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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
MAY 22 2012	
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	)	ORDER ON MOTION FOR
	)	RECONSIDERATION
Case No. 39576	)	
	)	SUBCASE NOS.: 22-13509
_____	)	

I. PROCEDURAL BACKGROUND

A *Motion for Reconsideration, or in the Alternative, Motion for Stay of Associated Paradise Springs Subcases* was filed by the claimants of this water right. A hearing was held on May 2, 2012. The *Motion for Reconsideration* asked the court to reconsider its *Amended Order on Show Cause Hearing* issued March 14, 2012. The *Amended Order* held that the parties entered binding settlement agreements for individual subcases 22-11639 and 22-13854 but did not show sufficient evidence of a binding settlement agreement for 22-13509. The claimants of 22-13509 asked the court to reconsider the record and to hold that the parties had a settlement agreement for 22-13509.

Previously, the court issued an *Order to Show Cause and Summons to Appear* in subcases 22-13509, and related subcases 22-11639 and 22-13854. The *Order to Show Cause* was issued after the court had held numerous hearings with assurances that the parties were close to resolution; however a resolution was not forthcoming.

At a Status Conference held October 12, 2011, IDWR reported that *Standard Form 5* settlement documents had been sent to Michael Reid on all subcases, but had not been returned. Mr. Reid did not attend a prior Status Conference on September 21, 2011, at which time the parties attempted to conclude the subcases on Paradise Springs.

During the October 12th Status Conference, Mr. Reid stated that he had not received the *Standard Form 5* for 22-13509. At the hearing, the Court informed the parties that if the *SF5s* were not signed and filed within a week, it would issue an *Order to Show Cause*. Completed *SF5s* were not filed, so the Court issued the *Order to Show Cause*. A show cause hearing was held on December 7, 2011. At the hearing, Richardson Family Properties, Daniel Miller, David Miller, Larry Miller, Lewis Miller, Phillip Miller, Ralph Miller, and Ron Miller (hereafter “Millers”) asserted that the parties had an enforceable global settlement covering multiple subcases including 22-13509.

At the May 2, 2012 hearing on this *Motion*, Millers requested reconsideration of the holding that there was insufficient evidence of a settlement on the elements of this subcase. Millers argued that the parties reached an agreement at a settlement conference in November of 2010 about how the parties would allocate on a *pro rata* basis 2.0 cfs which came from the J.J. Miller water right in the *Rexburg Decree*. The J.J. Miller water right from the *Rexburg Decree* was 22-405. Millers explained that IDWR sent a letter dated January 24 to the parties establishing the quantity for each party and explaining the steps each party needed to accomplish to establish the groundwork for the settlement. Millers provided the court additional information about the hearing from October 12, 2011 on which their argument relies. The court did not have the benefit of that information when it ruled previously. The *Affidavit of Robert L. Harris* included an unofficial transcript of the hearing. The transcript demonstrates that Mr. Reid stated he did not have the proposed *SF5* for 22-13509. Nevertheless, Mr. Reid did discuss 22-13509. Millers argue that Mr. Reid’s statements on the record on October 12, 2011 are sufficient to bind him to the agreement contained in the *SF5* he did not have. Millers argue that Mr. Reid agreed to the recommended elements of 22-13509 as long as the recommendation was consistent with the prior agreement. Millers argue that the proposed *SF5* was consistent with the settlement outlined in November of 2010. Specifically, the quantity was for .51 cfs and 25.5 acres.

II. STANDARD OF REVIEW

A. Oral Stipulations

In general, settlement agreements do not have to be in writing to be enforceable. If an oral stipulation to settle is entered on the court records, it is usually enforceable. However,

oral settlement agreements must comply with the requirements of a contract. *Lawrence v. Hutchinson*, 146 Idaho 892, 204 P.3d 532 (2009). There must be a 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 its material terms. *Id.* at 146 Idaho 898. The intent of the parties is to be determined by the surrounding facts and circumstances of each particular case. *Id.*

