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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
AUG 31 2010	
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 01-23B, 01-297, 35-2543 and 35-4246
	)	(Aberdeen-Springfield Canal Co.)
Case No. 39576	)	
	)	ORDER DENYING MOTION
_____	)	TO ALTER OR AMEND

Background

Report and Recommendations

The Special Master entered a *Report and Recommendations* in subcases 01-23B and 01-297¹ on April 23, 2010, following summary judgment proceedings in favor of the claimant² and a later *Order Denying Motion for Reconsideration*.³ The key issues were the following conclusions of law:

1) recharge for irrigation was recognized as a beneficial use of water before enactment of its groundwater recharge statute in 1978, and 2) a portion of ASCC's diversion from the Snake River decreed "for irrigation and other purposes" in water right 01-23B was lawfully changed to "recharge for irrigation" with a priority date of February 6, 1895.

....

¹ The *Report and Recommendations* was entered in only two subcases (01-23B and 01-297), not subcases 35-2543 and 35-4246, after the parties and IDWR filed a *Stipulation to Resolve Objections* in subcases 01-23B and 01-297 resolving objections filed by the BLM and BOR. The hope was that the *Report and Recommendations* would quickly move the contested issues discussed herein toward final resolution. There has been no similar stipulation in subcases 35-2543 and 35-4246.

² On June 11, 2009, the Special Master entered an *Order Partially Granting Aberdeen-Springfield's Motion for Summary Judgment* in subcases 01-23B, 01-297, 35-2543 and 35-4246.

³ The *Order Denying Rule 56(f) Request for Additional Discovery and Motion for Reconsideration* was entered on January 8, 2010, in the same four subcases (01-23B, 01-297, 35-2543 and 35-4246).

[R]emanding the matter to the IDWR Director “for further hearing to determine whether the change injured a water right existing on the date of the change or constituted an enlargement of the original right.” (I.C. § 42-1425(2)(a)) would only serve to delay final resolution of the claim – the Director has already submitted his findings and conclusions recommending the accomplished transfer. That is, the Director found that 1) a portion of ASCC’s irrigation water right 01-23B was changed to recharge for irrigation before November 19, 1987 (commencement of the SRBA), 2) the accomplished change in purpose of use did not injure other existing water rights and 3) the change did not result in an enlargement.

Order Denying, at 1-2.

Motion to Alter or Amend

On May 28, 2010, the Surface Water Coalition⁴ filed their *Objectors’ Motion to Alter or Amend* in subcases 01-23B, 01-297, 35-2543 and 35-4246 even though, as noted earlier, a *Report and Recommendations* has not been filed in subcases 35-2543 and 35-4246. However, all four subcases present the same disputed conclusions of law made by the Special Master.

The Surface Water Coalition repeated the two main arguments it made in earlier proceedings:

Water right 01-23B should not have a “recharge for irrigation purpose of use with a priority date of 1895 [emphasis in original].

....

The refusal to remand to the Director for further injury analysis and a hearing is directly contrary to the plain language of the law.

Objectors’ Motion, at 2 and 4.

The Coalition concluded:

The Special Master’s recognition of “recharge for irrigation” as a beneficial use with an 1895 priority date is not supported by the law. That use was not lawfully recognized until at least 1978. Furthermore, the refusal to remand the water rights to the Department for further harm analysis – as plainly required by the accomplished statute – cannot stand. Accordingly, the Special Master should alter and amend the Special Masters Report for the above water rights.

Objectors’ Motion, at 7.

⁴ The “Surface Water Coalition” includes: 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.

Claimant's Response

Claimant Aberdeen-Springfield Canal Company filed its *Response and Objection to Motion to Alter or Amend* on June 25, 2010. It argued the Coalition “does nothing more than attempt to take a second (or third) bite at the apple by repackaging and reiterating the same stale arguments presented in support of their *Motion for Summary Judgment* and *Motion for Reconsideration*, all of which have been twice rejected by the Special Master.” *Response*, at 4.

