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Twin Falls Canal Company

RECEIVED  
MAR 30 2009  
DEPARTMENT OF  
WATER RESOURCES

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

|                       |   |                                            |
|-----------------------|---|--------------------------------------------|
| <b>In Re SRBA</b>     | ) | <b>Subcase Nos. 01-23B</b>                 |
|                       | ) |                                            |
| <b>Case No. 39576</b> | ) | <b>MEMORANDUM IN SUPPORT OF OBJECTORS'</b> |
|                       | ) | <b>JOINT MOTION FOR SUMMARY JUDGMENT</b>   |
|                       | ) |                                            |

COME NOW, American Falls Reservoir District #2, A&B Irrigation District, Burley  
Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal  
Company, and Twin Falls Canal Company (collectively hereafter referred to as "Objectors"), by

and through counsel of record, and pursuant to I.R.C.P. 56(c), and hereby submit this *Memorandum in Support of Joint Motion for Summary Judgment* in the above-referenced subcases. Exhibits referenced below are attached to the *Affidavit of Travis L. Thompson* (hereinafter “*Thompson Aff.*”) filed together herewith.

As set forth below, the agreed to and recommended “recharge for irrigation” purpose of use is contrary to a prior stipulation and decree between the Claimant Aberdeen-Springfield Canal Company (“ASCC”) and the Objectors and therefore should be dismissed as a matter of law with prejudice.

### INTRODUCTION

ASCC is bound by the prior decrees adjudicating its water rights. In each decree, ASCC received a water right authorizing the use of water for *irrigation* purposes.<sup>1</sup> ASCC does not own any water rights authorizing “recharge for irrigation.” ASCC’s decrees predate the recognition of “recharge” as a recognized beneficial use in Idaho, which did not occur until 1978 (93 years *after* water right 01-23B was appropriated). As a result, such a claim or appropriation for “recharge for irrigation” purposes was legally impossible at the time of the prior decrees. Since ASCC is bound by its prior decrees, the agreed to and recommended use of “recharge for irrigation” is not proper and summary judgment dismissing that purpose of use is appropriate.

### STATEMENT OF UNDISPUTED FACTS

The ASCC water right (01-23B) subject to this motion was decreed in prior adjudications. Importantly, during the *Eagle Decree* proceedings, ASCC stipulated to the decreed elements of its water rights with each of the Objectors.

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<sup>1</sup> The decrees contain the terms “domestic” and “other purposes” as well.

Water right 01-23B was previously decreed to the American Falls Power & Canal Company (ASCC's predecessor) in the *Rexburg Irrigation Company, et. al v. Teton Irrigation Canal Company, et. al* adjudication on December 19, 1910 ("*Rexburg Decree*"). In the *Rexburg Decree's Findings of Fact and Conclusions of Law*, Referee F.J. Cowen found the following relative to water right 01-23B<sup>2</sup>:

33. That the said lands are arid in character, and require the artificial application of water thereto before they can be successfully cultivated and profitable crops of agricultural products raised thereon.

34. That for the irrigation of their respective tracts of land, and for the irrigation of tracts of land lying under the canals of the various appropriators herein, and for domestic and other purposes, the said claimants and their predecessors in interest appropriated, on the respective dates set opposite their names, of the waters of the Snake River and its tributaries, the respective amounts of water set opposite each name, and at the respective times, to wit;

*Rexburg Decree Findings of Fact* at 151. See **Ex. A** to *Thompson Aff.*

Water right 01-23B was also reaffirmed to ASCC on March 12, 1969 in the *Aberdeen-Springfield Canal Company et. al v. Henry Eagle* adjudication ("*Eagle Decree*"). See **Ex. B** to *Thompson Aff.* ASCC and the Objectors were all parties to the stipulation and decree in that case. See **Ex. C** to *Thompson Aff.*; *Stipulation* at 71-73 (signature pages for attorneys signing on behalf of ASCC and all Objectors). ASCC and the Objectors specifically agreed that "all the parties plaintiff herein do hereby accept as binding upon them the provisions of all prior valid decrees . . . including, particularly, but not limited to the Rexburg Decree and the Woodville Decree". See *id.* at 2.

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<sup>2</sup> At the time of the *Rexburg Decree* water right 01-23B was part of larger water right (62,500 inches, or 1,250 cfs) decreed to ASCC's predecessor, the American Falls Power & Canal Company. See *Rexburg Decree Findings of Fact and Conclusions of Law* at 152; **Ex. A** to *Thompson Aff.*

ASCC filed its original *Notice of Claim* for water right 01-23B<sup>3</sup> in the SRBA Court on May 8, 1990. *See Ex. D to Thompson Aff.* Consistent with the prior decrees, ASCC claimed only an “irrigation” purpose of use. *See id.* Later, on June 7, 2002, ASCC, IDWR, and the State of Idaho entered into a *Settlement Agreement Regarding Aberdeen-Springfield Canal Company’s Basin 01 Surface Water Rights and Consolidated SRBA Subcase No. 35-2315* (“*Agreement*”). *See Ex. E to Thompson Aff.* The *Agreement* recognized that IDWR would recommend “irrigation” and “recharge for irrigation” as the purposes of use for ASCC’s water rights 01-23B and 01-297.<sup>4</sup> *See Agreement* at 3. Despite the agreed to “purpose of use”, ASCC and the other parties recognized that the execution of the *Agreement* “will not automatically result in approval by the SRBA District Court of IDWR’s recommendation for the Canal Company’s Basin 01 water rights”. *See id.* at 5.

