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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - CSRBA Fifth Judicial District County of Twin Falls - State of Idaho	
OCT - 6 2016	
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 CSRBA	)	Water Right 92-10502
	)	
Case No. 49576	)	SPECIAL MASTER'S REPORT AND
	)	RECOMMENDATION; FINDINGS OF FACT
_____	)	AND CONCLUSIONS OF LAW

I. PROCEDURAL BACKGROUND

The Claimants of this water right are Jeffrey Baker, William Ross, and Douglas and Darcy McInturff. The claims are based on license 92-7090. (IDWR renumbered the first claim 92-10502; the subcase has proceeded under that number.) The parties filed competing claims for the same water use. This water right was initiated with an Application for Permit filed by St. Maries Wild Rice Growers. The license was eventually issued in 1992 to St. Maries Wild Rice Inc. In 1995, Transfer 4547 changed ownership from St. Maries Wild Rice, Inc. to Jeffrey Baker. After IDWR investigated all three claims, it was unable to determine which Claimant had exclusive ownership of the right. Therefore, IDWR recommended all Claimants as co-owners in the *Director's Report* for 92-7090. The McInturffs claim exclusive ownership of this water right. Mr. Baker and Mr. Ross claim ownership based on the proportion of their ownership of the place of use. Mr. Baker's claim also has a basis in Transfer 4547.

The McInturffs grow wild rice in northern Idaho. They base their claim to the license on a contract they entered into in 2001 to purchase a wild rice business. The 2001 contract was to buy a wild rice business from Alexander and Judith Bruner. The terms of the contract were to include equipment, leases, water rights, and other items owned by the Bruners. This contract and a Change of Ownership processed by IDWR are the basis of the McInturffs' claim to the water right.

The land on which this water right is used is not owned by the McInturffs. The land is owned by Jeffrey Baker and William Ross. Mr. Baker and Mr. Ross filed competing claims for the water right. The claims by Mr. Baker and Mr. Ross are based in part on their ownership of the place of use. Mr. Baker's claim also has a basis in a Transfer subject to legal notice and the licensing process established by state law.

A *Director's Report* for this right was filed December 29, 2014. The *Director's Report* recommended all of the Claimants as co-owners of the right. Therefore, Douglas and Darcy McInturff, William Ross and Jeffrey Baker were recommended as co-owners of this water right.

A trial on this water right was held in Coeur d'Alene on August 3, 2016. The McInturffs and Mr. Baker and Mr. Ross attended the trial, called witnesses, and offered exhibits.

II. STANDARD OF REVIEW

A. Director's Reports

In the SRBA and now in the CSRBA, Director's Reports of water claims are *prima facie* evidence of the nature and extent of a water right. I.C. § 42-1411(4); *Clear Springs Foods, Inc. v. Clear Lakes Trout Co.*, 136 Idaho 761, 764, 40 P.3d 119, 122 (2002). The objecting party has the "burden of going forward" with evidence to establish any element which is inconsistent with the description in the Director's Report.

"Any party filing an objection to any portion of the director's report shall have the burden of going forward with the evidence to rebut the director's report as to all issues raised by the objection." *State v. Hagerman Water Right Owners*, 130 Idaho 736, 742 (1997)(quoting I.C. § 42-1411(5)).

Therefore, the Director's Report is *prima facie* evidence of the nature and extent of this water right until the presumption afforded the Director's Report is rebutted. The burden of going forward with evidence to rebut the Director's Report is placed on the Objectors to provide evidence why the elements of the water right should not be as recommended in the Director's Report.

B. Collateral Attack on Licenses

The SRBA Court has long held that licenses duly issued by the Idaho Department of Water Resources cannot be collaterally attacked. "If a party is aggrieved by any aspect of a license, that party's remedy is to seek an administrative review and then, if necessary, a judicial

review of the license. I.C. §§ 42-1701(A) and 76-5270; *Hardy v. Higginson*, 123 Idaho 485, 849 P.2d 946. If the license is not appealed when issued, any attempt to appeal the license in a subsequent judicial proceeding, like the SRBA, would constitute a collateral attack on the license. See e.g., *Mosman v. Mathison*, 90 Idaho 76, 408 P.2d 450 (1965); *Bone v. City of Lewiston*, 107 Idaho 844, 693 P.2d 1046 (1984).” ***Supplemental Findings of Fact and Conclusions of Law*** (Facility Volume) (Subcases 36-2048 et.al.) (July 31, 1998) at 11 – 12.

