

RECEIVED
MAY 22 2014
DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
MAY 21 2014	
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 Nos. 65-2324 and 65-5452
)
) ORDER SETTING ASIDE
) DISALLOWAL OF UNCLAIMED
) WATER RIGHTS
)
) ORDER GRANTING MOTIONS TO
) FILE LATE NOTICE OF CLAIM
)
) ORDER FOR EXPEDITED LATE
) CLAIM DIRECTOR'S REPORT AND
) SETTING FORTH PROCEDURES AND
) DEADLINES FOR EXPEDITED
) PROCESS

I.

PROCEDURAL BACKGROUND

1. On January 31, 2012, this Court entered its *Order Establishing Deadline for Late Claim Filings* in basin 65 ("*Deadline Order*").¹ It directed that except for *de minimis* domestic and stockwater uses and late claims required to resolve litigation pending in the SRBA, the last date to file a *Motion to File Late Claim* in basin 65 "shall be March 30, 2012."

2. The Court subsequently entered an *Order Closing Claims Taking* in basin 65, closing the basin to the filing of late claims in accordance with the *Deadline Order* ("*Closure Order*").² The *Closure Order* also disallowed certain unclaimed water rights, including the above-captioned water rights.

¹ *Order Establishing Deadline for Late Claim Filings in Basins 21, 22, 29, 32, 33, 65, 67, 69, 71, 72, 73, 74, 75, 77, 78 and 79*, SRBA main case no. 39576, SRBA subcase no. 00-92099 (Jan. 31, 2012)

² *Order Closing Claims Taking Basins 21, 22, 29, 32, 33, 65, 67, 69, 71, 72, 73, 74, 75, 77, 78 and 79, and Disallowal of Unclaimed Water Rights*, SRBA main case no. 39576, SRBA subcase no. 00-92099 (April 25, 2012).

3. On February 21, 2014, Monty Pearce (“Pearce”) filed a *Motion to File Late Notice of Claim* in the above-captioned subcases.

4. Water right claim 65-2324 asserts the right to divert 3.8 cfs from Lateral B. Drain District No. One, tributary to Main Drain District No. One, for the irrigation of 188 acres. The claim is based on a prior decree, specifically the Payette Decree, and seeks a priority date of July 16, 1924.

5. Water right claim 65-5452 asserts the right to divert 1.94 cfs from Lateral B. Drain District No. One, tributary to Main Drain District No. One, for the irrigation of 97 acres. The claim is based on a prior decree, specifically the Payette Decree, and seeks a priority date of April 4, 1931.

6. A hearing on the *Motions* was held on May 20, 2014. 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 May 21, 2014.

II. ANALYSIS

Recognizing that the taking of claims in basin 65 must at some point come to an end, this Court closed the basin to the filing of late claims as of March 30, 2012. *See infra*, *Deadline Order* and *Closure Order*. The only exceptions are: (1) late claims for deferrable *de minimis* domestic and stockwater uses; and (2) late claims required to resolve litigation pending in the SRBA at the time of basin closure. *Id.* Pearce’s *Motions* were filed on February 21, 2014, and they do not fall into one of the two recognized exceptions to the *Deadline* and *Closure Orders*.³ However, Pearce argues that this Court’s *Order* disallowing the above-captioned water rights, as well as the *Closure Order* in basin 65 should be set aside to allow for the filing of the instant late claims under the circumstances presented here. Specifically, he asserts that he was not afforded proper notice of the need to file these claims in the Snake River Basin Adjudication (“SRBA”).

³ The *Deadline* and *Closure Orders* provided a claims taking deadline of March 30, 2012 “except for *de minimis* domestic and stockwater uses and late claims required to resolve pending litigation on the date of this *Order* in the SRBA.” *Deadline Order*, p.4; *Closure Order*, p.3. The term “pending litigation” was further defined to mean “an active, related subcase(s) pending at the time of the basin closure deadline wherein an additional late claim(s) is required to resolve the related water right(s).” *Id.*

When a general adjudication is commenced, the Director of the Idaho Department of Water Resources (“IDWR”) is required under Idaho law to serve notice of the adjudication commencement. I.C. § 42-1408. The adjudication statutes contemplate two rounds of service. First round service is to occur upon entry of a district court’s order commencing a general adjudication. I.C. §§ 42-1408(1) & (2). Second round service is to occur “[u]pon expiration of the period for filing notices of claims.” I.C. § 42-1408(4). On January 14, 2000, this Court entered a *Second Amended Second Round Service Order* in SRBA main case no. 39576, setting forth the method of second round service for certain basins, including basin 65. That *Order* required IDWR to identify unclaimed water rights and potential claimants in basin 65 by, among other things, a comparison of IDWR’s water right data base against claims already filed in the SRBA.

In this case, it is undisputed that neither Pearce nor his predecessor-in-interest received second round service.⁴ The *Affidavit of Danni M. Smith Re: Service of Second Round Service of Commencement Notice – Basin 65, Parts I, II & III* filed in June 8, 2001 in SRBA main case no. 39576 (“*Smith Aff.*”) lists each person in basin 65 to receive second round service.⁵ Neither Pearce nor his predecessor-in-interest is listed as having received second round service in the *Smith Aff.* Furthermore, the *Affidavit of Carter Fritschle Regarding 2nd Round Service of Commencement Notice – Payette County* (“*Fritschle Aff.*”), filed in the above-captioned matter on February 21, 2014, provides in part as follows:

I have reviewed the Department’s records of service of the notice of the commencement of the Snake River Basin Adjudication in Basin 65. The Department’s records show that first round notice was served on Monty and Merry Pearce but that second round service was not served on Monty and Merry Pearce for unclaimed water rights 65-2324 and 65-5452.

