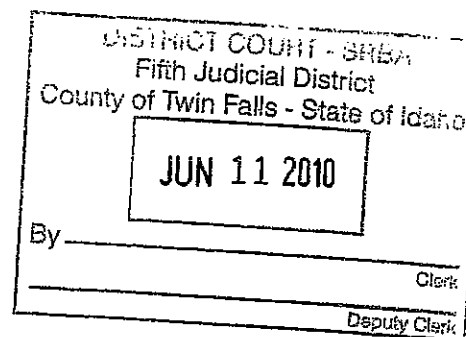


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JUN 14 2010

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

In Re SRBA	)	Subcases 75-10061A, et al. (see attached list)
	)	(Carmen Creek)
Case No. 39576	)	
	)	ORDER DENYING MOTION TO REMAND
	)	SUBCASES

On May 11, 2010, the "Burns Group", also called the "South Side Users", filed a *Motion to Remand Subcases to the Director of IDWR for Injury Analysis Pursuant to Idaho Code § 42-1425(2)(a)*, "for a hearing to determine whether the Department's accomplished transfer findings contained in their Supplemental 706 Report submitted to the Court in January of 2010 injured existing water rights or constituted an enlargement of the original rights." On May 27, 2010, the "Fols Group", also called the "Carmen Creek Users", filed their *Response* arguing "the statute does not require remand of these subcases." Finally, on June 2, 2010, the Burns Group filed their *Reply*.

A hearing on the *Motion* was held on June 3, 2010. Robert L. Harris appeared for the Burns Group; Travis L. Thompson and Paul L. Arrington appeared for the Fols Group; David L. Negri appeared for the United States of America, Department of Interior, Bureau of Land Management, along with Fredric W. Price; and Garrick L. Baxter appeared for IDWR, along with Suzy Cooley-Denney.

At the hearing, counsel for the Burns Group agreed with three important points: first, Frank Parmenter was the sole owner of the land when the alleged transfer occurred; second, the alleged transfer of exchange water from the south side of Carmen Creek to the north side occurred in 1948, before parcels of the land were sold; and third, there is no allegation of an

enlargement, only potential injury. There was general agreement that the land was first subdivided in the 1970s when certain parcels were allocated their share of the 1875 and 1882 exchange water.

Both groups correctly argued the Court is bound to strictly interpret Idaho's accomplished transfer statute, I.C. 42-1425, which states in relevant part:

If an objection is filed to a claim for accomplished change of place of use . . . the district court shall remand the water right to the director for further hearing to determine whether the change injured a water right existing on the date of change

....
I.C. § 42-1425(2)(a).

But a previous section of the same statute limits when an accomplished transfer must be remanded to the IDWR Director for a hearing on possible injury. In other words, before the Court can consider a remand, 1) the accomplished transfer must have occurred before 1987, and 2) only injury to other water rights existing on the date of the change is considered:

(2) Any change in place of use . . . of a water right . . . *prior to November 19, 1987* . . . may be claimed . . . provided no other water rights *existing on the date of the change* were injured . . . [emphasis added].

I.C. § 42-1425(2).

The evidence is that Mr. Parmenter made the alleged transfer of exchange water from the south side of Carmen Creek to the north side in 1948 – all his own land – well before he sold parcels of the land, presumably with appurtenant water rights. Therefore, none of the current landowners' water rights existed at that time. Hence, the Burns Group cannot claim injury from any accomplished transfer that may have occurred before they purchased their lands. There is no legal basis to remand the subcases to the Director pursuant to I.C. § 42-1425(2)(a).

THEREFORE, IT IS ORDERED that the Burns Group's *Motion to Remand Subcases* is **denied**.

DATED June 11, 2010.


TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

CARMEN CREEK LIST

Subcase Nos:

75-10061A
75-10061AA
75-10061AC
75-10061AE
75-10061AM
75-10061B
75-10061C
75-10061J
75-10061N
75-10061Q
75-10061R
75-10061T
75-10061X
75-10061Y
75-10061Z
75-10062A
75-10062AA
75-10062AB
75-10062AC
75-10062AL
75-10062C
75-10062H
75-10062L
75-10062P
75-10062R
75-10062V
75-10062W
75-10062X
75-10062Y
75-10136A
75-10136B
75-10137A
75-10137B
75-14025
75-14027
75-14044
75-14046
75-14055
75-14056
75-14057
75-14058
75-14388
75-14441
75-14443
75-14540

(Subcase list: CARMENCRK)

6/11/10

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER DENYING MOTION TO REMAND SUBCASES was mailed on June 11, 2010, with sufficient first-class postage to the following:

A C & LUELLA PILKERTON
ALBERT C & ALVERA C FOLS
CHARLES E & MARY N HARLING
JAMES EDGREN & JENNIFER BRADY
LLOYD A & SHERYL L TUTOR
TRACY MASCIA

Represented by:
BARKER, ROSHOLT & SIMPSON LLP
113 MAIN AVE W, STE 303
PO BOX 485
TWIN FALLS, ID 83303-0485
Phone: 208-733-0700

GEORGE MATEJKO
JACQUELINE D ERNEST
JAMES R & ROWENA D QUINN
JAMES R QUINN
JOHN E & RUTH C BURNS
JOHN E BURNS
LINDA RICE
RICK & LINDA RICE
RICK RICE
ROBERT M & JACQUELINE ERNEST
ROBERT M ERNEST
ROWENA D QUINN
RUTH C BURNS
WILLIAM W CLEMENTZ

Represented by:
ROBERT L HARRIS
1000 RIVERWALK DR, STE 200
PO BOX 50130
IDAHO FALLS, ID 83405
Phone: 208-523-0620

A C & LUELLA PILKERTON
A C PILKERTON
ALBERT C & ALVERA C FOLS
ALBERT C FOLS
ALVERA C FOLS
CARMEN CREEK USERS
CHARLES E & MARY N HARLING
CHARLES E HARLING
JAMES DAN EDGREN
JENNIFER BRADY
LLOYD A TUTOR
LUELLA PILKERTON
MARY N HARLING
SHERYL L TUTOR
TRACY MARCIA

Represented by:
TRAVIS L THOMPSON
113 MAIN AVE W, STE 303
PO BOX 485
TWIN FALLS, ID 83303-0485
Phone: 208-733-0700

UNITED STATES OF AMERICA
Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

TERRY J HERSHEY
VERALYN E HERSHEY
PO BOX 121
CARMEN, ID 83462
Phone: 208-756-5202

CATHLEEN TIPPETT
JAMES R TIPPETT
PO BOX 15
CARMEN, ID 83462
Phone: 208-756-4594

RODNEY HUGH EDMISTON
SUSAN FRANCINE EDMISTON
PO BOX 155
CARMEN, ID 83462
Phone: 208-756-6160

(Certificate of mailing continued)

JAMES PAUL HUDSON
PO BOX 173
CARMEN, ID 83462
Phone: 208-756-3193

SHIRLEY J MATTIS
PO BOX 265
CARMEN, ID 83462
Phone: 208-756-3944

DANNY E FADNESS
ROBERTA FADNESS
ROBERTA V FADNESS
PO BOX 286
CARMEN, ID 83462
Phone: 208-756-6296

DONNA K JACKSON
THOMAS M JACKSON
PO BOX 47
CARMEN, ID 83462
Phone: 208-756-8047

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

JOHNNY J CABIGAS
LANA J GREENWAY
1267 MOBIL AVE
CAMARILLO, CA 93010

PHILLIP G EISENHAUER
SHELLEY L ERWIN
1306 W VISTA VIEW
WASHINGTON, UT 84780
Phone: 435-688-1680

FRANSICKA MOSHER
ROBERT D MOSHER
54 PARMENTER RD
PO BOX 213
CARMEN, ID 83462-0213
Phone: 208-756-4607