

File

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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. 34-10167
	)	
	)	IDWR'S PRETRIAL REPORT
Case No. 39576	)	
	)	
	)	

DESCRIPTIVE SUMMARY

IDWR submits this Pretrial Report to provide information to the Court and the parties regarding the remaining contested issues in the above-referenced subcase. The report also summarizes the information that IDWR will provide to the Court and the parties at the Standard Form 5 evidentiary hearing.

CONTESTED ISSUES

The priority date is the only contested issue in this subcase. All remaining elements of the water right have been stipulated to in a Standard Form 5 signed by the claimant, Herb Whitworth, the objector, United States, and IDWR.

The priority date is contested only by Herb Whitworth, not the United States. Herb Whitworth claims he is entitled to a June 1, 1875, priority date for this water right. IDWR has

recommended a priority date of May 1, 1937.

The legal issue which this Court must decide is whether the doctrine of res judicata precludes Herb Whitworth from obtaining his requested priority date of June 1, 1875. Res judicata has three elements. It bars (1) the same parties or their privies (2) from presenting claims that were asserted or could have been asserted (3) in a prior action resulting in a final judgment on the merits. Devil Creek Ranch v. Cedar Mesa Reservoir & Canal Co., 123 Idaho 634, 637, 851 P.2d 348, 351 (1993); Foster v. City of St. Anthony, 122 Idaho 883, 888, 841 P.2d 413, 418 (1992).

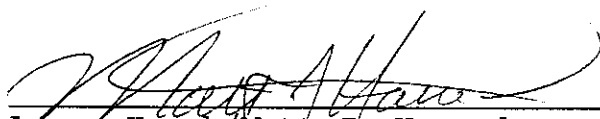
The information that will be introduced by IDWR will show that IDWR's decision not to recommend the June 1, 1875, priority date claimed by Herb Whitworth is based upon its conclusion that all three elements of res judicata are satisfied. First, IDWR concluded that Herb Whitworth is in privity with a party to the Utah Constr. Co. v. Abbott case. Specifically, a chain of title consisting of deeds and other legal instruments showing conveyances of the place of use claimed by Herb Whitworth indicated to IDWR that he is a successor-in-interest to a party to the Abbott case. Second, IDWR concluded that the Abbott case adjudicated all water right claims to Thousand Springs Creek, the source now claimed by Herb Whitworth for this water right. The decree, however, does not grant a water right to Thousand Springs Creek to Herb Whitworth's predecessor-in-interest who was a party to that case. Third, IDWR concluded that the Abbott decree is a final judgment on the merits.

Since IDWR concluded that res judicata applies, IDWR determined that the earliest possible priority date Herb Whitworth could receive for this water right would be the day after entry of the Abbott decree--March 16, 1923. However, IDWR determined that letters submitted to it by Herb Whitworth do not support a 1923 priority date. IDWR concluded that the earliest priority date supported by these letters is 1937.

Based on this information, IDWR recommended a priority date of May 1, 1937, for this water right. May 1 is the first day of the irrigation season of use recommended for this water right.

DATED this 30th day of November, 1995.

Respectfully submitted



Lynne Krogh/Matt J. Howard
Deputy Attorney General
Idaho Department of Water Resources

CERTIFICATE OF MAILING

I certify that I served true and correct copies of the following described document on the persons listed below by hand delivery on November 30, 1995.

Document Served: IDWR's Pretrial Report

Persons Served: Herb Whitworth
Star Route
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