Fritschle Aff., ¶7.⁶ There is no conflicting evidence before the Court that Pearce or his predecessor-in-interest received second round service. Therefore, the Court finds that since

⁴ Although Pearce acquired the real property to which these water right claims pertain in 1984, he has not filed a *Notice of Change in Water Right Ownership* with IDWR. Therefore, IDWR’s records show the current owner of the above-captioned water rights as Dannie Naegle, Jessie Naegle and Leonard Naegle. The Naegles are predecessors-in-interest to Pearce.

⁵ At the time of filing, Danni M. Smith was the administrative assistant 1 for the adjudication bureau of IDWR. *Smith Aff.*, ¶1.

⁶ At the time of filing, Carter Fritschle was the manager of the adjudication section of IDWR.

Pearce held two water rights of record which had not been claimed in the SRBA, Pearce should have received second round service notifying him of the requirement to file those claims in the SRBA. Given that no second round service was given, the Court finds that Pearce has set forth sufficient grounds, and unique and compelling circumstances, justifying the setting aside of the *Order* disallowing the above-captioned water rights, as well as the *Order* closing claims taking in basin 65 pursuant to Idaho Rule of Civil Procedure 60(b)(6).

III.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the disallowal of the above-captioned water rights in this Court's *Order Closing Claims Taking Basins 21, 22, 29, 32, 33, 65, 67, 69, 71, 72, 73, 74, 75, 77, 78 and 79 and Disallowal of Unclaimed Water Rights* dated April 25, 2012, **is hereby set aside**.

IT IS HEREBY FURTHER ORDERED that this Court's *Order Closing Claims Taking Basins 21, 22, 29, 32, 33, 65, 67, 69, 71, 72, 73, 74, 75, 77, 78 and 79 and Disallowal of Unclaimed Water Rights* dated April 25, 2012, **is hereby set aside** for the limited purpose of allowing for the filing of the instant *Motions to File Late Notice of Claim*.

IT IS HEREBY FURTHER ORDERED that the *Motions to File a Late Notice of Claim* for the above-captioned water right claims are **granted**.

IT IS HEREBY FURTHER ORDERED that the Director issue an expedited *Late Claim Director's Report* for the above-captioned water right claims, and that the parties abide by the following schedule with respect to the late claims:

1. Deadline for filing *Late Claim Director's Report*: The Director shall file an original of the *Late Claim Director's Report* for the above-captioned water right claim with this Court on or before **June 30, 2014**, and shall distribute for display and review at least one (1) copy of the *Late Claim Director's Report* to the office of the clerk of the district court for each county in which any part of the water system is located, together with a copy of this **Order**. The Director shall also serve on each claimant or the claimant's attorney a notice of filing of the *Late Claim Director's Report*. Last, the Director shall file with the Court an affidavit demonstrating compliance with the notice requirements of Idaho Code § 42-1411(6).

2. Deadline for the filing of objections to *Late Claim Director's Report*: Any party wishing to file an objection to the *Late Claim Director's Report* may do so on or before **July 31, 2014**.

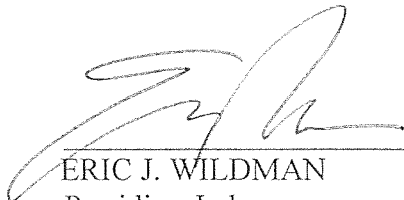
3. Deadline for the filing of responses to objections to *Late Claim Director's Report*: Responses to objections to the *Late Claim Director's Report* must be filed on or before **August 15, 2014**.

4. Hearing on uncontested claim: In the event no objections are filed, the Court will hold a hearing on the entry of the *Partial Decree* as required by I.C. § 42- 1412(7). **NOTICE IS HEREBY GIVEN** that the hearing will be held on **August 19, 2014, at 1:30 p.m. (Mountain Time)**, at the **Snake River Basin Adjudication District Court, 253 - 3rd Avenue North, Twin Falls, Idaho**. Parties may participate by telephone by dialing the number 1-215-446-0193 and when prompted entering code 406128#.

5. Publication of Notice: The clerk of the court is instructed to publish a notice of the issuance of this order, together with the applicable objection, response and hearing date, on the June 2014 docket sheet.

IT IS SO ORDERED.

Dated May 21, 2014

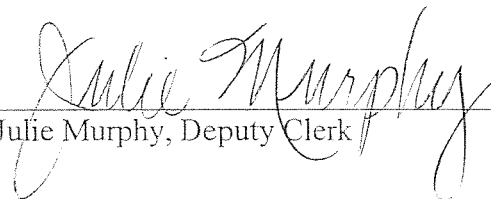

ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I hereby certify that true and correct copies of the **ORDER SETTING ASIDE
DISALLOWAL OF UNCLAIMED WATER RIGHTS / ORDER GRANTING MOTIONS
TO FILE LATE NOTICE OF CLAIM / ORDER FOR EXPEDITED LATE CLAIM
DIRECTOR'S REPORT AND SETTING FORTH PROCEDURES AND DEADLINES
FOR EXPEDITED PROCESS**, were mailed on May 21, 2014, by first-class mail to the
following:

DIRECTOR OF IDWR
PO Box 83720
Boise, ID 83720-0098

Monty J. Pearce
2001 County Line Rd
New Plymouth, ID 83655


Julie Murphy, Deputy Clerk