In the Facility Volume case, the Special Master held that the Claimant was bound by the licenses for the rights at issue because Claimant did not appeal the remarks during the licensing proceedings. The Court said that once a license is issued by IDWR, “any attempt to redefine a license would be ‘tantamount’ to altering a real property right.” *Id.* At 11; Idaho Code § 42-220. In other words, if a licensee fails to appeal the condition of a license when the license is issued, the licensee has no judicial remedy. ***Order Granting Motion to Alter or Amend; Amended Findings of Fact and Conclusions of Law and Recommendation*** (Subcase 36-8099)(Aug. 20, 1999) at 3.

Based on long-standing case law about the effect of licenses, if an Objector disputes an element of a water right that was decided in a license, there would ordinarily be no remedy. The reason is that disputes about the elements of the water right were required to be brought during the licensing proceedings. Transfers and the changes made during transfer proceedings are treated the same as licenses for purposes of collateral attack.

III. ISSUES

IDWR recommended this right to the McInturffs, Mr. Baker and Mr. Ross as co-owners. (IDWR Ex. 1; IDWR Ex. 3) All of the parties dispute the co-ownership recommended in the *Director’s Report*. None of the other elements of this water right is in dispute. The basis of the claims is License no. 92-7090.

The *Supplemental Director’s Report* confirms that IDWR received three separate claims for water right 92-7090. The *Supplemental Director’s Report* states that “[a]fter investigation of the claim, IDWR was unable to make a determination which, or if any, of the claimants had exclusive ownership of the water right.” (Ex. 3 at 1). Since IDWR could not determine which of the claimants had exclusive ownership of the water right, “IDWR listed as owners, in a single

recommendation, all of the claimants on the three separate claims filed for water right 92-7090.”
Id.

To answer the ownership question, the primary issues are:

- 1) Is there evidence that the claimants shared ownership of this license or water right?
- 2) Does ownership of the place of use determine ownership of the license?
- 3) Since this right is based on license 92-7090, who owned the license?
- 4) When IDWR approved Transfer 4547, did ownership of the license change?
- 5) When Al and Judith Bruner entered into the 2001 contract, did they own license 92-7090?
- 6) Did the 2001 contract transfer ownership of license 92-7090?
- 7) Was the 2005 Change of Ownership from the Bruners to the McInturffs valid?

IV. DISCUSSION

A. Duplicate Claims

IDWR received three separate claims for water right 92-7090. Jeffrey Baker filed a claim for 92-7090 on November 10, 2009. IDWR renumbered Mr. Baker’s claim 92-10502. (Testimony of Chad Goodwin) (IDWR Ex. 26). Douglas and Darcy McInturff filed a claim June 6, 2011. (IDWR Ex. 27). That claim was numbered 92-10503. William H. Ross filed a claim on April 23, 2014. IDWR numbered Mr. Ross’s claim 92-10925. (IDWR Ex. 31). All three claims were understood to be requesting all or a portion of the water right from License 92-7090. Mr. Baker and Mr. Ross each own a portion of the land described as the place of use for the license. The *Supplemental Director’s Report* explained that IDWR was unable to determine who owned the water right. Therefore, “IDWR listed as owners, in a single recommendation, all of the claimants on the three separate claims filed for water right 92-7090.” *Id.*

The McInturffs’ claim is based on the license and a contract entered into in 2001. The McInturffs do not own the place of use described in the license.

The land described in the place of use is owned by Mr. Baker and Mr. Ross. Mr. Ross’s claim is based primarily on his ownership of part of the place of use. Mr. Baker’s claim is based on his ownership interest in the place of use, and on Transfer 4547.

B. The Director's Report

The Idaho Department of Water Resources issued a *Director's Report* and a *Supplemental Director's Report* for this water right. Prior to filing the *Director's Report*, IDWR reviewed many documents provided by the Claimants showing their connection to this water right. (Testimony of Chad Goodwin). The Claimants provided documents in support of their theory of ownership. However, IDWR had difficulty determining which owners had the best legal basis. IDWR could not determine which of the claims was valid. "After investigation of the claim[s], IDWR was unable to make a determination which, or if any, of the claimants had exclusive ownership of the water right. In the Basin 92 *Director's Report*, IDWR listed as owners, in a single recommendation, all of the claimants on the three separate claims filed for water right 92-7090." (IDWR Ex.3 at 1). The *Director's Report* in this case is unusual because it added all of the competing Claimants as owners of a single water right. The *Director's Report* conclusion as to ownership is afforded *prima facie weight* until rebutted.