B. Statute of Frauds

Real property in Idaho must generally be transferred by a written instrument. Idaho water rights are considered a type of real property. In *Olson v. IDWR*, 105 Idaho 98, 666 P.2d 188 (1983), the Idaho Supreme Court declared an oral stipulation on water rights unenforceable in the absence of a writing. But the court cited to *Francis v. Green*, 7 Idaho 668, 65 P. 362 (1901) which held an oral settlement to convey water rights need not be in writing if part performance had occurred. In *Olson*, the reason the stipulation was unenforceable was that it changed existing water rights, and there was no part performance. The court found that a compromise or change to definitional elements was similar to a compromise of the metes and bounds of real property, and thus settlements approving changes to water rights should be in writing unless there was part performance. *Id.*

C. Administrative Order 1

Finally, SRBA *Administrative Order 1* approves oral stipulations to the elements of a water right: “Where parties reach an agreement on a contested water right recommendation, they shall file either a stipulation with the court using Standard Form 5 or some other stipulation acceptable to the court. Subcases may also be resolved orally on the record.” AOI Rule 4d(3).

III. DISCUSSION

This court issued an *Order to Show Cause* explaining that *Masters Reports and Recommendations* would issue according to proposed *Standard Form 5s* unless “good cause” was shown. The proposed *Standard Form 5s* had been discussed at prior hearings, but not filed because not all parties had signed. The proposed *Standard Form 5* for 22-13509 was signed by IDWR, and counsel for Millers. Therefore, all parties had signed the proposed *SF5* except Michael Reid. Millers argued that there is no “good cause” because the *SF5* document and oral comments bound all parties.

The law regarding oral settlements was explained in *Lawrence v. Hutchinson*, 146 Idaho 892, 204 P.3d 532 (Ct. App 2009). The *Lawrence* Court said that settlement agreements do not have to be in writing to be enforceable. Oral settlements may be valid if they comply with the requirements for contracts. Formation of a valid settlement agreement requires a meeting of the minds shown by a manifestation of mutual intent to contract. *Id* at 898. The manifestation of mutual intent to contract is shown by an offer and acceptance. In addition, there must be a meeting of the minds on the essential terms of the agreement. *Id*. The *Lawrence* Court emphasized that placing an agreement on the court's record will ordinarily bind the parties: "Oral stipulations are binding when acted upon or entered on the court records." *Id. citing Kohring v. Robertson*, 137 Idaho 94, 99, 44 P.3d 1149, 1154 (2002).

A. Meeting on Global Settlement

All parties agree that in November of 2010 they held a meeting to discuss a global settlement of the subcases on Paradise Springs including 22-13509. IDWR sent a letter dated January 24, 2011 that set forth details of a global settlement including 22-13509 and other subcases on Paradise Springs. (Attached as Exhibit 1) The parties disagreed about whether that meeting resulted in a binding global settlement agreement.

Michael Reid did not attend the hearing on May 2, 2012, but had previously argued there is "good cause" why the court should not issue the *Masters Reports and Recommendations*. Mr. Reid argued that he withdrew from the global agreement "on the afternoon of October 11, 2011." *Response to Statement* (Dec. 21, 2011). Mr. Reid argued that he withdrew because he did not obtain a subordination clause he understood was part of the global agreement. *Response to Statement*. The parties subsequently explained that Mr. Reid was referring to subordination language he apparently sought for 22-13212.

The Millers argued that no "good cause" exists because Mr. Reid agreed to a global settlement of this right, and agreed to the elements in the proposed SF5. Furthermore, Millers argued that the parties acted in part performance of the agreement.

B. Acts of the Parties

The Court looks at the January 24th letter, the proposed SF5s, and the actions of the parties to determine whether a valid global settlement agreement was formed. The January 24th letter set forth the quantity and acreage agreed to for each right. For some rights, there was an additional beneficial use portion which had not been claimed. *Master's Reports* were

issued for some subcases, and some subcases were partially decreed. For example, 22-587, 22-12714, and 22-12511 have been partially decreed. A trial was previously held for 22-13212, and *Master's Reports* were issued. The global agreement anticipated a *Motion to Set Aside* for 22-13212 which was filed, but then withdrawn by Mr. Reid. The global settlement called for a beneficial use component related to 22-13212 which was filed under the number 22-11639.

Subcase 22-13586 was partially decreed in 2011. A related late claim was filed for the beneficial use, and was numbered 22-13997. A *Master's Report* was issued for 22-13997. The global settlement anticipated an amended claim for 22-13853 and a related late claim. A *Motion to file Late Claim* was filed, but denied. The parties have taken some actions contemplated in the January 24th letter, including the filing of late claims, amended claims, the issuance of *Master's Reports*, and *Partial Decrees*.

