was entered by Judge Rowett. Judge Rowett ordered Batruels to modify their pond diversion to allow water to flow down the gulch to Viners.

In response to the *Memorandum Decision*, Batruels requested that Judge Rowett quantify the water rights. *Motion to Quantify Water* (Aug. 21, 1990). Judge Rowett appointed a Special Master to assist in quantification issues. Judge Rowett also found that the 1987 *Second Amended Findings of Fact, Conclusions of Law and Judgment* contained material omissions requiring a third amended judgment.

The Special Master issued a report in August 1991 and an addendum report in November 1991. Batruels disagreed with the Special Master's report. Judge Rowett, therefore, set a deadline for Batruels to submit expert testimony to support their theory of quantification. The Batruels failed to do so. Judge Rowett then entered a *Supplemental Decision and Order* (Sept. 15, 1992) adopting the Special Master's report. Judge Rowett eventually entered a *Supplemental Judgment* that determined the elements of these water rights. *Supplemental Judgment* (July 5, 1995). The Batruels moved to set aside the *Supplemental Judgment*. That motion was denied. On June 26, 1996, IDWR filed a motion to enforce the *Supplemental Judgment*. On July 25, 1996, District Judge Joel Horton³ granted IDWR's request. *Memorandum Opinion Denying Alternative Motions to Amend or to Stay Supplemental Judgment and Granting Motion for enforcement of Judgment* (July 2, 1996).

Viners were enjoined from interfering with Batruels' water right in Little Canyon Creek that flowed into the "Slick Ditch" and the "Upper Ditch". Viners were directed to open the Slick Ditch and Upper Ditch and to reinstall a headgate and weir at the point of diversion from Little Canyon Creek.

3 Upon Judge Robert Rowett's retirement, Judge Joel Horton was assigned to the Elmore County case.

C. SNAKE RIVER BASIN ADJUDICATION

The Snake River Basin Adjudication (SRBA) commenced November 19, 1987. *Commencement Order* (Nov. 19, 1987). Water right 61-00293B was claimed in the SRBA by Mary, Paul, and Peter Batruel. Water right 61-00293C was claimed in the SRBA by Roger L. Jones. Water right 61-00293D was claimed in the SRBA by Carlene Viner Smith.

On February 16, 1999, the Director of the Idaho Department of Water Resources (IDWR) filed the *Director's Report for Irrigation and Other Uses, Reporting Area 6 (IDWR Basin 61)* which included recommendations for water rights 61-00293B, 61-00293C, and 61-00293D.

II. STANDARD OF REVIEW

Idaho Code § 42-1417 sets forth the requirements for orders of interim administration during the pendency of a water rights adjudication. The moving party for an order of interim administration must show that such an order "is reasonably necessary to protect senior water rights." I.C. § 42-1417(1)(c). If such a showing is made, the court may order interim administration pursuant to the recommendation in the director's report, or pursuant to a partial decree.

III. ANALYSIS

A. OVERVIEW

Because the SRBA commenced in 1987 and because many of the critical decisions in the Fourth District Court case occurred after the *Commencement Order*, the parties filed cross motions to determine whether the SRBA has jurisdiction to order administration of water rights 61-00293B, 61-00293C, and 61-00293D prior to an SRBA decision on the merits. Batruels' *Motion for Order of Interim Administration* argues that the SRBA has jurisdiction to order interim administration of these rights and should do so. Batruels argue that these water rights cannot be administered according to the 1995 *Supplemental Judgment* because it was entered after commencement of the SRBA and is not controlling. Batruels seek an *Order of Interim Administration* allowing IDWR to administer these rights according to the *Basin 61 Directors Report*.

The Vine/Smith *Motion to Dismiss Batruels' Motion for Order of Interim Administration* argues that the SRBA lacks jurisdiction to order administration because the Fourth District Court continues to have jurisdiction to order administration of its own orders. This Special Master holds that, pursuant to I.C. § 42-1417, the SRBA has jurisdiction to order interim administration of water rights claimed in the SRBA.

B. SRBA HAD EXCLUSIVE JURISDICTION AFTER NOVEMBER 19, 1987

The Idaho Supreme Court has repeatedly ruled that the SRBA District Court has jurisdiction to determine the elements of water rights in the Snake River Basin:

[O]nce SRBA was commenced, jurisdiction to resolve all of the water right claims within the scope of the general adjudication is in the SRBA district court only

Walker v. Big Lost River Irrig. Dist., 124 Idaho 78, 80-81, 856 P.2d 868, 870-71 (1993).

