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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
FEB 27 2013	
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

Case No. 39576

) Subcase No. 65-23481
)
) ORDER ADOPTING SPECIAL MASTER'S
) RECOMMENDATION IN PART AND
) REJECTING IN PART
)
) ORDER DENYING MOTION TO FILE LATE
) NOTICE OF CLAIM FOR EARLY AND
) LATE SEASON IRRIGATION
)
) ORDER CONDITIONALLY GRANTING
) MOTION TO FILE LATE NOTICE OF
) CLAIM FOR STOCKWATER
)
) ORDER REQUIRING AMENDED NOTICE
) OF CLAIM
)
_____)

I.

PROCEDURAL BACKGROUND

This matter came before the Court pursuant to an *Amended Special Master's Report and Recommendation* filed January 24, 2013. The matter was previously referred to the Special Master on a contested *Motion to File Late Notice of Claim* for "a determination as to whether the elements of the 'good cause' standard for filing a late claim as required by *SRBA Administrative Order 1*, § 4.d.(2)(d) and Idaho Rule of Civil Procedure 55(c) have been met" and to "issue a recommendation . . . as to whether the *Motion* should be granted."

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The Special Master's initial recommendation analyzed the late claim under two separate components: the stockwater claim; and the early and late period of use irrigation claim. The Special Master initially determined that the filing of the early and late period of use portion of the late claim was barred for failure of the claimant, Allen Ranch, LLP ("Claimant"), to have the right adjudicated in the Payette Adjudication. The Special Master reasoned the Payette Adjudication decreed all rights to the Payette River established prior to October 19, 1977. As such, any rights established prior to that date but not adjudicated in the Payette Adjudication were deemed lost under principles of *res judicata* as well as the express language of the Payette Decree. Thereafter, the Claimant filed a *Motion to Alter or Amend the Special Master's Recommendation* asserting this Court's decision in ***Order Conditionally Granting Motion to File Late Notice of Claim; Order Requiring Filing of Amended Claim; Order Requesting Amended Director's Report if Amended Claim is Filed***, Subcases 74-15015 and 74-15861 (Jan 12, 2009) ("*Riggan*"). The Special Master followed the holding in *Riggan* and recommended that the claim be allowed to proceed based on law-of-the-case but recommended that the Court re-evaluate the holding in *Riggan*.

II.

STANDARD OF REVIEW

A district court is required to adopt a special master's findings of fact unless they are clearly erroneous. I.R.C.P. 53(e)(2); *Rodriguez v. Oakley Valley Stone, Inc.*, 120 Idaho 370, 377, 816 P.2d 326, 333 (1991). In determining whether findings of fact are clearly erroneous, a reviewing court "inquires whether the findings of fact are supported by substantial and competent evidence." *Gill v. Viebrock*, 125 Idaho 948, 951, 877 P.2d 919, 922 (1994). The party challenging the findings of fact has the burden of showing error, and a reviewing court will review the evidence in the light most favorable to the prevailing party. *SRBA Springs & Fountains Memorandum Decision & Order on Challenge*, Subcase No. 67-13701 (July 28, 2006), p. 18.

The special master's conclusions of law, however, are not binding upon a reviewing court, although they are expected to be persuasive. *Higley v. Woodard*, 124 Idaho 531, 534, 861 P.2d 101, 104 (Ct. App. 1993). This permits the district court to adopt the master's conclusions

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of law only to the extent they correctly state the law. *Id.* Accordingly, a reviewing court's standard of review of the special master's conclusions of law is one of free review. *Id.*

III. ANALYSIS

1. The holding in *Riggan* was in error.

Riggan involved a similar set of facts concerning the preclusive effect of the Lemhi Decree. The Lemhi Adjudication was a general adjudication. On December 30, 1982, a ***Partial Decree*** was entered in Lemhi County Civil Case No. 4948 incorporating a *Stipulation Resolving General Objections* dated February 11, 1982 and *Proposed Findings of Water Rights (Findings of Fact, Conclusions of Law and Decree of Water Rights)* dated February 12, 1982. A *Minute Entry Order* ruling that the earlier ***Partial Decree*** “shall be considered a final decree in this matter” was entered in that case on October 14, 1992. On May 25, 2004, the SRBA Court ruled that the ***Partial Decree*** and *Minute Entry Order* “would have the same legal effect in the SRBA as other prior decrees addressed in the SRBA.” *Order Re: In the Matter of the General Determination of the Right to the Use of Surface Waters and Tributaries from Whatever Source of the Lemhi River Drainage Basin (Lemhi Adjudication)* (May 25, 2004).

