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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
MAY 17 2011	
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	) Subcase Nos. 01-217, 01-218, 01-4024 and 01-4025
	) (Minidoka Power Rights)
Case No. 39576	)
	) Subcase Nos. 01-2068 and 01-4054
	) (Palisades Power Rights)
	)
	) MEMORANDUM DECISION AND ORDER ON
	) MOTION TO ALTER OR AMEND JUDGMENT,
	) I.R.C.P. 59(e)
_____	)

Holding: *Motion to Alter or Amend is Denied.*

Appearances:

Paul L. Arrington of Barker Rosholt & Simpson, LLP, Twin Falls, Idaho, attorneys for A&B Irrigation District, Falls Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Company, and Twin Falls Canal Company.

W. Kent Fletcher of Fletcher Law Office, Burley, Idaho, attorney for Minidoka Irrigation District.

C. Tom Arkoosh, Capital Law Group, PLLC, Boise, Idaho, attorneys for American Falls Reservoir District #2.

David W. Gehlert, U.S. Department of Justice, Natural Resources Division, Denver, Colorado, attorney for the United States, Bureau of Reclamation.

David I. Stanish, Deputy Attorney General of the State of Idaho, Natural Resources Division, Boise, Idaho, attorney for the State of Idaho.

Chris M. Bromley, Deputy Attorney General of the State of Idaho, Idaho Department of Water Resources, Boise, Idaho, attorney for the Idaho Department of Water Resources.

I.

BRIEF FACTUAL AND PROCEDURAL BACKGROUND

1. On February 9, 2011, this Court issued a *Memorandum Decision and Order on Challenge* (“*Memorandum Decision*”) in the above-captioned matter. The procedural background and facts of the case were set forth at length in the *Memorandum Decision* and will not herein be repeated.

2. On February 22, 2011, A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Falls Irrigation District, Minidoka Irrigation District, North Side Canal Company, and the Twin Falls Canal Company (collectively “Surface Water Coalition” or “SWC”) filed *SWC’s Joint Motion for Reconsideration* and on March 8, 2011, filed *SWC’s Joint Amended Motion for Reconsideration* on March 8, 2011.

3. On March 18, 2011, this Court issued an *Order on Motion to Strike and Request for Attorney Fees and Costs* (“*Order on Motion to Strike*”) following proceedings related to the filing of a *Motion to Strike* by the State of Idaho. In the *Order on Motion to Strike* this Court ruled that it would treat the *SWC’s Joint Amended Motion for Reconsideration* as a *Motion to Alter or Amend Judgment* pursuant to I.R.C.P. 59(e). For reasons set forth in the *Order on Motion to Strike*, this Court ruled that consistent with the applicable standard governing I.R.C.P. 59(e) motions, no new evidence or legal arguments would be considered in conjunction with the SWC’s *Motion*.

II.

MATTER DEEMED FULLY SUBMITTED FOR DECISION

Argument was heard on April 18, 2011. The parties did not request additional briefing, nor does the Court require any. The matter is therefore deemed fully submitted the following business day, or April 19, 2011.

III.

ISSUES RAISED ON MOTION TO ALTER OR AMEND

The SWC raises the following issues in its *Motion to Alter or Amend*:

1. Whether the State of Idaho is bound by the terms of the decree issued in *Burley Irrigation District, et al v. Eagle* (“*Eagle Decree*”) through the duly appointed watermaster being named as a party to the action?

2. Whether the Bureau of Reclamation (“USBOR”) can use the SRBA Decree process as a method of amending prior contracts, such that the provisions of the prior contracts would no longer have meaning?

IV.

DISCUSSION

A. The State of Idaho is not “bound” by the terms of the *Eagle Decree* for purposes of the SRBA proceedings on the above-captioned water right claim.

1. The *Memorandum Decision* failed to address the issue of whether the State of Idaho was bound through the party status of the watermaster.

As a preliminary matter, the SWC asserts the Court’s *Memorandum Decision* failed to address the issue of whether the State of Idaho was bound by the terms of the *Eagle Decree* as a result of the watermaster being a named party to the action in a capacity as an agent of the State of Idaho. In the *Order Granting Motions for Summary Judgment and Special Master Report and Partial Recommendation* the Special Master determined:

The argument was made that the State and United States are bound by the Eagle Decrees. The answers are simple. The State is not bound because it was not a party and Water District 01 Watermaster Henry Eagle, a USGS employee at the time, lacked authority to bind the State in its sovereign capacity.

