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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
JAN 12 2009	
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	) Subcases 74-50A, 74-380A, 74-381A and
	) 74-10146
Case No. 39576	) (Carlson)
	)
	) ORDER OF RECOMMITMENT TO
	) SPECIAL MASTER FOR SPECIFIC
	) FINDINGS
_____	)

I.
PROCEDURAL BACKGROUND

Water right number 74-10146¹ was originally claimed in the SRBA by Harry and Shirley Coleman for the irrigation of 158 acres with 0.40 cfs and a priority date of November 6, 1908. Thomas and Evelyn Carlson later purchased the property from the Colemans and filed their own beneficial use claim in the SRBA for water right number 74-10146. The Carlsons claimed a water right for the irrigation of 158 acres with 0.47 cfs (0.40 cfs irrigation and .07 cfs stockwater and domestic) from Adams Creek with a priority date of November 6, 1908.

On January 23, 2006, the Director of the Idaho Department of Water Resources ("IDWR") filed his *Director's Report for Irrigation and Other Uses, Reporting Area 23, IDWR Basin 74, Part I*. Citing the doctrine of *res judicata*, the Director recommended water right number 74-10146 be disallowed because the right had not been claimed in the

¹ Subcases 74-50A, 74-380A, and 74-381A are uncontested overlapping claims and are not at issue.

Lemhi Adjudication, a general stream adjudication of the Lemhi River, commenced in 1970. At the request of the Special Master, IDWR issued an I.R.E. 706 report, detailing the underlying facts and data upon which it made its recommendation. IDWR also filed an “alternative recommendation” in the event that the motion to file claim 74-10146 is granted.

In this report, IDWR cited Idaho Code § 42-1420, stating that the legal doctrine of *res judicata* bars reconsideration of the nature and extent of all water rights previously adjudicated. IDWR found that the Colemans are the Carlsons’ predecessors-in-interest in this matter. The Colemans were previously a party to the Lemhi Adjudication and received decreed water right nos. 74-33 (Little Timber Creek), 74-47 (Little Timber Creek), 74-50A (Little Timber Creek), 74-380 (Milk Creek/Shenon Creek), and 74-1619 (Big Timber Creek). However, the Colemans did not file claim 74-10146 (Adams Creek) in the Lemhi Adjudication. While IDWR found that Adams Creek was not a listed or decreed source in the Lemhi Adjudication, it also determined that water right number 74-381 was decreed in the Lemhi Adjudication with a source of Adams Springs, which appears to feed Adams Creek. 74-381 was later split and recommended by IDWR in the SRBA, and a portion of that split has been recommended to the Carlsons.²

After a trial, the Special Master issued his *Special Master’s Report and Recommendation* on September 24, 2008, recommending that 74-10146 be decreed in the SRBA because it is possible that Adams Creek was excluded from the Lemhi Adjudication, and it is possible that 74-10146 may be a high flow claim.

II. EFFECT OF PRIOR DECREE IN THE SRBA

The Idaho Supreme Court has held that a prior decree entered in a private adjudication is binding upon the parties (and their privies) to that decree. *State v. Hagerman Water Right Owners*, 130 Idaho 736, 742, 947 P.2d 409, 415 (1997). In its decision, the Court cites I.C. § 42-1401A, which defines a private adjudication as binding “those persons joined in the action and for the administration of such rights.” I.C. § 42-

² This split right is 74-381A, one of the Carlson’s uncontested overlapping claims.

1401A (9). Further, with limited exception, I.C. § 42-1420 states that a “decree in a general adjudication shall be conclusive as to the nature and extent of all water rights in the adjudicated water system.” I.C. § 42-1420 (1). Therefore, in the SRBA, water rights decreed in a prior adjudication are binding upon the parties (and their successors-in-interest) to that decree. Such parties bound by that earlier decree may not collaterally attack it in a later adjudication, such as the SRBA. The SRBA cannot serve as a second opportunity for parties and their successors-in-interest to re-adjudicate their prior decreed water rights. Subject to certain exceptions, this Court has consistently prohibited parties from reopening prior decrees in the SRBA.

III. THE LEMHI ADJUDICATION

The Lemhi Adjudication was commenced as a general adjudication on August 13, 1970. Therefore, following an investigation of water uses by the Director, a list of water users was compiled and those water users were then joined as parties and required to file claims. Proposed findings of fact and conclusions of law were lodged with the court on July 9, 1974. On January 4, 1983, a *Partial Decree* was entered. The *Partial Decree* applied to all of the claims in the Lemhi Basin except as expressly excluded. The *Partial Decree* provided:

IT IS HEREBY ORDERED ADJUDGED AND DECREED that the water rights of the Lemhi River Basin with the exceptions noted above are as described in the PROPOSED FINDINGS OF WATER RIGHTS IN THE LEMHI RIVER BASIN, as amended by:

1. Special Master’s Report on Specific Objections;
 2. Stipulation Resolving General Objections;
 3. Order Correcting Clerical Oversights in Proposed Findings of Water Rights;
- and

4. Licenses issued on or before the dates of this partial decree for permits listed in the PROPOSED FINDINGS;

all of which are incorporated herein by reference.

The *Partial Decree* expressly excluded any of the rights on Geertsen Creek and its tributaries which were subject to a separate partial decree. The *Partial Decree* also excluded the United States Forest Service claims which were at issue in *U.S. v. New Mexico*, 438 U.S. 696, 98 S.Ct. 3012 (1978).

On July 29, 1985, a *Notice of Entry of Judgment* was entered, providing that final judgment for the water rights covered by the *Partial Decree* was entered January 4, 1983. Accordingly, all water users within the Lemhi River Basin who were joined as parties, subject to the express exclusions as provided in the *Partial Decree*, who either filed claims or failed to file claims were bound by that *Partial Decree* and subsequent final judgment.