The *Proposed Findings of Water Rights (Findings of Fact, Conclusions of Law and Decree of Water Rights)* entered in the Lemhi Decree defined beneficial use surface claims as those claims perfected under the constitutional method of appropriation prior to May 20, 1971. The Court concluded that Mr. Riggan was therefore barred from claiming a beneficial use surface water right in the SRBA with a priority date earlier than May 20, 1971. The Court recognized however, that due to this definition, it would be possible to establish a post- May 20, 1971, beneficial use surface right provided the priority was earlier than July 1, 1971, which is the date when the appropriation of surface water through the statutory permit process became mandatory. The Court's holding was based on the reasoning that although the amendments to Idaho Code § 42-201 were adopted March 24, 1971, the amendments did not become effective until July 1, 1971. Consequently, a “window” existed between these two dates in which a beneficial use right could be established.

Although, the Court's ruling was not contested, it was in error in two respects. First, even if a "window" existed for the filing of a beneficial use claim, the claim would still have had to be confirmed in the final judgment, which it was not. The *Proposed Findings of Water Rights (Findings of Fact, Conclusions of Law and Decree of Water Rights)* also provided that:

5. This recommended decree includes all of the existing rights to the waters of the Lemhi River and its tributaries and upon its adoption supersedes all prior judgments of the Court. Any water user who heretofore diverted water from the Lemhi River or its tributaries or who owns lands to which previously established rights were appurtenant and who, upon being joined in this action, failed to claim such water rights has forfeited such rights as provided in Section 42-1411, Idaho Code, subject to the provisions of 42-1405, Idaho Code.

Proposed Findings of Water Rights (Findings of Fact, Conclusions of Law and Decree of Water Rights), ¶ 5 (Feb. 12, 1982) as adopted by *Minute Entry Order* (October 14, 1992). Based on this provision the "window" was irrelevant because any water right with a priority earlier than February 12, 1982, would have still had to be filed and confirmed in the Lemhi Decree.

Similarly, in the instant case, the "window" is also irrelevant. The Payette Decree by its express language decreed all water rights established prior to October 19, 1977, and provided further that such rights having earlier priorities that were not claimed were deemed forfeited. The *Proposed Findings of Water Rights in the Payette River Drainage Basin* (April 26, 1979), as adopted by the *Partial Decree Pursuant to Rule 54(b) I.R.C.P.* entered in Gem County Case No. 3667 on January 21, 1986, provides:

This recommended decree includes all of the rights established before October 19, 1977 to the waters of the Payette River and its tributaries including groundwater, and upon its adoption supersedes all prior judgments of the Court. Any water user who heretofore diverted surface water or groundwater from within the boundaries as described in Exhibit 1, or who owns lands to which previously established rights were appurtenant and who, upon being joined to this action, failed to claim such water rights has forfeited such rights as provided in Section 42-1411, Idaho Code.

Proposed Findings of Water Rights in the Payette River Drainage Basin (April 26, 1979), as adopted by the *Partial Decree Pursuant to Rule 54(b) I.R.C.P.* (January 21, 1986), Conclusion of Law No. 1, p. 173.

Based on this express language, even if the Claimant could establish a beneficial use right between May 20, 1971 and July 1, 1971, the claim would still have had to be claimed in the Payette Adjudication or be deemed forfeited.

2. The Court erred in determining the effective date of the statutory amendments to I.C. § 42-201.

The Court also erred in *Riggan* in its determination that the statutory amendments to Idaho Code § 42-201 became effective July 1, 1971. In this case, the Special Master explained the error as follows:

In the *Riggan* Decision, the SRBA District Court stated that the mandatory permit requirement for appropriating surface water did not become effective until July 1, 1971. As explained below, further research shows the effective date of the 1971 amendment to Idaho Code § 42-201 (eliminating the “beneficial use” method of appropriating a water right) to be May 19, 1971, not July 1, 1971. The starting point in determining when an act of the legislature becomes effective is Article III, Section 22 of the Idaho Constitution, which states:

§ 22. When acts take effect. – No act shall take effect until sixty days from the end of the session at which the same shall have been passed, except in case of emergency, which emergency shall be declared in the preamble or in the body of the law.