Order Granting Motions for Summary Judgment and Special Master Report and Partial Recommendation at 13. The Special Master’s determination relied on the reasoning that the watermaster was not an employee of the State of Idaho. However, the Special Master did not expand further regarding why the watermaster by acting as an instrumentality of the State of Idaho, nonetheless lacked the authority to bind the State of Idaho on that basis. On Challenge, following a discussion of the legal effect of Idaho Code § 42-1405, the summary supplemental adjudication statute under which the *Eagle Decree* Adjudication was commenced, this Court held: “Since the *Eagle Decree* does not carry the binding or *res judicata* effect of a general adjudication it cannot bind non-parties to its terms. The Special Master did not err in holding that the *Eagle Decree* is not binding on the USBOR, which undisputedly was not a named party to the adjudication, or the State of Idaho.” *Memorandum Decision* at 13.

This Court agrees the *Memorandum Decision* failed to specifically address the issue of whether the State of Idaho is bound by the *Eagle Decree* as a result of the watermaster being named as a party to the action and acting as an instrumentality or agent of the State. However, consistent with this Court’s prior holding regarding the legal effect of the summary supplemental adjudication proceeding, this Court holds that to the extent the State of Idaho is bound by the *Eagle Decree*, the scope to which it is bound is for a much more limited purpose than the position argued by the SWC. For the reasons explained below, the watermaster was joined in the action in the limited capacity as the instrumentality responsible for administering the water rights within a water district according to priority. Consequently that upon a proper showing to the Court, to recognize prospectively the unadjudicated water right for purposes of delivery and administration until such time as the right is contested, if ever, by an aggrieved water user. Indeed the watermaster was not joined for purposes of adjudicating or confirming the underlying validity of any of the elements of the unadjudicated water right. Likewise, any binding effect of the decree on the State of Idaho is limited to the purpose of ensuring the delivery and administration of the water until such time as the water right is contested in a subsequent proceeding. As such, this limited role does not preclude the State of Idaho from later contesting the right in a subsequent proceeding the same as any other aggrieved water user who was not a party to the action.

2. The *Eagle Decree* did not adjudicate any water rights or other administrative provisions.

In the *Memorandum Decision*, prior to this Court determining the State of Idaho was not bound by the *Eagle Decree*, the Court discussed at length the limited purpose, scope and binding effect of the summary supplemental adjudication proceeding under which the action was brought. The following excerpts are applicable to the issue now before the Court and are worth repeating:

In this case it is undisputed that the *Eagle Decree* Adjudication was commenced pursuant to former Idaho Code § 42-1405 (1948). At the time the complaint was filed in the *Eagle Decree* Adjudication, Idaho Code § 42-1405 (1948) provided for the summary supplemental adjudication of water rights. A summary supplemental adjudication proceeding was permitted under the former statute only where the priority of rights upon the stream, canal or reservoir at issue had previously been determined by the entry of a decree and *thereafter* one of the following two situations presented itself:

It shall appear that any person or corporation having the right to the use of any part of said water was not included in said decree as a party thereto, and said right was not determined thereby, or that any person who subsequent thereto has acquired any right to the use of such waters, any such person or corporation may have such right adjudicated in the following manner

I.C. § 42-1405 (1948).

Under such circumstances, a water user could “bring an action in the district court of the county wherein such decree was entered against the watermaster having charge of said stream, canal or reservoir in which said party claims an interest.” *Id.* The former statute required only that the applicable watermaster be named as a defendant, that the applicable watermaster be served with a copy of the summons and complaint, and that the plaintiff publish a notice of the pendency and purpose of the action in such newspapers as the judge may order once a week for not less than three weeks. *Id.*

The SWC argues that even though the *Eagle Decree* resulted from a summary supplemental adjudication proceeding, it is a *de jure* and/or *de facto* general adjudication decree that is binding on parties and non-parties alike. A review of Idaho Code § 42-1405 (1948) reveals that the SWC’s

argument is untenable. A decree issued as a result of a summary supplemental adjudication proceeding under the former statute by its express terms did not adjudicate any right to the use of water. Rather, it simply gave a *prima facie* right to the delivery of so much water:

The court by its decree in said action shall determine the rights of said plaintiff in accordance with the proof submitted but subject to the terms of the original decree hereinbefore referred to: provided, that the right thus established shall not be deemed adjudicated, but prima facie merely, and may be attacked by suit brought in a court of competent jurisdiction at any time by any person deeming himself aggrieved thereby.