C. January 24th Letter

Oral settlements can be valid if they comply with the requirements of contracts. Here, the court looks at whether the facts show a meeting of the minds on the essential terms of a global settlement with a mutual intent to contract. *Lawrence* at 898. Mutual intent to contract is shown by an offer and an acceptance. The meeting of the minds must occur on the essential terms of the agreement. *Id.*

The parties did not provide much detail regarding the offer and acceptance of the essential terms of the global settlement. The January 24th letter was offered to show that a global settlement had occurred. Thus, the letter must be examined to determine whether it shows the necessary elements required of a contract.

The letter shows a mutual interest in resolving the subcases on Paradise Springs because it sets forth the structure of the discussions during the November 2010 meeting. Nothing in the letter contradicts a mutual intent to contract for a global settlement. However, mutual intent to contract is usually shown by an offer and acceptance of the essential terms of an agreement.

The letter shows that the discussions were moving towards a global settlement. However the wording does not indicate that a concrete offer and acceptance of the essential terms had occurred. Rather, the wording states that the “parties in attendance and the Idaho Department of Water Resources reached a tentative agreement.” That wording is less definite

than what might have accompanied a definitive agreement to which all parties agreed. The letter also referred to additional steps needed to be taken by the parties. “The table below lists the amounts agreed upon during the settlement conference followed by the tasks that need to be completed before the settlement can be finalized.” This language certainly refers to additional action needed by the parties. Those acts could be considered as part performance of a global agreement. However, the wording points to something less definite. The letter indicates that the listed tasks, such as filing late claims, would be completed “before the settlement can be finalized.” That wording is consistent with the phrase “tentative agreement” used to describe the discussions. The letter seems to be saying that the parties needed to take additional steps before the essential terms were finalized.

Looking at the letter as a whole, and after careful reconsideration for this *Motion*, it appears to describe a very productive settlement meeting which moved the parties towards a resolution. But the letter described the discussions as ending with a “tentative agreement” which required further action and additional details before there would be sufficient details for a meeting of the minds. In short, the January 24th letter does not appear to memorialize a global settlement agreement that was a “done deal.” Rather, the letter appears to memorialize a good first step towards a definitive agreement. Therefore, this court concludes that a binding global settlement agreement on all subcases had not been reached. At the very least, this court concludes that the evidence presented, including the January 24th letter, is insufficient to establish a global settlement on all subcases.

Next, this Court looks at the facts for this subcase to determine whether “good cause” exists independent of a global agreement. The question is whether the parties entered a binding settlement agreement for subcase 22-13509 individually. The court concludes that the parties did not demonstrate sufficient evidence of a settlement agreement on subcase 22-13509.

D. 22-13509

Water claim 22-13509 was claimed by David Miller, Larry Miller, Ralph Miller, Phillip Miller, Lewis Miller, Daniel Miller and Ronald Miller. An *Objection* was filed by Michael Reid. Mr. Reid asserted during the October 12, 2011 Status Conference that he had not yet received a proposed *Standard Form 5* for this right. Mr. Reid did not sign the *Standard Form 5*. All other parties signed the *SF5*, and a copy was attached to the *Order to*

Show Cause. At the December 7, 2011 hearing, Mr. Reid argued that he withdrew from the global agreement on the afternoon of October 11, 2011.

The Millers argued that a global settlement was reached which included this water right. The Millers argued that the elements were described in the January 24 letter and the proposed *Standard Form 5*. In addition, the parties argued that they acted to fulfill the terms of the global agreement.

The January 24th letter established some of the essential elements of a global agreement. It listed the acreage and quantity for each water right. In addition, the letter recognized that additional action was needed to complete the terms of the agreement. The claimant did file a late claim for the additional beneficial use. Late claim 22-13999 claimed the beneficial use related to 22-13509. A *Master's Report and Recommendation* has issued for the beneficial use right 22-13999.

This court has analyzed why the January 24th letter does not memorialize a binding global agreement, but rather a tentative agreement to work on essential terms for a global agreement. There is no global settlement agreement which binds the parties to the proposed *SF5* for this subcase. In addition, there is no independent agreement which bound the parties to the proposed *SF5* for this subcase.

