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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

Case No. 39576

) Subcases 74-15015 and 74-15861
) (Riggan)
)
) ORDER CONDITIONALLY GRANTING
) MOTION TO FILE LATE NOTICE OF
) CLAIM; ORDER REQUIRING FILING
) OF AMENDED CLAIM; ORDER
) REQUESTING AMENDED
) DIRECTOR'S REPORT IF AMENDED
) CLAIM IS FILED
)

I.
PROCEDURAL BACKGROUND

On May 1, 1990, Clark H. and Harriet C. Riggan filed a *Notice of Claim to a Water Right* in the Snake River Basin Adjudication for water right claim number 74-0209. The Riggans claimed a water right for 0.36 cfs and a priority date of May 1, 1897, based on an earlier decree. This earlier decree was issued to the Riggans in the Lemhi Adjudication, for the irrigation of 27 acres from one point of diversion. On May 18, 2001, water right claim number 74-0209 was renumbered to 74-15015, due to a split.

The Idaho Department of Water Resources filed its *Director's Report for Irrigation and Other Uses, Reporting Area 23, IDWR Basin 74, Part I* on January 23, 2006, recommending the claimed quantity, priority date, and acreage based on the Lemhi Decree as claimed by the Riggans. On June 27, 2006, James E. Riggan (son of Clark and Harriet Riggan) filed a *Standard Form 1 Objection* to 74-15015, objecting to the recommended quantity, place of use, and point of diversion. Specifically, Mr. Riggan claimed a quantity of 1 to 1.5 inches per acre, a place of use of 72 acres, and three different points of diversion. Mr. Riggan asserted that from the time his family

purchased the property in the 1960's, there had been over seventy acres irrigated from three points of diversion.

On May 15, 2007, after being advised by the Idaho Department of Water Resources ("IDWR"), Mr. Riggan filed a *Motion to File Amended Notice of Claim*.¹ After a hearing, the Special Master granted Mr. Riggan's *Motion*. The amended claim sought 2.16 cfs for 72 acres with three points of diversion. Thereafter, IDWR filed an *Amended Director's Report, Subcase 74-15015* on September 21, 2007, recommending no change from the original *Director's Report*. No changes were made on the basis that the water right was previously adjudicated in the Lemhi Adjudication. 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. On October 17, 2007, Mr. Riggan again objected to the quantity, point of diversion and place of use in the *Amended Director's Report*.

Special Master Dolan requested an I.R.E. 706 report from IDWR, detailing the underlying facts and data upon which it made its recommendation, plus an "alternative recommendation." IDWR filed its *Supplemental Director's Report Regarding Subcase No. 74-15015* on July 11, 2008. It found that water right 74-209 was decreed in the Lemhi Adjudication for 27 acres with .34 cfs from one point of diversion, based on the Shenon Decree of 1906. During the course of its site examination and discussions with Mr. Riggan, IDWR suggested that Mr. Riggan file a beneficial use claim for the additional acreage, quantity, and points of diversion.

On May 28, 2008, Mr. Riggan filed a *Motion to File Late Notice of Claim* claiming the additional acreage, quantity, and points of diversion under water right claim number 74-15861. Water right claim number 74-15861 overlaps with claim number 74-15015. After a hearing, this Court referred the matter to the Special Master on July 18, 2008. On September 24, 2008, the Special Master issued his *Special Master Report and Recommendation on Motion to File Late Notice of Claim* recommending the *Motion to File Late Notice of Claim* be granted and that different recommendations be prepared by IDWR in the event 74-15861 is allowed as an overlapping claim, or in the alternative, if

¹ *AOI* prohibits a claimant from amending a claim through an objection. *Administrative Order 1*, Section 4(d)(1)(b).

Mr. Riggan decides to withdraw his objection to 74-15015 should 74-15861 be allowed as a beneficial use 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. § 42-1401A (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. Thereafter, 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 be 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.² 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

² For example, corrections to legal descriptions and the like which do not result in expanding the previously decreed right.

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 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

In this case, the claimant's predecessor-in-interest was properly joined in the Lemhi Adjudication. The water right was decreed in the Lemhi Adjudication. The claimant is now seeking a greater quantity and more acreage than was previously decreed. The claimant offers no concrete explanation for the discrepancy other than a possible oversight by his predecessors-in-interest. The Court finds this to be a direct collateral attack on the partial decree. In the I.R.E. 706 Report, IDWR provided a draft recommendation for the portion of the water right claim exceeding that which was decreed in the Lemhi Adjudication. The 706 Report provides that there is evidence of prior beneficial use and that but for *res judicata*, it could recommend the claim as a beneficial use claim. However, because of the Shenon Decree, IDWR could not recommend a priority date earlier than March 15, 1907.

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 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.

THEREFORE, IT IS ORDERED that the *Motion to File a Late Notice of Claim* for water right claim 74-15861 is **conditionally granted** on the basis that the claimant file an amended claim claiming a May 20, 1971 priority date. Alternatively, the Court is issuing an I.R.C.P. 54(b) certificate so that the claimant may appeal from this **Order**.

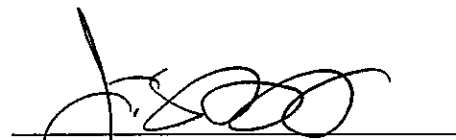
IT IS FURTHER HEREBY ORDERED that if the claimant elects to file the amended claim, the claim be filed within 15 (fifteen) days of entry of this **Order**.

IT IS FURTHER HEREBY ORDERED that if the claimant files an amended claim, IDWR is required to file an Amended Director's Report for 74-15015 and a Director's Report for 74-15861 with the May 20, 1971 priority date.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Dated January 9, 2009

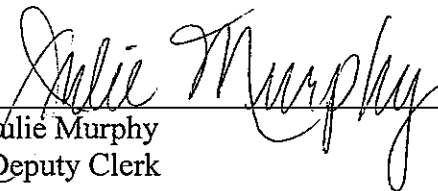

JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I hereby certify that true and correct copies of the **ORDER CONDITIONALLY GRANTING MOTION TO FILE LATE NOTICE OF CLAIM; ORDER REQUIRING FILING OF AMENDED CLAIM; ORDER REQUESTING AMENDED DIRECTOR'S REPORT IF AMENDED CLAIM IS FILED** were mailed on January 12, 2009, by first-class mail to the following:

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Julie Murphy
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