C. Business Status

This water right began with an Application for Permit initiated by an unincorporated business known as St. Maries Wild Rice Growers. (IDWR Ex. 4); (Testimony of Chad Goodwin). The unincorporated business was later incorporated with the State of Idaho. (Testimony of Chad Goodwin). On February 13, 1984, Jeffrey P. Baker and Steven W. Bruner incorporated St. Maries Wild Rice, Inc. (Testimony of Chad Goodwin); (IDWR Ex. 3). In 1987, the annual report for St. Maries Wild Rice, Inc. listed Al W. Bruner as the registered agent in place of Steven W. Bruner. (IDWR Ex. 3); (IDWR Ex. 12). The annual report also listed Jeffrey P. Baker as President and Al W. Bruner as Secretary. (IDWR Ex. 12). A letter to IDWR dated November 18, 1988 identified Al Bruner and Jeffrey Baker as partners, directors and officers of St. Maries Wild Rice, Inc. (IDWR Ex. 13).

IDWR considered several documents in its file which showed the change in status from St. Maries Wild Rice Growers to St. Maries Wild Rice, Inc. In February of 1984, Jeffrey Baker and Steven W. Bruner incorporated St. Maries Wild Rice, Inc. (Testimony of Chad Goodwin) (IDWR Ex. 6; Ex. 7). In July of 1987, St. Maries Wild Rice, Inc. filed an annual report signed by Al Bruner. (IDWR Ex. 12) The annual report listed Jeffrey Baker as the president and Al Bruner as the secretary of the corporation. An Assignment of Permit was filed with IDWR

which assigned ownership of Water Right 92-7090 to St. Maries Wild Rice, Inc. (IDWR Ex. 10) Al Bruner and Jeffrey Baker were identified as partners, directors and officers of St. Maries Wild Rice, Inc. (IDWR Ex. 13). St. Maries Wild Rice, Inc. was eventually administratively dissolved February 6, 1998.

D. Permit & License

This water right is based on license 92-7090. The licensing procedure began in 1981 with an Application for Permit for 92-7090. (Testimony of Chad Goodwin); (IDWR Ex. 4). The Application was in the name of St. Maries Wild Rice Growers. *Id.* The Application was signed by Al W. Bruner as Manager/Consultant of St. Maries Wild Rice Growers. The Application confirmed that St. Maries Wild Rice Growers did not own the property on which the place of use was located. The Application asked for the name of the property owner and a description of the arrangement allowing use of the property. The Application listed Albert Best as the property owner and stated that a “sharecrop/long term lease” was the basis for access to the place of use. *Id.* The Application for Permit was advertised for two weeks in the St. Maries Gazette Record as required. (Testimony of Chad Goodwin) (IDWR Ex. 5). The permit for 92-7090 was approved by IDWR on September 24, 1981. *Id.* The permit stated that “issuance of this permit in no way grants a right-of-way or easement across the land of another.”

The Proof of Beneficial Use for Permit No. 92-7090 was received by IDWR August 18, 1986. (Testimony of Chad Goodwin); (IDWR Ex. 8). The Proof of Beneficial Use was signed by Al Bruner as Co-Owner/Field Manager of St. Maries Wild Rice, Inc. *Id.* However, the Proof of Beneficial Use listed St. Maries Wild Rice, Inc. as the permit holder. (IDWR Ex. 8) Thus, the name of the applicant did not match the name of the permit holder. Consequently, IDWR requested an Assignment of Permit No. 92-7090. IDWR received an Assignment of Permit No. 92-7090 on September 29, 1986. (IDWR Ex. 10). The Assignment of Permit assigned the permit for 92-7090 from St. Maries Wild Rice Growers to St. Maries Wild Rice, Inc. (IDWR Ex. 10).