ASCC then filed an *Amended Notice of Claim* for water right 01-23B on May 15, 2007.<sup>5</sup> *See Ex. F to Thompson Aff.* In the *Amended Notice of Claim*, ASCC, consistent with the prior *Rexburg* and *Eagle* decrees, and its original claim filed in 1990, again only claimed an “irrigation” purpose of use for its water right.

IDWR then issued its recommendation for ASCC’s amended claim on March 21, 2008, recommending both an “irrigation” and “recharge for irrigation” purpose of use.<sup>6</sup> The Objectors

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<sup>3</sup> Water right 01-23B was originally claimed as part of water right 01-23. The right was split sometime after May 8, 1990.

<sup>4</sup> IDWR did not recommend a “recharge for irrigation” purpose of use for water right 01-297 in its amended Director’s Report issued on March 21, 2008. In the event IDWR would attempt to change its recommendation to match the *Agreement*, the Coalition reserves the right to object and amend this motion at that time.

<sup>5</sup> The claims may have been amended between the original notice of claim in 1990 and the latest amended claim filed in 2007. Those claims, if any, are not relevant for this motion but should be filed on record with the SRBA Court if the Court needs to review them.

<sup>6</sup> It is unclear under what authority IDWR can recommend a “purpose of use” that is not claimed by a Claimant in the SRBA. Pursuant to Idaho’s adjudication statutes, it appears that IDWR does not have such authority. *See Idaho Code* §§ 42-1401B, 42-1411.

filed timely objections to the amended Director's Report for ASCC's amended claim on April 28, 2008.

### **STANDARD OF REVIEW**

Summary judgment is appropriate if "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." I.R.C.P. 56(c); *Read v. Harvey*, 141 Idaho 497, 112 P.3d 785, 787 (2005); *Doe v. City of Elk River*, 144 Idaho 337, 160 P.3d 1272, 1273 (2007). When an action is tried before the court without a jury, the judge is not constrained to draw inferences in favor of the party opposing a motion for summary judgment but rather the trial judge is free to arrive at the most probable inferences to be drawn from uncontroverted evidence. *Read*, 112 P.3d at 787. If there are no material facts in dispute a court may enter a judgment in favor of the party entitled to prevail as a matter of law. *Barlow's Inc. v. Bannock Cleaning Corp.*, 103 Idaho 310, 312 (Ct. App. 1982).

### **ARGUMENT**

#### **I. ASCC IS BOUND BY ITS PRIOR DECREES AS TO THE PURPOSE OF USE FOR WATER RIGHT 01-23B.**

As a matter of law, ASCC is bound by its prior decrees as to the "purpose of use" for its water right claim 01-23B. Pursuant to Idaho law, ASCC cannot attack its prior decrees in the SRBA and claim or agree to a different purpose of use, particularly when that use was not authorized at the time when the prior decrees were entered.

Water right 01-23B was decreed to ASCC's predecessor in the *Rexburg Decree* "for the irrigation of their respective tracts of land . . . and for domestic and other purposes." *Rexburg*

*Decree Findings of Fact and Conclusions of Law* at 151; *See Ex. A to Thompson Aff.* The water right was not decreed for “recharge for irrigation” purposes.

By signing the *Stipulation* in the *Eagle Decree* proceedings, ASCC agreed with the Objectors to “accept as binding upon them the provisions of all prior valid decrees, which have been entered with respect to the waters of Snake River and its tributaries, including, particularly, but not limited to the Rexburg Decree . . .” *Stipulation* at 2; *Ex. C to Thompson Aff.*

Accordingly, ASCC agreed that the purpose of use for water right 01-23B, as decreed in the *Rexburg Decree*, was binding upon ASCC. Water right 01-23B was not decreed for “recharge for irrigation” purposes.

Idaho Code § 42-1420 provides that a decree entered in a general adjudication shall be “conclusive as to the nature and extent of all water rights in the adjudicated water system.” The Idaho Supreme Court has specifically reviewed the *Rexburg Decree* and upheld its “conclusive” effect as to the rights decreed therein. In *Crow v. Carlson*, 107 Idaho 461 (1984), the Court stated:

The 1910 Rexburg decree is conclusive proof of diversion of the water, and of application of the water to beneficial use, *i.e.*, the decree is *res judicata* as to the water rights at issue herein. . . . Our holding of the presumption of accuracy of the decree is in keeping with the judicial policy of deterring the reopening of judgments long after cases are decided and the files are closed.