I.C. § 42-1405 (1948) (emphasis added). The Idaho Supreme Court aptly described the process as set forth in Compiled Statute § 7036 – Idaho Code § 42-1405’s nearly identical predecessor – as follows:

[O]ne who was a stranger to the decree or any subsequent appropriator might, if satisfied with the earlier decree, accept its terms, and avail himself of a summary and inexpensive remedy *to establish his prima facie right.*

Mays v. District Court of Sixth Judicial Dist., 24 Idaho 200, 206–207, 200 P. 115, 116 (1921) (emphasis added).

The differences between a general adjudication decree and a summary supplemental adjudication decree issued pursuant to the former statute are stark. Most significantly, it is clear that I.C. § 42-1405 (1948) did not contemplate that such a decree would have the same *res judicata* or binding effect as a general adjudication decree. Unlike a general adjudication decree, the express terms of the former statute provide that a decree issued in a summary supplemental adjudication is *not* conclusive as to the nature and extent of any water right, but is merely *prima facie* evidence of a right to use of water. Moreover, unlike a general adjudication decree the express terms of the former statute direct that a summary supplemental adjudication may be subsequently attacked by third parties. Since the *Eagle Decree* does not carry the binding or *res judicata* effect of a general adjudication decree it cannot bind non-parties to its terms. The Special Master did not err in holding that the *Eagle Decree* is not binding on the USBOR, which undisputedly was not a named party to the adjudication, or the State of Idaho.

Memorandum Decision at 12-13. Although the foregoing analysis focused on distinguishing between a summary supplemental adjudication proceeding and the binding

effect of a general adjudication on non-parties, the reasoning is instructive as to the scope of the binding effect on the State of Idaho through the watermaster's participation in the action.

The summary supplemental adjudication proceeding not only failed to result in a *de facto* general adjudication for purposes of binding non-parties but it also failed to adjudicate any water rights *de facto* or otherwise. In *Mays v. District Court*, 34 Idaho 200, 200 P. 115 (1921), the Idaho Supreme Court discussed the difference between the adjudication of a water right through the traditional method of a quiet title action and through a summary supplemental proceeding authorized at the time pursuant to Idaho Code § 42-1405. In *Mays*, an investment company sought to have its water right adjudicated through the filing of a quiet title action against a large number of defendant water users on the same stream source. The defendants to the action sought a dismissal arguing that because the investment company established its water right after the conclusion of three previous adjudications on the stream, the company's exclusive remedy for adjudicating the after-acquired right was through the summary supplemental adjudication proceeding. The issue on appeal was whether the summary supplemental adjudication process was the exclusive remedy for adjudicating water rights established subsequent to a prior decree adjudicating the source. Ultimately, the Idaho Supreme Court held that the remedy provided for through the summary supplemental proceeding was not exclusive because the process was not a substitute for the adjudication of a water right and therefore was not an adequate remedy. In arriving at its decision, the Court distinguished between adjudicating a water right through a quiet title action and the limited function and effect of the summary supplemental proceeding:

[The summary supplemental proceeding] did not create any new right to the use of water. That right existed before. Nor did it for the first time create a remedy for the protection of such right. An adequate remedy existed. *It created a new remedy of a very narrow and restricted nature. The action is brought, not against other water users, but against the administrative officers who distribute it. The decree does not adjudicate any right. It simply gives a prima facie right to the delivery of so much water. It may be attacked by suit brought in a court of competent jurisdiction at any time by any aggrieved party.* There is no language used in the statute expressly providing that the remedy shall be exclusive. *The party invoking the remedy is forced to admit the binding force of the decree to which he was not a party.* All these facts make it appear that the

Legislature did not intend the remedy should be exclusive, did not intend to take away from a water user an adequate remedy and substitute this inadequate one, *but merely intended that, as a cumulative remedy, one that was a stranger to the decree or any subsequent appropriator might, if satisfied with the earlier decree, accept its terms, and avail himself of a summary and inexpensive remedy to establish his prima facie right.*

Mays at 201, 200 P. at 116 (emphasis added). Indeed, it is apparent from the plain language of Idaho Code § 42-1405, as well as the holding in *Mays*, that the summary supplemental proceeding was not intended as a substitute process for adjudicating a water right nor could it have been given the limited procedural due process notice requirements for commencing such an action.¹ As such, any decree entered resulting from a summary supplemental adjudication proceeding did not adjudicate a water right. This conclusion raises the question of the function and intended purposes of the summary supplemental process as well as the significance and legal effect of any decree issued as a result of the proceeding. This issue is addressed below.

