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DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho
AUG 30 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	)	Subcase Nos. 29-12049 and 29-12848
	)	
Case No. 39576	)	STATE OF IDAHO'S MEMORANDUM
	)	IN SUPPORT OF THE MOTION
	)	TO AMEND PARAGRAPH
	)	29-12049.X.A AND PARAGRAPH
	)	29-12848.X.A OF THE FORT HALL
	)	CONSENT DECREE

The State of Idaho (the "State"), by and through its counsel of record hereby moves the Court to amend Paragraph 29-12049.x.a and Paragraph 29-12848.x.a of the *Partial Final Consent Decree Determining the Rights of the Shoshone-Bannock Tribes to the Use of Water in the Upper Snake River Basin* ("Fort Hall Consent Decree") to include a list of the water rights that were decreed in *United States v. Daniels* (D. Idaho April 9,

1907) (“Bannock Creek Decree”) and that were subsequently decreed in the Snake River Basin Adjudication (“SRBA”).

The 1990 Fort Hall Indian Water Rights Agreement (“1990 Fort Hall Agreement”) and subsequent Fort Hall Consent Decree provide that the United States and the Tribes will ensure that non-Indian Bannock Creek water users “with water rights decreed in the Bannock Creek Decree [United States v. Daniels (D. Idaho April 9, 1907)]” will continue to “receive their full legal entitlement” under their state-created water rights without regard to senior water rights 29-12049 and 29-12848. This protection extends to those Bannock Creek Decree water rights that are “confirmed in the SRBA.”

The water rights that were decreed in the Bannock Creek Decree were partially decreed in the SRBA. Subsequently, a remark was placed on the Bannock Creek Decree rights that references the protections afforded to the rights by Paragraph 29-12049.x.a and Paragraph 29-12848.x.a for the Fort Hall Consent Decree. The State requests that Paragraph 29-12049.x.a and Paragraph 29-12848.x.a be amended to list the Bannock Creek Decree water rights that were partially decreed in the SRBA and are entitled to the protections of Paragraph 29-12049.x.a and 29-12848.x.a.

Discussion

Paragraph 29-12049.x.a and Paragraph 29-12848.x.a of the Fort Hall Consent Decree contain the following language:

The Tribes and the United States shall exercise this right in a manner that ensures persons with water rights decreed in the Bannock Creek Decree [United States v. Daniels (D. Idaho April 9, 1907)] and that are confirmed in the SRBA continue to receive their full legal entitlement.

When the Court approved the Fort Hall Consent Decree it anticipated that water right numbers 29-12049 and 29-12848 would require action by the Court at a later date. During the hearing approving the Fort Hall Consent Decree, the Court engaged in the following discussion regarding Paragraph 29-12049.x.a and Paragraph 29-12848.x.a:

[THE COURT:] In your opinion would the decrees of those U.S. v. Daniels rights that happens later on require in any way an adjustment of this water right by amending this consent decree?

...

[MR. STRONG:] The only thing that we have been able to ascertain at this point in time is a way to resolve this would be a motion to amend the partial decree once those other rights are decreed, once—it would be towards the end of the adjudication or when we have completed those basins, we could simply then come in and enumerate those particular rights that would fit within this provision and for clarity purposes.

[THE COURT:] So in that sense it seems to me that the parties do intend that this court essentially maintain continuing jurisdiction over those matters which in all likelihood will require some adjustment as noted in the proposed consent decree.

[MR. STRONG:] Your Honor, a mechanism along that line, I think, would be appropriate. Because although it's not going to change the content of the decree, certainly when we get to the end we don't want to have to refer back to old decrees. We'd like to be able to have a self-contained document that enumerates the rights.

Reporters' Transcript, Hearing on the Proposed Consent Decree on 1990 Fort Hall Indian Water Rights Settlement Agreement, pp. 142 ln. 9–13, pp. 143 ln. 1–pp. 144 ln. 10. (July 18, 1995).

Thus, the Court retained jurisdiction to amend Paragraph 29-12049.x.a and Paragraph 29-12848.x.a to include a list of the Bannock Creek Decree water rights that were partially decreed in the SRBA.

The non-Indian water rights in the Bannock Creek Decree that are entitled to the protections of Paragraph 29-12049.x.a and 29-12848.x.a have been partially decreed in the SRBA. *See Affidavit of Carter Fritschle* at 2–3. Therefore, it is now appropriate to amend Paragraph 29-12049.x.a and Paragraph 29-12848.x.a to reflect the list of Bannock Creek Decree water rights that were partially decreed in the SRBA and are entitled to the protections of Paragraph 29-12049.x.a. and Paragraph 29-12848.x.a. The State requests that Paragraph 29-12049.x.a and Paragraph 29-12848.x.a be amended to read as follows.

The Tribes and the United States shall exercise this right in a manner that ensures persons with water rights 29-00476, 29-00477, 29-00480, 29-10990, and 29-13215 decreed in the Bannock Creek Decree [United States v. Daniels (D. Idaho April 9, 1907)] and that are confirmed in the SRBA continue to receive their full legal entitlement under state law.¹

A remark referencing water rights 29-12049 and 29-12848 already appears on the face of the partial decrees for water rights 29-00476, 29-00477, 29-00480, 29-10990, and 29-13215. *See Affidavit of Carter Fritschle* at 2–3. The remark is sufficient to ensure proper administration of these rights. Therefore, the State is not requesting that any additional remarks be added to water right numbers 29-00476, 29-00477, 29-00480, 29-10990, and 29-13215. *Affidavit of Carter Fritschle* at 3.

Conclusion

The Court retained jurisdiction over Paragraph 29-12049x.a and Paragraph 29-12848.x.a so they could be amended to include a list of the Bannock Creek Decree water rights that were partially decreed in the SRBA that are entitled to the protections of Paragraph 29-12049.x.a and Paragraph 29-12848.x.a. Therefore, the State requests Paragraph 29-12049.x.a and Paragraph 29-12848.x.a be amended to reflect the list of

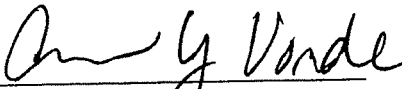
¹ The language “under state law” does not appear in Paragraph 29-12049.x.a and 29-12848.x.a of the Consent Decree. It was added to make these paragraphs consistent with the language used in Paragraph 27-11375.x.d and Paragraph 29-12052.x.c of the Fort Hall Consent Decree.

Bannock Creek Decree water rights that were partially decreed in the SRBA that are entitled to the protections of Paragraph 29-12049.x.a and Paragraph 29-12848.x.a of the Fort Hall Consent Decree.

Respectfully submitted this 29th day of August 2013.

LAWRENCE WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division



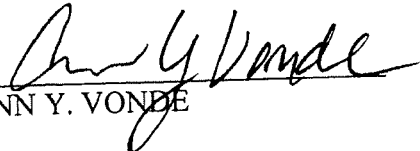
ANN Y. VONDE
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of August, 2013, the above STATE OF IDAHO'S MEMORANDUM IN SUPPORT OF THE MOTION TO AMEND PARAGRAPH 29-12049.X.A AND PARAGRAPH 29-12848.X.A OF THE FORT HALL CONSENT DECREE was served on the persons below in the manner indicated:

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