\* \* \*

Hence, we confirm the validity of the 1910 decree and hold that the water right at issue herein was appropriated for the lands in Sections 26 and 27, as described in the Rexburg decree, and that the water so decreed was beneficially applied to those respective parcels by the then appropriator Byrne. It would be unwise and unjust to overturn a decree imposed 74 years ago which awarded water rights with a priority of nearly 100 years ago.

107 Idaho at 465-66.

In addition, 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, Inc.*, 130 Idaho 736, 742 (1997).<sup>7</sup> Presiding Judge Melanson recently explained that “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.” *See Order of Recommitment to Special Master for Specific Findings* at 2-3 (Subcase No. 74-50A et al., January 12, 2009).

Through the *Eagle Decree*, the Objectors and ASCC also agreed to be bound by prior decrees entered for their respective rights on the Snake River, including the *Rexburg Decree*. *See Eagle Decree* at 2; **Ex. B** to *Thompson Aff.* Accordingly, pursuant to the express terms of the *Rexburg Decree*, ASCC is bound to use water right 01-23B for only “irrigation” and “for domestic and other purposes”. *Rexburg Decree Findings of Fact* at 151; **Ex. A** to *Thompson Aff.* Pursuant to the express terms of the *Eagle Decree*, ASCC is bound to use water right 01-23B for those same purposes. *See Eagle Decree* at 2; **Ex. B** to *Thompson Aff.* The prior decrees did not authorize ASCC to use water for a “recharge for irrigation” purpose. Accordingly, as a matter of law, ASCC is bound by the prior decrees and cannot claim or agree to a purpose of use different than what was previously decreed. Stated another way, ASCC cannot “collaterally

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<sup>7</sup> Although the *Eagle Decree* case was not a “private adjudication”, but a general adjudication pursuant to Idaho Code § 42-1405 (see *Stipulation* at 2), the binding effect of the decree still applies between ASCC and the other parties to the decree, including the Objectors. *See id.*; *see also*, Presiding Judge Melanson’s *Order of Recommitment to Special Master for Specific Findings* at 2-3 (Subcase No. 74-50A et al., January 12, 2009) (applying *State v. Hagerman Water Right Owners* in the context of the Lemhi Adjudication, another general stream adjudication pursuant to I.C. § 42-1405).

attack” the purpose of use for its water right as previously decreed in the *Rexburg* and *Eagle* Decrees.

Moreover, the use of the term “other purposes” in both the *Rexburg Decree* and the *Eagle Decree* cannot be construed to authorize “recharge for irrigation.” First, the original priority dates for ASCC’s water right (02/06/1895 for water right 01-23B) forecloses such an interpretation since Idaho did not recognize “recharge” to be a beneficial use until the Legislature enacted Idaho Code § 42-234 *in 1978*. As such, even the “other purposes” language in the *Rexburg Decree* cannot stand for a use which did not exist at the time of that decree was entered in 1910. Second, the *Rexburg* court could not decree some new use of water “in the future” such as “recharge for irrigation” since “recharge” was not an authorized beneficial use until 1978. Accordingly, ASCC could not have changed the purpose of use of its “irrigation” water right to “recharge for irrigation” prior to that time. *See Order Denying Motion for Summary Judgment* at 4-5 (Subcase Nos. 36-00134B and 36-00135A, June 13, 1996, Special Master Dolan).

In summary, any claim to a water right authorizing “recharge for irrigation” with priority dates pre-dating 1978 must fail as a matter of law.

### CONCLUSION

ASCC holds a previously decreed water right for “irrigation” uses. ASCC and the Objectors signed a *Stipulation* and were all parties to the *Eagle Decree* adjudication that confirmed the “irrigation” purpose of use for ASCC’s water rights. None of those prior decrees authorized ASCC to divert and use water for a “recharge for irrigation” purpose of use. Under Idaho law, ASCC is bound by its prior decrees, including the *Eagle Decree* that included the Objectors as parties.

For the foregoing reasons, ASCC's claimed "recharge for irrigation" purpose of use fails as a matter of law and should be dismissed with prejudice.

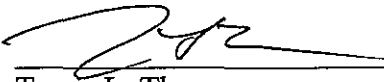
DATED this 27<sup>th</sup> day of March, 2009.

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## CERTIFICATE OF MAILING

I certify that on March 27<sup>th</sup>, 2009, I mailed the original and copies of the foregoing notice to the following persons:

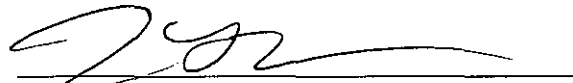
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