3. The purpose of the summary supplemental adjudication process was to provide for the distribution of an unadjudicated water right until such time as the right is ultimately adjudicated or challenged by an aggrieved water user.

The summary supplemental adjudication proceeding provided a process whereby a water user, short of undertaking the onerous task of initiating a water adjudication or quiet title action and joining as parties all water users on the source, could have his or her unadjudicated water right recognized and distributed by the watermaster. Following publication notice to other water right holders on the source, the water user could make a *prima facie* showing to a Court of appropriate jurisdiction of the existence of the

¹ This was previously explained in the *Memorandum Decision*:

In 1903, the Idaho legislature approved an act entitled “An act to regulate the appropriation and diversion of the public waters and to establish rights to the use of such waters and the priority of such rights.” 1903 Idaho Session Laws 223. The statute provided for constructive notice via publication of suits to adjudicate water rights. *Id.* § 34 at 247. This specific provision of the act was held to be unconstitutional on the grounds that the Idaho Constitution requires personal service of such defendants. *Bear Lake County v. Budge*, 9 Idaho 703, 75 P. 614 (1904).

Memorandum Decision at 15.

unadjudicated water right for the purpose of having the right recognized and delivered by the watermaster. For reasons explained below, despite not adjudicating the water right, the summary supplemental proceeding nonetheless served an important function particularly in an organized water district where water use is supervised and administered through a watermaster as well as outside of a water district where in times of shortage injured water users can seek administration.

Idaho law requires the creation of water districts. See Idaho Code § 42-601 *et. seq.* (providing for supervision of water distribution within water districts). The statutes governing water districts, at present as well as at the time of the enactment of the summary supplemental proceeding, require that IDWR (previously the Department of Reclamation) divide the State of Idaho into water districts in those areas where the streams or water supplies have been adjudicated. See 1927 Idaho Sess. Law ch. 63, p. 78. The statutes provide for a watermaster to supervise and distribute the water within the district according to the priorities of the “adjudicated” rights. *Id.* at 79. The statutes provide further that any person claiming the right to use water in a water district but not having an adjudicated water right, for purposes of distribution shall be deemed to have a right subsequent in priority to all other adjudicated rights in the district. *Id.* As a threshold condition, the creation of a water district requires the water supply within the district to already be adjudicated, therefore any unadjudicated rights within the district would either include those rights that were either omitted from prior adjudication(s) or those established subsequent to the adjudication(s). A water user seeking to have an unadjudicated right recognized in priority by the watermaster for distribution could either commence a quiet title action and have the right adjudicated or pursue the less burdensome process of initiating a summary supplemental adjudication action to establish a *prima facie* right to the delivery of so much water. The procedure also put the onus on any aggrieved water user to come forward and contest the right either in conjunction with the summary supplemental proceeding or later in a subsequent proceeding.

The apparent shortcoming to using the summary supplemental procedure was that it did not adjudicate the water right and therefore could be challenged in a subsequent proceeding. In other words, no water user would need to come forward to challenge the *prima facie* showing at that time. The process also benefitted water users having

adjudicated rights on the source by not having to be routinely joined or appear in successive actions every time a post-adjudication water right on the source is established. Instead, under the process the adjudicated water right user could wait to contest the right in the future if and when aggrieved or the right is adjudicated.

4. The watermaster is bound for the limited purpose of distributing water until such time as the water right is ultimately adjudicated or contested by an aggrieved water user.

Idaho Code § 42-1425 (1948) required that the action be brought against the watermaster or agency responsible for the distribution of water. The statute specifically provides: “He may bring in the district court of the county wherein such decree was entered against the watermaster having charge of the distribution of the water of said stream, canal or reservoir in which said party claims an interest, or if there be no watermaster thereof, then against the department of reclamation” *Id.* Consistent with the holding in *Mays*, the watermaster or department of reclamation is not joined as an instrumentality of the state for purposes of adjudicating or confirming the validity of the elements of a water right. Rather either are joined in the capacity as the instrumentality responsible for the administration of water rights. As stated in *Mays*: “*The action is brought, not against other water users, but against the administrative officers who distribute it. The decree does not adjudicate any right. It simply gives a prima facie right to the delivery of so much water.*” *Mays* at 201, 200 P. at 116 (emphasis added). The Idaho Supreme Court has acknowledged the limited role for which watermasters are joined in private adjudications. In *Nampa & Meridian Irr. District v. Barclay*, 56 Idaho 13, 20, 47 P.2d 916, 919 (1935), the Idaho Supreme Court recognized that watermasters are joined as parties to private adjudications as administrative officers and have no interest in the subject matter of the litigation:

The defendant water master is only an administrative officer and has no interest in the subject of the litigation,--his only duty is to distribute the waters of the district in accordance with the respective rights of the appropriators,--adjudicated rights having preference over un-adjudicated rights and appropriations.