In 1987, IDWR conducted a field examination for 92-7090. The field exam was part of the licensing process for the water right. (Testimony of Chad Goodwin); (IDWR Ex. 11). The Beneficial Use Field Report lists St. Maries Wild Rice, Inc. as the owner, and lists Al Bruner as the individual who accompanied the field examiner during the field exam. *Id.*

The license was eventually issued May 15, 1992. (Testimony of Chad Goodwin) (IDWR Ex. 14). The license was issued in the name of St. Maries Wild Rice, Inc. (IDWR Ex. 14).

E. Transfers

In March 1993, Jeffrey Baker sent a letter to IDWR requesting a change in the point of diversion. (IDWR Ex. 15). The letter stated that Mr. Baker requested the change because he would be taking over the wild rice lease of his field and the field of his mother-in-law. *Id.* An Application for Transfer accompanied the letter. It was signed by Jeffrey Baker. The Application for Transfer sought to change the point of diversion. (IDWR Ex. 16). The Application for Transfer listed the applicant as Jeffrey Baker. However, there was a handwritten notation by the IDWR agent which indicated that the applicant was St. Maries Wild Rice, Inc. (Testimony of Chad Goodwin); (IDWR Ex. 16). The transfer was assigned Transfer No. 4149. However, before IDWR acted on the request, Transfer No. 4149 was withdrawn by Mr. Baker with a letter dated June 7, 1993. (IDWR Ex. 18).

A second Application for Transfer was submitted by Jeffrey Baker to IDWR on March 15, 1995. (IDWR Ex. 19). This second Application for Transfer 4547 indicated that the reason for the proposed transfer was to add a new point of diversion to allow more efficient pumping for one field which had a higher elevation. (IDWR Ex. 19); (Testimony of Chad Goodwin). Notice of the transfer was accomplished by publication in the St. Maries Gazette Record. (IDWR Ex. 20). Transfer 4547 was approved by IDWR on April 18, 1995. (IDWR Ex. 21). The Transfer granted the additional point of diversion, but also changed the water right to be in the name of Jeffrey P. Baker. (IDWR Ex. 21). Transfer 4547 changed the ownership from St. Maries Wild Rice, Inc. as listed in the original license (IDWR Ex. 14) to Jeffrey Baker. (IDWR Ex. 21); (Testimony of Chad Goodwin). Therefore, on April 18, 1995, the owner of water right license 92-7090 was Jeffrey P. Baker. There were no challenges to the change of ownership or the change of point of diversion for Transfer 4547. (Testimony of Chad Goodwin).

F. Sales Agreement

The McInturffs' claim to this license is based primarily on a contract. In 2001, Alexander and Judith Bruner sold their wild rice business, harvesting equipment, and other items. These items were sold to Douglas and Darcy McInturff. (IDWR Ex. 22); (Testimony of

Chad Goodwin). The contract entitled *Sale of Wild Rice Harvesting Business* specifically addressed water rights. The contract said, "This sale and transfer will include all equipment, leases, water rights, harvest agreements, good will and other items, owned by the Bruners, associated with the wild rice industry in St. Maries." *Id.* Clearly, the contract was intended to transfer only those water rights which were *owned by the Bruners*. This language makes sense and is consistent with the notion that a seller may not legally transfer things which he does not own.

The contract also indicates that it was intended to transfer water rights. The contract language states, "[t]he existing water rights included are registered with the Idaho Department of Water Administration as No. 92-07090 and No. 91-07094. These are valuable and absolutely essential to the operation. They are legal licenses which permit pumping water from the rivers into the fields at the specified rate. The licenses pertaining to Jeff Bakers (sic) fields were given to him earlier." (IDWR Ex. 22).

The contract price was \$15,000. (IDWR Ex. 22). The contract was signed by Alexander and Judith Bruner, and Douglas and Darcy McInturff. The contract states it was entered into on July 15, 2001. (IDWR Ex. 22 at 1). The signature page identifies the date of the signatures as June of 2006, and October of 2006. The signature page indicates that it was documenting an agreement which had taken place on July 15, 2001. (IDWR Ex. 22 at 3.).

The contract lists licenses 92-7090 and 91-7094 as being registered with IDWR. The contract also indicates that Jeffrey Baker had previously obtained licenses. It is unclear whether 92-7090 was listed because it was a license which Jeffrey Baker had previously obtained, or whether 92-7090 was a license which was intended to be sold by Alexander and Judith Bruner. However, it is clear from the License and Transfer 4547 that in 2001, the owner of license 92-7090 was Jeffrey Baker. There is no evidence of a transfer from Jeffrey Baker to Alexander or Judith Bruner. At the time the contract was entered into in 2001, Alexander and Judith Bruner were not the owners of license 92-7090.

