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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	)	Subcase Nos. 74-40 and 74-54
	)	
	)	LEADORE LAND PARTNERS LTD.
Case No. 39576	)	PARTNERSHIP'S MOTION FOR PARTIAL
_____	)	SUMMARY JUDGMENT

Leadore Land Partners Ltd. Partnership (Leadore Land) moves for partial summary judgment pursuant to Rule 56 of the Idaho Rules of Civil Procedure and the December 30, 1982 partial decree for the Lemhi Adjudication.

Leadore Land seeks partial summary judgment on the points enumerated below:

1. The objections to the Director's Report and Recommendation for SRBA claim 74-40 are limited to an examination of this right subsequent to December 30, 1982, the date of the partial decree in the Lemhi Adjudication.
2. The objections to the Director's Report and Recommendation for SRBA claim 74-54 are limited to an examination of this right subsequent to December 30, 1982, the date of the partial decree in the Lemhi Adjudication.
3. The filing of SRBA claims 74-40 and 74-54 on April 9, 1990 tolled statutory forfeiture until the entry of SRBA partial decrees for these rights.

**STANDARD OF REVIEW UNDER IRCP 56(c) FOR AN ACTION TRIED TO
THE COURT WITHOUT A JURY**

Summary judgment is appropriate only where two conditions are met: (1) “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 (2) “the moving party is entitled to a judgment as a matter of law.” I.R.C.P. 56(c). When those two conditions are satisfied, a motion for summary judgment is proper. *See Sorenson v. Saint Alphonsus Reg’l Med. Ctr.*, 141 Idaho 754, 758, 118 P.3d 86, 90 (2005) (“Summary judgment is proper where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.”); *State ex rel. Kempthorne v. Blaine County*, 139 Idaho 348, 349, 79 P.3d 707, 708 (2003) (“A summary judgment is properly granted when the moving party shows there is no genuine issue of material fact and is entitled to judgment as a matter of law.”).

SRBA subcases are tried before the SRBA court without a jury. The summary judgment standard is that used in non-jury trial cases. The trial court as the trier of fact is entitled to arrive at the most probable inferences based upon the undisputed evidence properly before it and grant the summary judgment despite the possibility of conflicting inferences. *Intermountain Eye & Laser Centers, P.L.L.C. v. Miller*, 142 Idaho 218, 222, 127 P.3d 121, 125 (2005). This is a different standard from a case to be tried to a jury. When a court reviews a summary judgment motion filed in a case to be tried to a jury, all facts are to be liberally construed for the non-moving party and any reasonable inferences drawn in that party’s favor. *G & M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 517 (1991).

ARGUMENT

The following facts are not in dispute:

1. The December 30, 1982 partial decree for the Lemhi Adjudication was filed with the Lemhi County District Court on January 4, 1983.¹
2. Water Rights 74-40 and 74-54 were decreed in the Lemhi Adjudication on December 30, 1982.²
3. SRBA claims 74-40 and 74-54, based on the Lemhi partial decree, were filed April 9, 1990.³
4. The objections to 74-40 and 74-54 were filed by water users who also claim water rights decreed in the Lemhi Adjudication on December 30, 1982.⁴
5. The objections to water rights 74-40 and 74-54 include allegations that predate and controvert the December 30, 1982 Lemhi partial decree.⁵

¹ Partial Decree Pursuant to Rule 54(b) I.R.C.P. Affidavit of Josephine P. Beeman in Support of Leadore Land Partners Ltd. Partnership's Motion for Partial Summary Judgment (Beeman Affidavit), Exhibit 1. Out of consideration for the Court, Leadore Land has not attached all the water rights from the December 30, 1982 partial decree as an exhibit. Should the Court wish to review these documents they are available at the Idaho Department of Water Resources (IDWR) On-Line Water Right and Adjudication Search. The search parameters are "decrees", "basin 74", decree date "December 30, 1982 to December 30, 1982". The Supplemental Affidavit of Josephine P. Beeman in Support of Leadore Land Partners Ltd. Partnership's Motion for Partial Summary Judgment (Beeman Supplemental Affidavit), Exhibits 1-4, provides the IDWR online decree and SRBA claim documents for Leadore Land's water rights 74-40 and 74-54. The same decree documentation is available for the rights from the December 30, 1982 Lemhi partial decree.

² Idaho Department of Water Resources "Water Right Report" for decreed water right 74-40. Supplemental Affidavit of Josephine P. Beeman in Support of Leadore Land Partners Ltd. Partnership's Motion for Partial Summary Judgment (Beeman Supplemental Affidavit), Exhibit 2.

Idaho Department of Water Resources "Water Right Report" for decreed water right 74-54. Beeman Supplemental Affidavit, Exhibit 4.

³ "Notice of Claim to a Water Right Acquired under State Law" for water right 74-00040, filed April 9, 1990. Beeman Supplemental Affidavit, Exhibit 1.

"Notice of Claim to a Water Right Acquired under State Law" for water right 74-00040, filed April 9, 1990. Beeman Supplemental Affidavit, Exhibit 3.

⁴ The following is a partial list of the objectors' water rights decreed in the Lemhi Adjudication: James Whittaker (74-39B, 74-56); Purcell Partnership and Purcell Ranch Partnership: Allan, Betty, Kerry Purcell (74-59A, 74-398); Richard E. Foster (74-51); Kurt Bird (74-32, 74-34).