Id. at 20, 47 P.2d at 919 (citing Sec. 41-507, I.C.A.; *Daniels v. Adair*, 38 Idaho 130, 220 P. 107; *Big Wood Canal Co. v. Chapman*, 45 Idaho 380, 263 P. 45)).

Accordingly, in the summary supplemental adjudication proceeding the watermaster or department of reclamation was joined for the limited purpose of recognizing and distributing the water right according to its relative priority as opposed to distributing the right junior to all previously adjudicated rights as would otherwise be required. Clearly, had the statute intended any binding effect broader in scope and legal effect concerning the State of Idaho it would have required the action be brought against the State in its sovereign capacity. Such a requirement however, would have significantly undermined the entire purpose of the simplified procedure contemplated by the summary supplemental adjudication statutes. In this case, the *Certificate of Appointment* issued in 1969 appointing Henry Eagle as the watermaster for Water District 36 for the 1969 irrigation season is consistent with this limited purpose for which the watermaster was joined as a party. The *Certificate* only delegated the authority to administer rights in accordance with the provisions of Idaho Code § 42-605. *Stanish Aff.* Ex. M. Furthermore the watermaster, Henry Eagle, filed a disclaimer of interest in the action. *Thompson Aff.* Ex. E. In sum, the watermaster takes no position in the litigation regarding the elements of the water right.

Accordingly, the only “binding” effect on the watermaster, IDWR or the State of Idaho would be to recognize and deliver water in accordance with the *prima facie* showing of the unadjudicated right on an interim basis until such time as the water right is either contested or adjudicated in a subsequent proceeding. In this case the subsequent proceeding is the SRBA. To conclude that the watermaster, IDWR (or the State through either instrumentality), is bound for any other or broader purpose would result in “binding” the party responsible for distributing water to the position of administering the right on a permanent basis as if it were *de facto* adjudicated. Such a conclusion is in direct contravention of the express purpose of the summary supplemental adjudication statute, the holding in *Mays* and the recognition by the Idaho Supreme Court regarding the limited purpose for which watermasters are routinely joined to private adjudications.

In sum, the summary supplemental adjudication process served a limited function and did not adjudicate a water right. Consequently, the only purpose for which the

watermaster, IDWR or the State of Idaho could have been bound was strictly limited to administering the right according to the *prima facie* showing on an interim basis until such time as the right is challenged or ultimately adjudicated. Nothing in the statute required that the State come forward in a different capacity and assert any grievances against the unadjudicated right at that time. Given the limited role of the watermaster and legal effect of the *Eagle Decree*, the State of Idaho now taking a position different from that expressed in the *Eagle Decree* cannot be construed as a collateral attack on the decree. The State is simply not bound by the terms of the *Eagle Decree* for the purposes of the proceedings in the above-captioned water right claims. The SWC's *Motion to Alter or Amend* is therefore DENIED on this issue.

B. The Court defers to its prior ruling on the issue of whether the USBOR can agree to the entry of a remark in a decree which differs from terms of its federal contract with the USBOR.

On Challenge the SWC argued that because the remark recommended by the Special Master provides for subordination to all “water otherwise storable in the reservoir system,” as opposed to merely “irrigation storage” it was inconsistent with provisions of the Palisades Contracts, the *Eagle Decree* and ultimately the SWC's beneficial interest in the hydropower rights. The SWC now raises the issue of whether the USBOR can use the SRBA Decree process as a method of amending prior contracts, such that the provisions of the prior contracts would no longer have meaning and in addition asserts the legal defense of estoppel.

