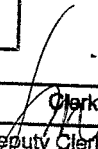


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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
JAN - 9 2015	
By _____	
	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: 01-10614, 01-10615, 01-10616, 01-
) 10617, 01-10618, 01-10620, 01-10621, 01-10622,
) 01-10623, 63-33732, 63-33733, 63-33737 and 63-
) 33738.
)
) **ORDER GRANTING IN PART AND**
) **DENYING IN PART MOTION FOR**
) **SUMMARY JUDGMENT**
)
)
)
)

I.

PROCEDURAL BACKGROUND

1. Before the Court is a *Motion for Summary Judgment* filed by the State of Idaho in the above-captioned subcases. The subcases concern beneficial use claims for storage water rights in various reservoirs located throughout the Snake River Basin.

2. Claim numbers 01-10614, 01-10615, 01-10616, 01-10617 and 01-10618 were filed by members of the Surface Water Coalition.¹ They seek the right to divert water from the Snake River for irrigation storage and irrigation from storage purposes associated with Jackson Lake, Palisades, Minidoka and American Falls Reservoirs. The State's *Motion* requests that these claims be decreed disallowed as a matter of law.

3. Claim numbers 63-33737 and 63-33738 were filed by the Boise Project Board of Control. They seek the right to divert water from the Boise River for irrigation storage purposes

¹ The term "Surface Water Coalition" as used herein refers collectively to the following claimants: American Falls Reservoir District #1, American Falls Reservoir District #2, A&B Irrigation District, Burley Irrigation District, Hillside Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company and Twin Falls Canal Company.

associated with Arrowrock and Anderson Ranch Reservoirs. The State's *Motion* requests that these claims be decreed disallowed as a matter of law.

4. Claim numbers 01-10620, 01-10621, 01-10622, 01-10623 were filed by the United States Bureau of Reclamation ("United States"). They seek the right to divert water from the Snake River for irrigation storage and irrigation from storage purposes associated with Jackson Lake, Palisades, Minidoka and American Falls Reservoirs.² Although the State filed its *Motion* in these subcases, it does not seek the disallowal of these claims.

5. Claim numbers 63-33732 and 63-33733 were filed by the United States. They seek the right to divert water from the Boise River for irrigation storage and irrigation from storage purposes associated with Arrowrock and Anderson Ranch Reservoirs.³ Although the State filed its *Motion* in these subcases, it does not seek the disallowal of these claims.

6. On December 9, 2014, the Director filed his *Director's Report for Late Claims* ("*Director's Report*"), which included his recommendations that all of the above-captioned claims be decreed disallowed. *Objections* to the Director's recommendations were subsequently filed by the respective claimants.

7. On October 10, 2014, the State of Idaho filed its *Motion for Summary Judgment*. Responses in support of the *Motion* were filed by the United States and United Water Idaho, Inc. Responses in opposition to the *Motion* were filed by the Surface Water Coalition as well as the Boise Project Board of Control (collectively, "Irrigation Entities"). Reply briefs were filed by the United States, the State and United Water.

8. A hearing on the *Motion* was held before this Court on December 17, 2014. The parties did not request the opportunity to submit additional briefing nor does the Court require any. Therefore, this matter is deemed fully submitted for decision on the next business day or December 18, 2014.

² The United States' claims associated with American Falls and Palisades Reservoirs also claim additional purposes of use for power storage and power from storage.

³ The United States' claim associated with Anderson Ranch Dam Reservoir also claims additional purposes of use for industrial storage, industrial from storage, power storage, power from storage, municipal storage and municipal from storage.

II. ANALYSIS

A. Standard of review.

Summary judgment is proper if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. I.R.C.P. 56. The burden of demonstrating the absence of a genuine issue of material fact is on the moving party. *Id.* When a court considers a motion for summary judgment, all facts are to be liberally construed in favor of the nonmoving party, and the court must draw all reasonable inferences and conclusions in that party's favor. *G & M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 517, 808 P.2d 851, 854 (1991). However, when an action will be tried before the court without a jury, the trial court as the trier of fact is entitled to arrive at the most probable inferences based upon the undisputed evidence properly before it and grant summary judgment despite the possibility of conflicting inferences. *P.O. Ventures, Inc. v. Loucks Family Irrevocable Trust*, 144 Idaho 233, 237, 159 P.3d 870, 874 (2007).

B. The State's *Motion* is granted in part and denied in part.

The State argues that the storage water right claims filed by the Irrigation Entities in this matter must be decreed disallowed as a matter of law. The State's argument is based on the Idaho Supreme Court's analysis in *United States v. Pioneer Irr. Dist.*, 144 Idaho 106, 157 P.3d 600 (2007) ("*Pioneer*"). In *Pioneer*, the United States filed water right claims in the SRBA for storage rights associated with Arrowrock, Lucky Peak and Anderson Ranch Reservoirs. *Id.* at 108, 157 P.3d at 602. Various irrigation entities filed separate claims to the same water rights. *Id.* Those entities were the holders of contracts with the United States for the storage and delivery of water from the subject reservoirs for irrigation purposes. *Id.* The issue before the Court was the respective ownership interests of the United States and the various irrigation entities in the subject water rights. *Id.* It was the United States' position that "the irrigation districts [did] not have an ownership interest" in the disputed water rights. *Id.* at 114, 157 P.3d at 608. The Supreme Court disagreed. It directed that while the name of the United States would appear in the name and address sections of the subject partial decrees, those decrees should also include a remark memorializing the fact that "title to the use of the water is held by the

consumers or users of the water.” *Id.* at 115, 157 P.3d at 609. On remand, this Court entered partial decrees for the disputed rights in the name of the United States, included in those decrees the remark set forth by the Supreme Court, and entered an order disallowing the claims filed by the various irrigation entities.⁴

As suggested by the State of Idaho, this matter shares some similarities with *Pioneer*. Both involve competing water right claims filed by the United States and various irrigation entities to water stored in Reclamation Act storage facilities. In both matters, the subject storage facilities are managed and operated by the United States. In both matters, the United States does not beneficially use the storage water for irrigation, rather irrigation entity members do. In both matters, the irrigation entities involved hold contracts with the United States for the storage and delivery of water from the subject reservoirs for irrigation purposes. Last, while not identical, the claims of the United States and the Irrigation Entities here, as in *Pioneer*, essentially claim the same water based on the same historic use.