The Millers provided additional information with an unofficial transcript of the October 12, 2011 hearing at which the *Order to Show Cause* and proposed *SF5s* were discussed. While that information was helpful in establishing more fully what was said by Mr. Reid, the statements fall short of establishing a binding agreement on 22-13509. It should be noted that I.R.E. 1005 and I.C.A.R. 27 both require official transcripts of hearings for evidentiary purposes. Nevertheless, even if the transcript had been official, this court would not be convinced that a settlement of the elements was agreed to on the record. The court asked if Mr. Reid agreed to the elements that IDWR sent on 22-13509. Mr. Reid said "And I don't think I have a problem with 13509, and I know I don't have a problem with 11639." But he went on to say, "You know, I can't – I think so, I don't – I haven't seen it, but, and it may yet need to just be forwarded to me. . ." That language is far different than the language used by Mr. Reid to agree to the elements for the proposed *SF5s*. Mr. Reid stated he had received and reviewed the proposed *SF5s* for the subcases 22-11639 and 22-13854. He stated he had not received the *SF5* for 22-13509. The language utilized in explaining his position on 22-13509

does not clearly indicate his agreement with the unread *SF5*. The language is tentative, stating that he doesn't think he has any problems with the proposals, but indicates he can't agree or disagree because he had not seen the proposal. The language used to describe 22-13509 is in contrast with the language used to agree to the elements of the other two rights. Consequently, the court has insufficient evidence to conclude that a binding agreement existed on 22-13509.

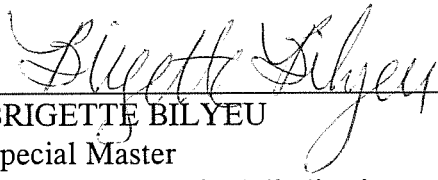
IV. CONCLUSION

The Millers argued that the parties with water rights on Paradise Springs entered into a binding global agreement in November of 2010. They asserted that the January 24th 2011 letter memorialized the essential terms of the global settlement. That global settlement, they argued, binds all parties to the subcases discussed in the January 24th letter. This court concluded that a valid global settlement was not formed. The January 24th letter utilized language that indicated the parties had reached an agreement in principle. However, the language of the letter called the results of negotiations a "tentative agreement." In addition, the letter referred to tasks the parties needed to accomplish before a settlement could "be finalized." Therefore, the Court concluded that the January 24th letter memorialized a positive step in negotiations, but did not show that an offer and acceptance had occurred on the essential terms. Therefore, the court looked next to see whether a valid settlement agreement was reached on subcase 22-13509.

Although the court found that valid settlement agreements were entered on the record for 22-11639 and 22-13854, the facts do not support such a finding for 22-13509. The analysis is quite different for **22-13509** since there was no oral agreement by Mr. Reid. The wording from the unofficial transcript shows that Mr. Reid did not think he had a problem with 22-13509. But the statement was very tentative. "You know, I can't - I think so, I don't - I haven't seen it . . ." That language is not enough for this court to find that Mr. Reid agreed to the elements on the proposed *SF5*, particularly where he had not received the document. The court found that the negotiations in November of 2010 and the letter of January 24th did not result in an offer and acceptance on the essential terms of a global settlement of all subcases on Paradise Springs. Therefore, Mr. Reid and the parties cannot be bound to the proposed *SF5* for 22-13509 based on the global negotiations. The next question is whether additional words or actions created a settlement agreement on **22-13509**. Mr. Reid did not agree to the terms of

an *SF5* for 22-13509. In fact, he stated on the record on October 12, 2011 that he had not received the *SF5* for this water right. Therefore, on reconsideration, the court finds that “good cause” exists for **22-13509**. Therefore, the court **will not** issue a *Master’s Report and Recommendation* for **22-13509** at this time. The Millers also asked the court to “stay the proceedings on the Paradise Springs subcases listed in the January 24th letter. . . .” However, no *Motion to Stay* was filed in individual subcases except for 22-13509. In addition, the court is not inclined at this time, to stay proceedings in the other Paradise Springs subcases.

Dated: May 22, 2012.



BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER ON MOTION FOR RECONSIDERATION was mailed on May 22, 2012, with sufficient first-class postage to the following:

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