State of Idaho's Response

The State of Idaho lodged its *Memorandum in Response to Objector's Motion to Alter or Amend* on June 28, 2010. Like the claimant, it argued the Coalition failed to present any new arguments. The argument that recharge could not have been a beneficial use prior to enactment of I.C. § 42-234 in 1978, is flawed legally and factually: “Nothing in Idaho law precluded recharge appropriation prior to 1978, and the considerable benefits of recharge had been widely recognized long before the enactment of section 42-234.” *Memorandum*, at 2.

Further, the State noted the Coalition “failed to offer any evidence whatsoever to rebut the presumption afforded the Director’s Report concluding that recharge for irrigation be included as a purpose of use for a portion of Aberdeen-Springfield Canal Company’s . . . water rights [footnote omitted].” *Memorandum*, at 2.

Finally, the State argued the Coalition is not entitled to a hearing before the Director under the Idaho Administrative Procedure Act and an opportunity to “put on evidence and confront witnesses” pursuant to the accomplished transfer statute:

The Director does not have jurisdiction to conduct a contested case proceeding in the Snake River Basin Adjudication. . . . Nor can a party to the SRBA use the remand procedures in the accomplished transfer statute to obtain testimony it failed to secure during a court-ordered discovery period, conduct belated trial-type proceedings to challenge a party’s case, or shift the burden of proof on injury or enlargement.

Memorandum, at 3.

Coalition Reply

The Coalition filed its *Reply in Support of Objectors' Motion to Alter or Amend* on June 29, 2010. It argued the issues and law are clear: recharge was not recognized as a beneficial use before 1978, and I.C § 42-1425 demands a remand when an objection is filed to an accomplished transfer. Neither response from the claimant and the State “justifies the unlawful attempt to

create a beneficial use where none existed and to deny the Coalition its hearing before the Director.” *Reply*, at 2.

The Coalition argued its “showing that the Director’s Recommendation is contrary to the law is sufficient to overcome the presumptions afforded the Director’s Report.” *Reply*, at 2. The Coalition added it never argued in favor of a contested *administrative* case before the Director and never tried to use a remand to obtain discovery – the Coalition “simply seeks an order from this Court that complies with the plain meaning of the statute.” *Reply*, at 3.

Hearing

The hearing on the Coalition’s *Motion to Alter or Amend* was held on July 1, 2010. Randall C. Budge appeared for Aberdeen-Springfield Canal Company; Travis L. Thompson and W. Kent Fletcher appeared for the Surface Water Coalition; and Harriet A. Hensley appeared for the State.

Discussion

Aberdeen-Springfield Canal Company and the State correctly stated the Coalition’s *Motion to Alter or Amend* merely repeats arguments made twice before in these subcases. Both times, the Special Master reached the same conclusions: “1) recharge for irrigation was recognized as a beneficial use of water before enactment of [Idaho’s] groundwater recharge statute in 1978, and 2) a portion of ASCC’s [Aberdeen-Springfield Canal Company’s] diversion from the Snake River decreed ‘for irrigation and other purposes’ in water right 01-213B was lawfully changed to ‘recharge for irrigation’ with a priority date of February 6, 1895.” April 23, 2010 *Special Master Report*, subcases 01-23B and 01-297, at 3.

On the related issue of remand to the Director under I.C. § 42-1425(2)(a), the Special Master twice held that remand would only serve to delay final resolution of the claim since the Director has already submitted his findings:

That is, the Director found that 1) a portion of ASCC’s irrigation water right 01-23B was changed to recharge for irrigation before November 19, 1987 (commencement of the SRBA), 2) the accomplished change in purpose of use did not injure other existing water rights and 3) the change did not result in an enlargement.

January 8, 2010 *Order Denying Rule 56(f) Request for Additional Discovery and Motion for Reconsideration*, subcases 01-23B, 01-297, 35-2543 and 35-4247, at 1.

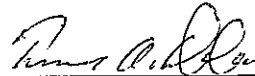
Conclusions of Law

It should be obvious by now that the disputed issues have been fully briefed, argued and determined at the special master level and nothing further is to be gained by more of the same. The Coalition has failed to present any new arguments; hence its *Motion to Alter or Amend* must be denied.

Order

THEREFORE, IT IS ORDERED that the Coalition's *Motion to Alter or Amend* is **denied**.

DATED August 31, 2010.



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER DENYING MOTION TO ALTER OR AMEND was mailed on August 31, 2010, with sufficient first-class postage to the following:

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