Idaho Const., Art. III, Sec. 22. The statutory codification of this Constitutional provision is found in Idaho Code § 67-510. In 1971 the language of the statutory provision was identical to the Constitutional provision. In 1972, the Idaho Legislature amended Idaho Code § 67-510 to state:

67-510. Statutes and Resolutions – When Effective. – No act shall take effect until **July 1 of the year of the regular session** or sixty days from the end of the session at which the same shall have been passed, **whichever date occurs last**, except in case of emergency, which emergency shall be declared in the preamble or in the body of the law.

I.C. § 67-510; Idaho Session Laws, 1972, Ch. 176, p. 444. The statutory amendments making the permit system mandatory for the appropriation of surface water were approved by the Idaho Legislature on March 24, 1971. Idaho Session Laws, 1971, Ch. 177, pp. 843-844. No emergency was declared in the preamble or body of the act. *Id.* The regular session of the Forty-First Idaho Legislature adjourned on March 20, 1971. The sixtieth day after March 20, 1971, was Wednesday, May 19, 1971. Because the amendment to Idaho Code 67-510 was not passed until the following year (1972), the applicable law at the time the

legislature approved the statutory amendments making the permit system mandatory provided that the amendments became effective sixty days from the end of the session, or May 19, 1971. In accordance with the foregoing analysis, it is recommended that the SRBA District Court revisit the issue of when Idaho's permit system became mandatory for the appropriation of surface water.

Amended Special Master's Report and Recommendation at 2-4 (fn omitted).

This Court agrees with and adopts the Special Master's legal analysis. Therefore this Court reverses its holding in *Riggan* and concludes that the subject statutory amendments to Idaho Code § 42-201 became effective May 19, 1971.

Therefore, based on the foregoing, the Claimant has failed to satisfy the standard set forth in *SRBA Administrative Order 1*, § 4.d.(2)(d) and Idaho Rule of Civil Procedure 55(c) by failing to establish a meritorious position in support of the late notice of claim.

IV.

ORDER

Therefore, pursuant to I.R.C.P. 53(e)(2) and *SRBA Administrative Order 1*, Section 13f, this Court adopts the *Amended Special Master's Report and Recommendation* except for the part of the recommendation that the Claimant "be granted leave of court to file a beneficial use claim for the early and late irrigation season with a priority date no earlier than May 20, 1971, and no later than July 1, 1971." For the reasons previously explained, the Court rejects this part of the recommendation on the basis that the Claimant has failed to meet the "meritorious position" standard as required by *SRBA Administrative Order 1*, § 4.d.(2)(d) and Idaho Rule of Civil Procedure 55(c).

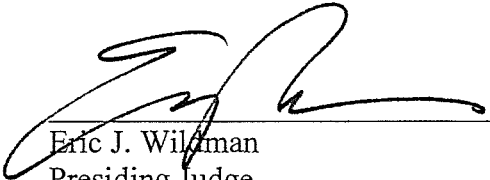
Accordingly, the *Motion to File Late Notice of Claim* as to the early and late irrigation season is DENIED.

The *Motion to File Late Notice of Claim* for stockwater is CONDITIONALLY GRANTED, upon the condition that the claimant file an amended notice of claim therefor consistent with the record herein.

IT IS SO ORDERED

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DATED February 27, 2013.


Eric J. Wilkman
Presiding Judge
Snake River Basin Adjudication

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CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER was mailed on February 27, 2013, with sufficient first-class postage to the following:

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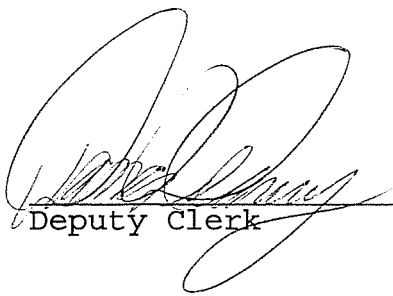
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