G. Change of Ownership

In August of 2005, a Change of Ownership form was submitted to IDWR for water right 92-7090. The Change of Ownership form was submitted along with the 2001 contract between Mr. McInturff and Mr. Bruner. (IDWR Ex. 23). The Change of Ownership form was submitted

to IDWR August 17, 2005. It requested a change in ownership from Alexander Bruner to Douglas McInturff.

IDWR acknowledged the Change of Ownership for water rights 91-7094 and 92-7090 in a letter dated December 5, 2006. (IDWR Ex. 24). The letter refers to “Change of Ownership for Water Right Nos. 91-7094 & 92-7090.” *Id.* The letter indicates that the Change of Ownership was accepted. “The department acknowledges receipt of correspondence changing ownership of the above referenced water rights to you.” *Id.*

The Change of Ownership process is set forth in I.C. § 42-248. That statute establishes a process for notification of changes in ownership or changes of address of a water right owner. The statute requires all persons owning or claiming ownership of a water right to notify IDWR of any change in ownership or of a change in the owner’s mailing address. The notice is required to be provided to IDWR within 120 days of any change. The Change of Ownership process in I.C. §42-248 is quite different than IDWR’s procedures under the Administrative Procedures Act. It appears that the primary focus of the statute is to allow IDWR to maintain accurate records. It does not provide the same level of safeguards and notice as administrative proceedings such as Transfers. However, I.C. §42-248 provides that IDWR will give notice of actions under this statute “if a notice of the action is mailed to the address and owner of the water right shown in the records of the department of water resources at the time of mailing the notice.” I.C. § 42-248(3)

There is no evidence that notice of the Change of Ownership was mailed to the owner of record, Jeffrey Baker.

H. The Appurtenance Theory

Mr. Baker and Mr. Ross claim this right because it is appurtenant to their land. A map of the place of use shows that the property is owned in part by Mr. Ross, and in part by Mr. Baker. (IDWR Ex. 2).

The McInturffs cite *First Security Bank of Blackfoot v. State*, 49 Idaho 740 (1930) for the proposition that water rights may be owned by appropriators who do not own the land on which they are used. In *First Security*, the bank applied for permission to change the place of use. The bank’s predecessor, Reese was decreed a water right in 1910 which was appurtenant to land in section 31 and section 36 in T13N. Reese acquired title to the lands in section 31, but not the

lands in section 36. The lands in section 36 were school lands which belonged to the State of Idaho. When Reese's predecessor in interest was appropriating water, the land comprising section 36 was unsurveyed lands of the United States. When the land was surveyed and allocated as school lands, title passed to the State of Idaho. After the title passed to the state, Reese continued on the land as a lessee of the State of Idaho. *Id.* Eventually, title to the lands in both section 31 and the land in section 36 passed to First Security Bank. The bank had a contract to sell the land in both sections and for the water rights to pass with the land. However, the Court ruled inapposite to the result urged by Mr. Baker and Mr. Ross. The Court held, "water may be appropriated for beneficial use on land not owned by the appropriator, and this water right becomes the property of the appropriator." *Id.* at 746. The Court listed several instances where the owner of the water right could legitimately be someone other than the owner of the land. The Court cited with approval instances where the appropriator had leased the land, where the appropriator was a lessee of state school lands, and other situations. The Court concluded by saying that "This court has repeatedly held that a water right is not necessarily appurtenant to the land on which it is used and may be separated from it, and this is the general rule." *Id.* The Court explained further that "[if] the water right was initiated by the lessee, the right is the lessee's property, unless the lessee was acting as agent of the owner." *Id.*

Certainly there are many instances where water rights are appurtenant to the land on which they are used and are then passed with title to the land. However, Idaho has long acknowledged that water rights may be held by the person initiating the beneficial use of the water. In those instances, the water right may be held by the beneficial user, not necessarily the land owner. Here, ownership of the water right is not ambiguous. The ownership interests were legally determined in the licensing process. Those determinations were not challenged.

