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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho
DEC 22 2008
By _____ Clerk _____ Deputy Clerk

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

)
)
) **ORDER GRANTING MOTION TO**
) **AMEND OBJECTION AND SETTING**
) **DEADLINE**

)
) **SUBCASE NOS.: 22-265E, 22-594, and**
) **22-13479**

I. PROCEDURAL BACKGROUND

The claimants in these subcases are DKJ Farms LLC and Woodmansee Johnson Canal Company. George Brown filed timely *Objections* to the *Director's Report* recommendation on July 16, 2007. The original *Objections* filed by Mr. Brown asserted that the water rights should not exist. (The reasons supporting objections section argues that IDWR did not enforce the stream channel act in a water exchange approved in 2007.) *Amended Objections* or similar documents from Mr. Brown were lodged or filed on July 17, 2007, July 23, 2007, August 20, 2008, and August 25, 2008. The final *Objections* lodged on August 25, 2008 were treated as a *Motion to File Amended Objections*. A hearing was held on November 19, 2008. The *Motion* was opposed by DKJ Farms LLC and Woodmansee Johnson Canal Co.

II. STANDARD OF REVIEW

The SRBA Court administrative rules establish that motions to amend claims "shall be freely given when justice so requires." *SRBA Administrative Order 1 (A01)* § 4d (2) (k)

III. FINDINGS

Mr. Brown asked to amend his *Objections* to additionally object to the points of diversion for these claims. Apparently, the proposed *Amended Objections* relate to administrative transfers which allowed changes to the points of diversion. Mr. Brown disputes the changes to points of diversion allowed by those transfers.

DKJ Farms LLC, Woodmansee Johnson Canal Co., and Fremont Madison Irrigation District (hereafter claimants) **opposed** the *Motion to Amend Objection*. They argued that the law of the case in the SRBA does not allow parties to collaterally attack administrative transfers. Neither Mr. Brown nor the claimants identified the transfers or made them part of the record

III. ANALYSIS

A. Rule 15(a)

Although the court has discretion in allowing amendments, I.R.C.P. 15(a) establishes that “leave shall be freely given when justice so requires.” Rule 15(a) establishes a rather lenient standard for amending pleadings.

A court generally considers whether the allegations sought to be added to the pleading state a valid claim. See, *Black Canyon Racquetball Club, Inc. v. Idaho First Nat’l Bank N.A.*, 119 Idaho 171, 175, 804 P.2d 900, 904 (1991). A court does not usually consider the sufficiency of evidence supporting the claim when deciding a motion to amend. Consideration of the sufficiency of evidence is more properly determined at the summary judgment stage. *Thomas v. Medical Center Physicians, P.A.*, 138 Idaho 200, 61 P.3d 557 (2002).

In these subcases, the original *Objections* by Mr. Brown assert that these water rights should not exist. The “Reasons Supporting Objections” section attached indicates that Mr. Brown takes issue with IDWR’s approval of a water exchange in 2007.

B. Transfers

According to the arguments of counsel, these water rights were previously subject to administrative transfer proceedings in front of the Idaho Department of Water Resources. Presumably the transfer applications sought changes to these rights, and changes to the points of diversions were allowed.

The claimants argued that the amendments lack merit, and requested that they be disallowed. Mr. Brown did not argue at length about whether the *Amended Objections* rely solely on a dispute over prior administrative transfers. Thus, it is difficult for the court to understand the basis for the *Amended Objections*. However, a brief discussion of the law of the case regarding transfers may be of assistance in future proceedings.

C. Collateral Attack

The law of the case in the SRBA is that a party may not subsequently challenge elements or

conditions decided in a license or transfer where the party was involved in the original proceeding.¹

The SRBA Court has also prohibited non-parties to license or transfer decisions from collaterally attacking administrative determinations if they had an opportunity to protest, but failed to do so. The SRBA Court's decision about a water right claimed by Ruby Springs Water Company is illustrative. Ruby Springs obtained the water right after the transfer of a licensed water right in 1976. Objectors had not been parties to the licensing or transfer proceedings and objected to elements which had been determined in license and transfer proceedings. The SRBA Court prohibited the Objectors from relitigating:

The Special Master entered lengthy findings about [the Ruby Springs license] and its several transfers leading up to its issuance to Ruby Springs Water Co. The Adamses' had the opportunity to protest the License transfer at the time of issuance which they failed to do. They waived any challenge to the issuance of the License. The SRBA is not a [Court] authorized to revive lost challenges to licensing decisions.

Order Adopting Special Master's Report and Recommendation, (Subcase No. 36-7092A) (Dec. 10, 1997).

Additionally, IDWR was removed as a party to the SRBA. Since IDWR functions in the SRBA as a technical expert without party status, the SRBA does not review IDWR administrative decisions. The SRBA court is thus not the proper venue for appeals of IDWR administrative decisions. However, the SRBA does have jurisdiction to determine the elements of water rights and to determine the legal significance of prior administrative decisions. In addition, the SRBA determines the legal significance of facts which occur after an administrative decision. For example, determinations of whether rights were forfeited or abandoned after transfers are properly before this court. Thus, the SRBA has jurisdiction to hear evidence on the proposed *Amended Objections* to the extent they raise issues which were not decided in administrative decisions.

It is apparent that *Objections* based solely on disputes with prior administrative decisions could be subject to dismissal under I.R.C.P. 12(b) if the only issues raised were disputes with prior transfers. Collateral attacks on **licenses or transfer decisions** are not appropriate in the SRBA. However, a party may raise issues based on facts which occur **after** the administrative decision if they impact the elements of a water right.

The law of the case in the SRBA would presumably bar a party from challenging determinations already made in transfer proceedings. However, a party is entitled to bring objections

¹ The prohibition on collateral attacks is presumably limited to the issues decided in the transfer.
ORDER GRANTING MOTION TO AMEND OBJECTION
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which rely on facts which occurred after a transfer decisions. Where the proposed *Amended Objections* relate to facts occurring after an administrative decision, they state claims on which relief may be granted, and this court has jurisdiction to decide the elements. Accordingly, the court is not inclined to dismiss the proposed *Amended Objections* at this time since it is unclear whether they are based solely on a dispute with administrative decisions.

THEREFORE, IT IS ORDERED that the *Motion to Amend Objections* is **granted** for 22-265E, 22-594, and 22-13479.

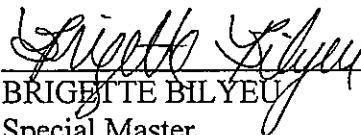
IT IS FURTHER ORDERED that the following deadline shall govern further proceedings:

January 23, 2009

5:00 pm

Deadline to File Response

DATED: December 22, 2008.



BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING MOTION TO AMEND OBJECTION AND SETTING DEADLINE was mailed on December 22, 2008, with sufficient first-class postage to the following:

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