If the claimants establish the existence and the elements of the claims at issue here, the Court agrees with the State of Idaho that *Pioneer* is controlling with respect to the memorialization of the respective ownership interests of the parties involved. As between each set of competing storage water right claims filed by the United States and the Irrigation Entities in this matter, only one partial decree will issue. With respect to the memorialization of the parties’ respective ownership interests, *Pioneer* dictates that the United States will appear in the name and address section of the partial decree, accompanied by the standard *Pioneer* remark evidencing the ownership interests of the consumers or users of the water.

That said, the Court disagrees that claims filed by the Irrigation Entities in this matter must be decreed disallowed as a matter of law on summary judgment. The procedural posture of this matter differs significantly from that of *Pioneer*. The competing claims in *Pioneer* were based on previously issued licenses. As such, there was no question as to the fundamental existence or historic perfection of the water rights at issue. Through the statutory permitting and licensing process, the fact that water had previously been diverted and put to beneficial use under the subject water rights had already been established administratively by the time the claims were filed in the SRBA. In fact, the Director recommended that the water rights at issue in

⁴ *Order Disallowing With Prejudice All Claims Filed by Irrigation Entities Under Consolidated Subcase 91-61, SRBA Subcase Nos. 63-303A, et al.* (June 23, 2007).

Pioneer be partially decreed in the name of the United States based on those prior licenses. Thus, the issue in *Pioneer* was not the existence or validity of the disputed water rights, but rather how to memorialize the respective ownership interests of the parties.

In this matter, by contrast, the very validity and existence of the above-captioned water rights are at dispute and before the Court. The competing claims of the United States and the Irrigation Entities are based on historic beneficial use. The Director, following his independent examination of the above-captioned claims, determined to recommend that all of the claims be decreed disallowed. Under Idaho Code § 42-1411(5), the burden now rests with the claimants to come forward with evidence to rebut the Director's recommendations, and establish the existence of the rights under the constitutional method of appropriation. To do so, the claimants must establish the two essentials for obtaining a water right under the constitutional method – diversion and application of the water to a beneficial use. *See e.g., Joyce Livestock Co. v. U.S.*, 144 Idaho 1, 8, 156 P.3d 502, 509 (2007) (providing an appropriation under the constitutional method begins with the diversion of water, and “is completed upon the application of the water to the beneficial use for which the water is appropriated”).

Establishing storage water rights in federal Reclamation Act storage facilities under the constitutional method presents unique obstacles. The perfection of such a water right requires the cooperative efforts of both the United States, who diverts the water into its storage facility, and the irrigation entities and their members who put the water to beneficial use.⁵ Each plays a vital and distinct role in establishing the essential elements of the appropriation. Therefore, given the procedural posture of this matter, this Court is not prepared to decree disallowed the claims of the Irrigation Entities. With respect to each set of competing claims, both the United States and the Irrigation Entities may proceed as co-claimants and present evidence at trial in an effort to rebut the Director's recommendations that the claims be decreed disallowed. This Court, in a separate order, will refer the above-captioned subcases to the appropriate Special Master for further proceedings. In that order, the Court will direct that the competing claims of the United States and the Irrigation Entities associated with each respective reservoir proceed in a consolidated fashion. In each consolidated proceeding both the United States and applicable

⁵ Under Idaho law “[i]rrigation districts act as trustees for the landowners managing the water right, and standing in place of the landowners in cases involving the appropriation of water.” *Pioneer*, 144 Idaho at 114, 157 P.3d at 608 (citing, I.C. § 43-316).

Irrigation Entities will proceed as co-claimants, with the understanding that if the claimants establish the existence of a water right only one partial decree for that right will issue.

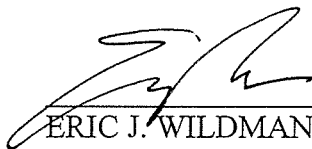
In sum, for the reasons set forth above, the State of Idaho's summary judgment is granted in part and denied in part. The State's *Motion* is granted to the extent it asserts that *Pioneer* is controlling with respect to the memorialization of the respective ownership interests of the parties involved should water rights for the above-captioned claims be established through the SRBA process. If so established, as between each set of competing storage water right claims filed by the United States and the Irrigation Entities, only one partial decree will issue. *Pioneer* dictates that the United States will appear in the name and address section of the partial decree, accompanied by the standard *Pioneer* remark evidencing the ownership interests of the consumers or users of the water. The State's *Motion* is denied with respect to its request that this Court decree as disallowed the claims filed by the Irrigation Entities.

III.

ORDER

Therefore, IT IS ORDERED that the State of Idaho's *Motion for Summary Judgment* is granted in part and denied in part consistent with this *Order*.

Dated January 9, 2015



ERIC J. WILDMAN
District Judge

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR SUMMARY JUDGMENT was mailed on January 09, 2015, with sufficient first-class postage to the following:

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