

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

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MAR 23 2012

IN RE SRBA

CASE NUMBER 39576

NOTICE of APPEAL

DEPARTMENT OF
WATER RESOURCES

SUBCASE 22-11639

BACKGROUND

A tentative settlement agreement concerning many Paradise Springs water rights was reached in November of 2010. This settlement agreement was dissolved by Michael Reid on October 11, 2011, due to material mistakes in the preparation of the SF-5 by the State attorney general's office and opposing counsel. On October 12, 2011, a status conference was held regarding this and other Paradise Springs water rights. On December 7, 2011, a show cause hearing was held over an Order to Show Cause concerning this and other Paradise Springs rights. During this hearing, I argued that water right 22-11639 needed to have its quantity amended to 0.54 cfs. I also stated numerous times that the priority date was incorrect and that it would have to be changed at some point, depending on the outcome of other cases and the case surrounding 22-11639. On March 9, 2012, SM Bilyeu issued an order stating that 22-11639 had been orally settled at this hearing, equivalent to having signed an SF-5 agreement, and was to have a quantity of .19 cfs. I received this March 14, 2012. On March 7, 2012, Michael Reid filed an objection to the Amended Director's report concerning 22-11639 stating that he renewed his objection to this right based on the original objections he had, namely the quantity and priority date were incorrect and needed to be 0.54 cfs and 6/1/1904, respectively.

ARGUMENT

Either SM Bilyeu misunderstood what I was saying, I misunderstood what SM Bilyeu was saying, and/or I was unduly coerced by SM Bilyeu to agree to something I clearly did not agree to.

I stated on several occasions during the hearing that I did not agree with the priority date of 22-11639. I did not know at that time the exact outcome of what quantity should be assigned to the 1904 priority or the 1969 priority and stated this. This is because of negotiations that were happening to try to resettle this case, and negotiations specifically with Rex Miller who was not a party to and also opposes the settlement agreement of November, 2010. Since that time, Rex Miller had a serious stroke, and while his improvement continues and he can sometimes answer questions yes or no, he is still impaired beyond making decisions of any consequence. No one yet knows whether or not he will regain full control of his faculties, but he may yet be able to represent himself again. His stroke was an act of God that I had no control over and it affects the cases 22-11639 and 22-13853.

Now there is only one good way to settle 22-11639, and this is what I alluded to when I testified at the Show Cause hearing that the priority date was still probably an issue and that the quantity should be higher than the Amended Director's Report. SM Bilyeu has stated that the SF-5 she is recommending is for 0.59 cfs which will need to be corrected as well. Because the quantity settled on is more than was ever used, the SF-5 should not be enforceable in its current state anyway.

During the discussion of 22-11639 at the hearing on Dec. 7, 2011, I stated several times that the priority date was still probably going to be an issue. Opposing counsel offered that they didn't want to agree to something during the hearing only to have me come back later to improve my position with an earlier priority date. I was not given a chance to respond to this but I never agreed that there wasn't an issue with the priority date. SM Bilyeu, while I was explaining this, told me she would not allow a higher quantity and she would enforce the previous, dissolved settlement agreement based on a threatened ruling of "failure to prosecute." This threat was based on the fact that I missed one status conference, and that my parents who never have attended any hearing or status conferences, and in essence no longer have a claim to my property or this water, had missed conferences that they were supposed to be at. Legally, I should have changed the names on the water right form, but practically speaking, it can be changed later. To use their lack of presence at hearings against me is preposterous. The Sept. 21 status conference I was supposed to be at and missed, I have explained and shown good cause for missing it; namely, I had not received the SF-5 forms we were going to discuss from the state and they had not been posted online by 5 weeks prior to the hearing, either. I was out of state when that conference

occurred. Many other participants, and their attorneys have missed status conferences along the way during the aftermath of the settlement conference.

When SM Bilyeu threatened me with "failure to prosecute," I thought that we were agreeing only to the shift in quantity, and not an oral SF-5 concerning the entirety of right 22-11639, because that was what I had stated. I also understood the quantity to be more than 0.19 cfs. I accepted her statements based on what I had argued, that the quantity should be amended and that there would likely be an issue with the priority date. This is all I agreed to. If there was an understanding that I agreed that the entire right was correct, this is wrong. While we had talked about an increased rate of diversion, and thrown out numbers to that effect, no one verified any of these numbers, and in the end it appears that the number that was decided on was incorrect anyway.

In her order, SM Bilyeu states that

"...oral settlement agreements must comply with the requirements of a contract...There must be a mutual meeting of the minds shown by mutual intent to contract with an offer and acceptance. The contract must be complete, definite, and certain in all material terms."

The oral agreement concerning 22-11639 had none of these elements and therefore cannot be valid. There was no meeting of the minds, and the 'contract' was not complete, definite, or certain. At best it was a coerced agreement only concerning the quantity issue, which was not certain or reconciled correctly.

As soon as I can get the court record from December 7, 2011, I will submit that as a supplementary addendum to this filing. It will show that my argument is truthful.

CONCLUSION

The coercion made by SM Bilyeu was an incorrect application of the standard of failure to prosecute. The agreement was not specific enough concerning what was being agreed to to be called a contract. The quantity is still incorrect. There is no way that, considering what was said and agreed

to at the hearing, one could assume a valid SF-5 or any binding agreement had been entered into. This is one example of why the transfer of real property should always be handled in writing with signatures.

M/L T (e) 3.20.12
Michael L Reid

Copies to:
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