For reasons explained at length in the *Memorandum Decision*, this Court held the SWC did not hold an ownership interest in the hydropower rights and absent such an interest, the SWC failed to present a legal reason preventing the USBOR from voluntarily subordinating its hydropower rights to storage purposes not expressed in the contracts. *Memorandum Decision* at 23. This Court further discussed the difference between rights that are purely contractual in nature and interests in water rights pursuant to state law:

The Special Master correctly identified in his *Order* that a difference exists between pure contractual rights and interests in a water right under state water law. *Order Granting*, p. 12. Any issue pertaining to whether the USBOR's decision to voluntarily subordinate its rights results in a

breach of the Palisades Contracts, or in a monetary claim in favor of the SWC, is not ripe for jurisdiction before this Court and does not create a state law interest in the USBOR's water rights in favor of the SWC. Any such issue or claim lies in the jurisdiction of the United States Court of Federal Claims. 28 U.S.C. § 1491(a)(1) ("The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded . . . upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort").

Memorandum Decision at 24. The Court concluded further that the recommended remark would not alter the terms of the Palisades Contracts and therefore the USBOR could still abide by the contract terms notwithstanding the modified subordination provision:

[T]he remarks proposed by the USBOR and State recognize the existence of the Palisades Contracts and by their express terms do not alter, amend, or modify any provisions of the Palisades Contracts:

This decree does not alter, amend, or modify the contracts entered into between various federal contractors and the United States Bureau of Reclamation, as amended, in connection with the Palisades project and the Minidoka project, which contracts remain binding among the parties thereto.

Via the above-quoted remark, whatever obligations and contractual rights exist between the parties under the Palisades Contracts are in no way affected by the remarks proposed by the State and the USBOR, and recommended by the Special Master.

Memorandum Decision at 24.

In sum, the water rights at issue are held entirely by the USBOR. The nature of the SWC's interest in the water rights is purely contractual. Idaho law provides for the voluntary subordination of water rights. Whether the USBOR's agreement to voluntarily expand the scope of the subordination results in a breach of contract of the federal contract is a separate issue over which this Court lacks proper jurisdiction. Indeed, it has yet to be determined whether the USBOR will construe the power loss payment provision to apply to all storage or limit the application of the provision to storage for irrigation.

According to the USBOR the subordination remark as recommended by the Special Master reflects how the hydropower right has historically been administered.

Finally, it needs to be pointed out that it is beyond the scope of the authority and function of the watermaster and/or IDWR to resolve private contract disputes as part of their administrative duties. Assuming for the sake of discussion the provision was decreed with the subordination remark limited to storage for irrigation and the USBOR nonetheless failed to maintain the power loss payments. Until ordered otherwise, the watermaster is required to administer the right according to the subordination remark as opposed to on the basis of whether or not one party or another is allegedly in breach of a particular contract term. The watermaster and IDWR are not responsible for getting in the middle of private contract disputes. The contract dispute needs to be resolved in the appropriate forum.

For the above-stated reasons the SWC's Motion to Alter or Amend on this issue is DENIED. For reasons previously discussed, consistent with the I.R.C.P. 59(e) standard, the Court declines to consider the issue of estoppel for the first time in conjunction with the *Motion to Alter or Amend*.

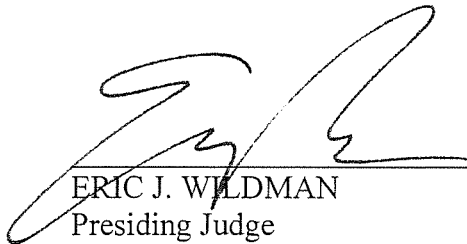
C. No award of costs or attorney's fees.

In light of this Court failing to specifically address the issue regarding the binding effect of the *Eagle Decree* on the State of Idaho the Court cannot make the finding that the *Motion* was pursued frivolously, unreasonably or without foundation. Accordingly, the State's request for attorney's fees for responding to the *Motion* is DENIED.

V.
CONCLUSION

For the above-stated reasons, the SWC's *Motion to Alter or Amend* is DENIED.

DATED: May 17, 2011.



ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the MEMORANDUM DECISION AND ORDER ON MOTION TO ALTER OR AMEND JUDGMENT, I.R.C.P. 59(E) was mailed on May 17, 2011, with sufficient first-class postage to the following:

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ORDER

(Certificate of mailing continued)

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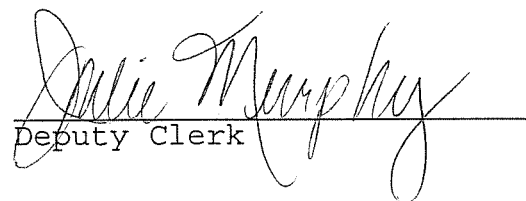
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