⁵ Objections to 74-40 include specific allegations about time frames predating the December 30, 1982 partial decree:

- "the late 1940's", "in my 77 years" (Allan Purcell for Purcell Partnership Objection)

Objections to 74-54 include specific allegations about time frames predating the December 30, 1982 partial decree:

- from May 1, 1964 (Ed Peterson letter in support of Whittaker objection)
- 1944-1979 (Ted Adams letter, dated March 10, 2007, in support of Whittaker objection)
- 1954-1972 (in support of Whittaker objection: Opal Adams letter dated July 17, 2007)

6. The objections to water rights 74-40 and 74-54 include allegations that post-date April 9, 1990 and controvert the December 30, 1982 Lemhi partial decree.⁶
7. The witness list filed by counsel for objector James Whittaker describes anticipated testimonial allegations that predate and controvert the December 30, 1982 Lemhi partial decree.⁷
8. The witness list filed by counsel for objector James Whittaker describes anticipated testimonial allegations that post-date April 9, 1990 and controvert the December 30, 1982 Lemhi partial decree.⁸

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- “Since 1981” (Kurt Bird Objection)
 - “60 – 70” years ago” (Allan Purcell for Purcell Ranch Partnership Objection)
 - 1946 map, actions in 1920’s, conversations in 1950’s, water taxes prior to 1982 (in support of Purcell Objection, Allan Purcell letter received at IDWR June 2, 2007)

⁶ Objections to 74-40 include specific allegations about time frames post-dating the filing of SRBA claim 74-40 on April 9, 1990:

- 1990 to present (Allan Purcell for Purcell Partnership) (in support of Purcell Objection, Allan Purcell letter received at IDWR June 2, 2007)

Objections to 74-54 include specific allegations about time frames post-dating the filing of SRBA claim 74-54 on April 9, 1990:

- From May 1, 1964 (Ed Peterson letter in support of Whittaker objection)
- 1990 to present (in support of Whittaker objection: Ted Adams letter, dated March 10, 2007)
- 1990 to present (Kurt Bird Objection)

⁷ The witness list for objections to 74-40 include specific reference to time frames predating the December 30, 1982 partial decree:

- 1964-1982 (Ed Peterson)
- 1972 – 1982 (Julia Russel)

The witness list for objections to 74-54 includes specific reference to time frames predating the December 30, 1982 partial decree:

- 1964-1982 (Ed Peterson)
- from 1944 (Ted Adams)
- from 1943 (Chet Adams)
- from 1954 (Opal Adams)
- “more than twenty years beginning in 1928” (Frank Hays)
- 1972-1982 (Julia Russel)

⁸ The witness list for objections to 74-40 include specific references to time frames post-dating the filing of SRBA claim 74-40 on April 9, 1990:

- 1990 – 2001 (Ed Peterson)
- 1990 to present (Dan Smith)
- 1990-1996 (Julia Russel)

The witness list for objections to 74-54 includes specific references to time frames post-dating the filing of SRBA claim 74-40 on April 9, 1990:

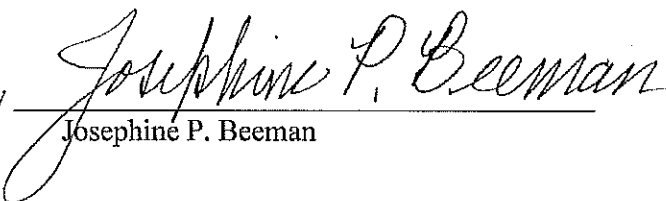
- 1990 – 2001 (Ed Peterson)
- 1990-1996 (Julia Russel)

The objectors are bound by the determinations in the partial decree in the December 30, 1982 Lemhi Adjudication because they were parties, or privies of parties, to the adjudication. *State v. Hagerman Water Right Owners, Inc.*, 130 Idaho 736, 740-42, 947 P.2d 409 (1997). Therefore, the support for the objections to 74-40 and 74-54 must be based upon information subsequent to December 30, 1982.

Under SRBA law of the case, the five-year statutory period of non-use for establishing forfeiture tolls upon the filing of a claim in the SRBA until a partial decree is entered. *Memorandum Decision and Order on Challenge; and Order of Partial Decree (Wood v. Troutt)*, subcase 65-05663B (May 9, 2002) ("*Wood v. Troutt*") at 19. As to SRBA claims 74-40 and 74-54, statutory forfeiture was tolled on April 9, 1990.

Dated this 17th day of March 2008.

BEEMAN & ASSOCIATES, P.C.
Attorneys for Leadore Land Partners Ltd. Partnership

By 
Josephine P. Beeman

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of March 2008, I caused a true and correct copy of the foregoing **LEADORE LAND PARTNERS LTD. PARTNERSHIP'S MOTION FOR PARTIAL SUMMARY JUDGMENT** to be deposited in an official U.S. Post Office receptacle with proper First Class postage affixed, addressed to the following:

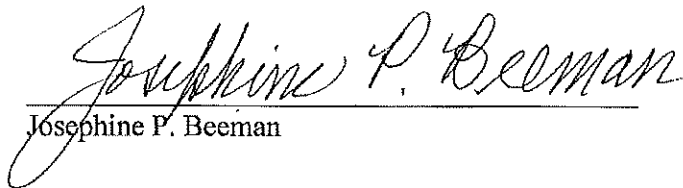
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Josephine P. Beeman