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AUG 14 2014
DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho
AUG 13 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. 21-94C, 21-96C, 21-97D, 21-
-) 2038 and 21-2062
-)
-) ORDER SETTING ASIDE
-) DISALLOWAL OF UNCLAIMED
-) WATER RIGHTS FOR WATER RIGHT
-) CLAIMS 21-2038 AND 21-2062
-)
-) ORDER GRANTING MOTION 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 21 ("*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 21 "shall be March 30, 2012."

2. The Court subsequently entered an *Order Closing Claims Taking* in basin 21, closing the basin to the filing of late claims in accordance with the *Deadline Order* ("*Closure*

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)

Order”).² The *Closure Order* also disallowed certain unclaimed water rights, including water right claims 21-2038 and 21-2062.

3. On July 16, 2014, Michael Moedl filed a *Motion to Set Aside* and *Motion to File Late Notice of Claim* in the above-captioned subcases.

4. Water right claim 21-94C is a surface water claim for the diversion of 1.0 cfs from Rock Creek tributary to Duck Creek for the irrigation of 130 acres. The claim is based on a prior decree. The claimed priority date is June 1, 1886.

5. Water right claim 21-96C is a surface water claim for the diversion of 1.25 cfs from Rock Creek tributary to Duck Creek for the irrigation of 130 acres. The claim is based on a prior decree. The claimed priority date is June 8, 1893.

6. Water right claim 21-97D is a surface water claim for the diversion of 0.5 cfs from Rock Creek tributary to Duck Creek for the irrigation of 130 acres. The claim is based on a prior decree. The claimed priority date is June 1, 1895.

7. Water right claim 21-2038 is a surface water claim for the diversion of 1.9 cfs from Hope Creek tributary to Henrys Lake for the irrigation of 85 acres. The claim is based on a license. The claimed priority date is November 11, 1911.

8. Water right claim 21-2062 is a surface water claim for the diversion of 1.0 cfs from Hope Creek tributary to Henrys Lake for the irrigation of 50 acres. The claim is based on a license. The claimed priority date is March 27, 1915.

9. A hearing on the *Motions* was held on August 12, 2014. After reviewing the files and for the reasons set forth on the record, the Court granted the *Motion to Set Aside* pursuant to Idaho Rule of Civil Procedure 60(b)(6) and the *Motion to File Late Notice of Claim* pursuant to Idaho Rule of Civil Procedure 55(c).

II.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the disallowal of water right claims 21-2038 and 21-2062 in this Court’s *Order Closing Claims Taking Basins 21, 22, 29, 32, 33, 65, 67,*

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).

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 *Motion to File Late Notice of Claim*.

IT IS HEREBY FURTHER ORDERED that the *Motion to File a Late Notice of Claim* for the above-captioned water right claims is **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 **September 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 **October 31, 2014**.

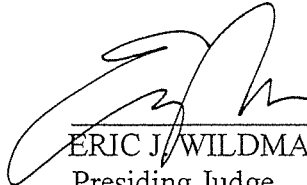
3. Deadline for the filing of responses to objections to *Late Claim Director's Report*: Responses to objections to the *Late Claim Director's Report* must be filed on or before **November 14, 2014**.

4. Hearing on uncontested claim: In the event no objections are filed, the Court will hold a hearing on the entry of the ***Partial Decrees*** as required by I.C. § 42-1412(7). **NOTICE IS HEREBY GIVEN** that the hearing will be held on **November 18, 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 September 2014 docket sheet.

IT IS SO ORDERED.

Dated August 12, 2014



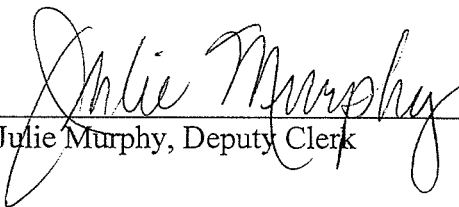
ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I hereby certify that true and correct copies of the **ORDER SETTING ASIDE
DISALLOWAL OF UNCLAIMED WATER RIGHTS FOR WATER RIGHT CLAIMS
21-2038 AND 21-2062 / ORDER GRANTING MOTION 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 August 13, 2014, by first-class mail to the following:

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

Michael Bryan Moedl
Represented by:
Jerry R. Rigby
PO Box 250
Rexburg, ID 83440-0250


Julie Murphy, Deputy Clerk