Other appellate decisions have emphasized the jurisdiction of the SRBA. In *Devil Creek Ranch, Inc. v. Cedar Mesa Res. & Canal Co.*, 126 Idaho 202, 206, 879 P.2d 1135, 1139 (1994), the Court held that where a controversy concerns the adjudication of a right to the use of water in the Snake River Basin, only the SRBA has subject matter jurisdiction. In *Bear Island Water Assoc., Inc. v. Brown*, 125 Idaho 717, 724, 874 P.2d 528, 535 (1994), the Court said that a district court lacks jurisdiction to adjudicate a private adjudication once a general adjudication has commenced. In *Bischoff v. Salem Union Canal Co.*, 130 Idaho 455, 457, 943 P.2d 45, 47 (1997), the Court reiterated that once the SRBA was commenced, jurisdiction to resolve the water rights in the Snake River Basin was in the SRBA District Court. *State v. Idaho Conservation League (Basin Wide Issue 5A)*, 131 Idaho 329, 335, n.1, 955 P.2d 1108, 1114, n.1 (1998), held that once the SRBA commenced, jurisdiction to resolve all of the water rights within the general adjudication was in the SRBA only.

It is unequivocally clear that after November 19, 1987, only the SRBA District Court had authority to determine the elements of the water rights at issue here. *Walker v. Big Lost River Irrig. Dist.*, 124 Idaho at 80. Thus, it is not appropriate to order interim administration of these water rights based on judgments entered by another court after November 19, 1987.

C. THE SRBA HAS JURISDICTION TO ORDER ADMINISTRATION PURSUANT TO I.C. § 42-1417

The remaining issue is whether the SRBA District Court has jurisdiction to order interim administration of water rights claimed in the SRBA in instances where another court previously issued an order or decree adjudicating some of the elements of the right.

IDWR is required to administer water rights in the SRBA. Accordingly, IDWR has the responsibility of administering water rights claimed in the SRBA prior to the issuance of a partial decree. Generally, IDWR administers previously adjudicated water rights according to the old decrees.

IDWR has, however, administered some water rights according to a director's report. For example, water rights in the first test basin (Basin 34) were administered according to an order on interim administration for basin 34.

On May 27, 1992, IDWR filed a *Motion for Order of Interim Administration for Basin 34* (May 27, 1992). The *Motion* sought an order for interim administration of water rights in Basin 34 according to the *Basin 34 Director's Report*. The *Motion* was made pursuant to I.C. § 42-1417. Idaho Code § 42-1417 allows the Court to order delivery of water in accordance with a director's report if necessary to protect senior water rights.

The *Motion* was opposed by the Big Lost River Water Users Association (hereafter "BLRWUA") See, *Big Lost River Water Users Association's Memorandum in Opposition to Motion for Interim Administration* (July 10, 1992) and *Big Lost River Water Users Association's Response to Amended Motion for Interim Administration* (July 24, 1992). The BLRWUA argued that the SRBA court lacked jurisdiction to order interim administration in Basin 34. The BLRWUA argued that I.C. § 42-1417 did not give the SRBA jurisdiction to administer previously decreed water rights. BLRWUA argued that I.C. § 42-1417 merely conveys jurisdiction to the SRBA to provide for administration of previously unadjudicated rights. *Big Lost River Water Users Association's Post Hearing Memorandum in Opposition to Motion for Interim Administration* (Sept. 29, 1992)

Judge Hurlbutt rejected the argument that the SRBA lacked jurisdiction to order interim administration of previously decreed water rights. The SRBA granted the *Motion for Order Of Interim Administration for Basin 34*.

IDWR has requested interim administration in Reporting Area 34 because of a number of unique factors which, when taken together, create an emergency. The area is in its sixth year of a drought. Unique geographical and hydrological features including a demonstrated Interconnection between surface and groundwater requires conjunctive administration of all water in the reporting area. . . . Additionally, because there are a substantial number of unadjudicated water rights in Reporting Area 34, there is concern over establishing an accurate list of rights by priority. Finally, IDWR states that the 1929 decree in *Utah Construction Co. v. Abbot*, Case No. 681 (D. Idaho) has not been followed in significant respects and that its administrative provisions are completely unworkable and inappropriate at this time.

Memorandum Decision and Order Granting Idaho Department of Water Resources' Motion for Interim Administration with Limitations (Dec. 18, 1992) Accordingly, the SRBA has jurisdiction to order interim administration of these water rights if the prerequisites of I.C. § 42-4217 are met.

D. APPLICATION OF I.C. § 42-1417

In applying the standards set forth in I.C. § 42-1417, Judge Hurlbutt looked to several unique factors in finding that the Court should order interim administration to protect senior water rights. Judge Hurlbutt looked to an existing drought, the unique geographical and hydrological features, the substantial number of unadjudicated water rights in the area, and the disregard of the prior *Utah Construction Decree* in ordering interim administration according to the *Basin 34 Director's Report*.

In the instant case, this Special Master looks to the unique factors involved in subcases 61-00293B, 61-00293C, and 61-00293D. First, the parties to these subcases have expended considerable time, effort, money, and undoubtedly anguish in trying to obtain a decision as to the elements of these water rights and as to the administration of these water rights. The battle has gone on for over 15 years. Second, the parties have water rights that are interconnected to the extent that the exercise of a water right by one has an impact on the water use of the others. Third, the *Judgment* issued in the Fourth District Court prior to commencement of the SRBA was admittedly incomplete. Subsequent decisions by the parties and the District Court acknowledged that these decisions were unenforceable. Finally, decrees or judgments issued in the Fourth District Court after commencement of the SRBA were issued by a court that lacked venue and subject matter jurisdiction. Therefore, this Special Master finds that it is reasonably necessary to administer these rights according to the *Basin 61 Director's Report* to protect senior water rights.