On October 14, 1992, a minute entry order was filed which provided:

- 1) The December 30, 1982 [January 4, 1983] partial decree shall be considered to be a final decree in this matter.
- 2) The United States shall be dismissed without prejudice certainly to bring their claims as reserved under the partial decree.
- 3) It was ordered in the alternative, that this matter be consolidated with the Snake River Basin Adjudication with the jurisdiction, in Twin Falls, so the procedures can be followed that have been established by the sitting Judge there, Daniel C. Hurlbutt.
- 4) The Lemhi County court, within the Seventh Judicial District, does not have the facilities to process the claims that the forest service has filed. Prior to this, they were all done by the Department of Water Resources and not by the Clerk of the Court. It is the understanding of this court, the claims to processed, whether it be refiling of the forest service claims or any new claims, shall be filed in Twin Falls.
- 5) The issue of whether or not the order of this court is res judicata, that decision is properly addressed in the Snake River Basin Adjudication.

Although the October 14, 1992 order provided that the December 30, 1982 order and *Partial Decree* be considered a final decree in the Lemhi Adjudication, the *Partial Decree* and *Notice of Entry of Judgment* was a final judgment as to those parties whose claims were subject to the *Partial Decree*. Accordingly, under principles of *res judicata*, law-of-the-case, and the holding in *State v. Hagerman Water Right Owners*, 130 Idaho 736, 947 P.2d 409, (1997), any water user or successor-in-interest whose claim was decreed or who failed to file a claim is bound by the *Partial Decree*.

Claims in the SRBA can vary from the elements in the prior decree to account for subsequent changes in circumstances such as abandonment, forfeiture, and accomplished transfer, or to correct errors.³ However, evidence of an earlier use or larger quantity than previously decreed does not fit within either of the above exceptions and constitutes a collateral attack on the prior decree.

The Court makes two observations in this respect. First, the fact that the present owner of a previously decreed water right may now have evidence of an earlier use or larger quantity than was previously decreed does not mean that an error or oversight occurred when the predecessor-in-interest filed (or failed to file) the claim in the prior adjudication. There are other plausible explanations. For instance, claims can be made in a manner so as to avoid contests. Existing differences between users over water rights can be worked out prior to the claims being filed so as to avoid litigation in the adjudication process. Settlements such as these may dictate what each user eventually claims in the adjudication. Therefore, parties or their successors-in-interest to the prior decree are entitled to rely upon the prior decree, at least to the extent that the scope of the right will not be expanded beyond what was previously adjudicated.

Next, allowing a claimant to reopen a prior decree to present evidence of earlier use or larger quantity than was previously decreed completely undermines the principles of *res judicata* and the Supreme Court's ruling in *State v. Hagerman Water Right Owners*, as well as law-of-the-case in the SRBA. This is not the only case before the Court involving a collateral attack on the Lemhi Decree. Based on the facts and circumstances of this case, an exception in this case would render the effect of the prior

³ For example, corrections to legal descriptions and the like which do not result in expanding the previously decreed right.

decree meaningless and would require that the Court allow the same exception in all cases. This would be contrary to the Court's past rulings involving other prior decrees.

IV. DISCUSSION AND ORDER OF RECOMMITMENT

The *Special Master's Report and Recommendation* was not conclusive in two respects, both of which the Court finds to be decisive in this matter. First, if the initial claim is a high flow claim, then the claim would be allowed to go forward in the SRBA. High flow claims were not individually decreed in the Lemhi Adjudication, but were instead addressed generally via a general provision. Nonetheless, if the claim is in fact a high flow claim, then it needs to be definitively identified and claimed as such.

Alternatively, if the source for the claim (Adams Creek) was outside the scope of the Lemhi Adjudication, then the claim would also be permissible in the SRBA. However, the Special Master must make a specific finding that the source was either outside the scope of the Lemhi Adjudication or was otherwise omitted from the adjudication, either appropriately or in error.⁴ The Special Master can make this finding despite conflicting evidence. Conversely, if the claim is not a high flow claim and the source was indeed included and part of the Lemhi Adjudication and the claimant's predecessor-in-interest simply failed to file a claim, then the claim would be barred by the doctrine of *res judicata*, subject to one exception. The claimant could establish a beneficial use claim with a May 20, 1971, priority date.

For reasons not apparent to this Court, the *Proposed Findings of Fact and Conclusions of Law* lodged July 9, 1974 and eventually incorporated into the *Partial Decree* provide that: "Beneficial use rights from surface sources are those rights which were commenced by diversion and appropriation of the water for a beneficial use prior to May 20, 1971." Because the mandatory permit requirement for appropriating surface rights did not become effective until July 1, 1971, it would have been possible to perfect a beneficial use surface right between May 20, 1971, and July 1, 1971. The Special

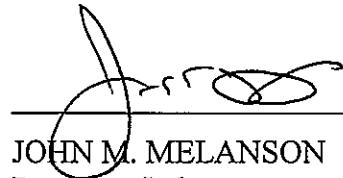
⁴ By in error, the Court means that IDWR informed the claimant that a claim did not need to be filed and now concludes that a claim should have been filed.

Master found that the claimant was beneficially using the water at that time.

Accordingly, based on the above-stated reasoning, the earliest permissible priority date that could be established would be May 20, 1971, unless the claim falls into one of the exceptions discussed above.

THEREFORE, IT IS ORDERED based on the foregoing that subcase 74-101476 is recommitted to the Special Master to make these specific findings based on the existing record.

Dated Jan. 9, 2009



JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER OF RECOMMITMENT TO SPECIAL MASTER FOR SPECIFIC FINDINGS was mailed on January 12, 2009, with sufficient first-class postage to the following:

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