Accordingly, this Special Master recommends that the SRBA District Court issue an Order of Interim Administration permitting IDWR to administer these three water rights according to the *Basin 61 Director's Report*. This decision is not a determination of the evidentiary weight of the judgment from the Fourth District Court. As with all prior decrees admitted into evidence in the SRBA, the Fourth District Court decisions could, at most, bind only those parties to the private adjudication. Therefore, both IDWR and the SRBA are obligated to review water rights that are based on prior decrees.

Insomuch as this Court has acknowledged that water rights in the Snake River Basin are interrelated . . . the Director's factual findings as to one water right holder impact the rights of other water right holders. To hold that the Director is "obligated to accept prior decrees as being conclusive proof of the nature of the water right" is contrary to the Director's statutory role in the SRBA and such a holding would have the effect of binding water right owners not parties in a prior adjudication to a prior decree issued in a private adjudication. This is an untenable outcome.

In re: SRBA Case No. 39576 (24 Hagerman Subcases), 130 Idaho 736, 742, 947 P 2d 409 (1997).

IV. CONCLUSION

Viner/Smith argues that the SRBA may not enter an order on interim administration for these water rights because the SRBA lacks jurisdiction. That argument is contrary to the clear holdings of the Idaho Supreme Court and the law of the case in the SRBA. The language the Supreme Court used in *Walker v. Big Lost River Irrig. Dist.* bears repeating:

The Idaho Constitution, art. 15 § 1, gives the legislature broad authority to regulate and restrict the use of public waters in this state. In 1986, the legislature amended the Idaho statutes concerning general adjudications and specifically set the framework for the SRBA I.C. §§ 42-1401 through 42-1423. In 1987, the director of the department of water resources filed a petition for SRBA. In response to that petition and in accordance with court rules, this Court issued an order assigning District Judge Daniel C. Hurlbutt, Jr., as the presiding judge over SRBA, and designated the district court of the fifth judicial district, Twin Falls County, as the county and court of venue for SRBA.

In essence, these actions created a division of the district courts (SRBA district court) with exclusive jurisdiction to determine all claims arising in the SRBA. The SRBA district court is, in effect, a separate division of the district courts and exercises the unique jurisdiction given it by the legislature. As in the case of the

magistrate division of the district courts, which exercises jurisdiction as a division of the district courts pursuant to I.C. § 1-2208, the SRBA district court exercises jurisdiction pursuant to I.C. §§ 42-1401 through 42-1423.

Walker at 124 Idaho 78, 80-81, 856 P.2d 868, 871. Only the SRBA had jurisdiction to adjudicate elements of these rights after November 1987. Furthermore, I.C. § 42-1417 conveys jurisdiction to the SRBA to order interim administration in limited circumstances. This Special Master finds that it is reasonably necessary to administer these rights according to the *Basin 61 Director's Report* to protect senior water rights. Therefore, the *Motion for Interim Administration* is **granted**. Accordingly the *Motion to Dismiss* is **denied**. This *Order on Motion for Interim Administration; Order on Motion to Dismiss* determines pretrial issues on jurisdiction but leaves critical factual issues to be tried. Accordingly, it is premature to recommend certification of the jurisdiction questions at this time. A separate order setting these subcases for scheduling conference shall be issued.

This Special Master sympathizes with the frustration the parties must feel after expending time, effort, and money pursuing their case in the Fourth District Court. However, this Special Master must follow the precedent of the Idaho Supreme Court and SRBA District Court. The Idaho Supreme Court has been consistent, unequivocal, and clear when it comes to the jurisdiction of water rights in the Snake River Basin. Equally clear is the law of the case in the SRBA regarding interim administration.

DATED November 14, 2001.



THOMAS R. CUSHMAN
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of ORDER ON MOTIONS TO FILE LATE OBJECTIONS AND/OR MOTIONS TO PARTICIPATE; ORDER ON INTERIM ADMINISTRATION was mailed on November 14, 2001, with sufficient first-class postage prepaid to the following:

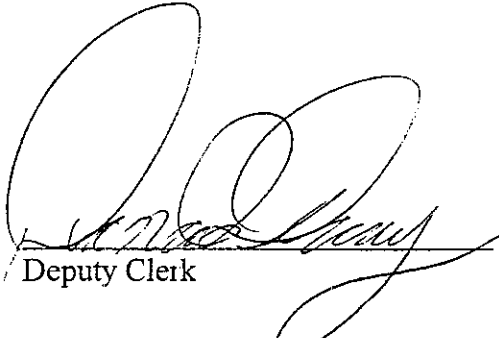
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