V. FINDINGS

The *Director's Report* included the McInturffs, Mr. Baker, and Mr. Ross as co-owners of this water right. It appears that this conclusion was based on IDWR's confusion as to which Claimant should be the owner. In reviewing the testimony at trial, the exhibits, and the file of record, there is no evidence that shows a basis for co-ownership of this water right. The McInturffs did not enter into any contracts with Mr. Baker and Mr. Ross. The McInturffs and Mr. Baker and Mr. Ross did not have any common land ownership. There are no records such as

licenses or transfers which show a common interest in this right shared by the McInturffs and Mr. Baker and Mr. Ross. Competing claims, unless unobjected to, are not evidence of co-ownership. Therefore the Court concludes that the McInturffs and Mr. Baker and Mr. Ross are not co-owners of this water right.

Mr. Ross's claim relies primarily on a legal theory that the ownership of the place of use determines the ownership of the license and thus the water right. Mr. Ross and Mr. Baker both utilized this theory, and gave a cogent and well-reasoned argument relating to ownership of land and water rights which are appurtenant to the place of use. However, this Court thinks the better reasoned argument is that land ownership does not always determine the ownership of a water right used on the place of use. The notion that a place of use and a water right may have different owners is well established. *First Security Bank of Blackfoot v. State*, 49 Idaho 740 (1930). Therefore, the Court concludes that Mr. Ross's and Mr. Baker's ownership of the place of use does not control the question of who owns the water right. That is particularly important where, as here, ownership originated in a license. Therefore, the Court concludes that Mr. Ross's and Mr. Baker's ownership of the place of use, does not determine ownership of the water right.

This right is based on license 92-7090. The license was duly issued by IDWR after an Application for Permit, publication notice, Proof of Beneficial Use, and a field exam. The license was issued to St. Maries Wild Rice Growers. St. Maries Wild Rice, Inc. was incorporated in 1984. St. Maries Wild Rice Growers filed an Assignment of Permit for the license assigning ownership to St. Maries Wild Rice, Inc. The license was eventually issued May 15, 1992. The license was issued in the name of St. Maries Wild Rice, Inc. Transfer 4547 changed the ownership from St. Maries Wild Rice, Inc. to Jeffrey Baker. Transfer 4547 was approved in April 1995.

The next question is whether Al Bruner acquired the license for 92-7090. The connections between Al Bruner and St. Maries Wild Rice, Inc. are numerous. Al Bruner signed the Application for Permit filed by St. Maries Wild Rice Growers. Al Bruner filed the 1987 annual report for St. Maries Wild Rice, Inc. Mr. Bruner was listed in the 1987 annual report as the Secretary and agent of the corporation. The corporation was administratively dissolved February 6, 1998. In 2001, Mr. Bruner entered into a contract with the McInturffs which identified license 92-7090. The 2001 contract attempted to sell license 92-7090 to the

McInturffs. However, the 2001 contract could only operate to sell items which Mr. Bruner owned. The evidence shows that in 1995, Transfer 4547 changed ownership from St. Maries Wild Rice, Inc. to Jeffrey Baker. It is unclear why the change of ownership was made during the Transfer. However, the Affidavit of Publication shows that notice was accomplished, and that the change of ownership was included in that notice. The Transfer was approved, and there were no challenges to Transfer 4547. As a consequence, any objection to the ownership change in Transfer 4547 is an impermissible collateral attack on a licensing decision.

As a result of Transfer 4547, Jeffrey Baker owned license 92-7090 in 1995. There is no evidence showing a transfer of ownership from Jeffrey Baker to Al Bruner. As a result, Mr. Bruner did not have an ownership interest in 92-7090. Consequently, he could not have sold license 92-7090 since he did not own it. The 2001 contract did not effectuate a sale of 92-7090.

The last question is whether the Change of Ownership filed by the McInturffs operated to change ownership in favor of the McInturffs. Although Idaho Code provides for changes in ownership under I.C. § 42-248, it does not appear that such an action could ever supercede licensing determinations. The statute on change of ownership establishes a process for notification of ownership changes for water rights. The statute requires notice to IDWR of any change in ownership. The Change of Ownership process in I.C. § 42-248 is quite different than IDWR's procedures under the Administrative Procedures Act. The primary focus of the statute is to allow IDWR to maintain accurate records. It does not provide the same level of safeguards and notice as administrative proceedings such as Licenses and Transfers. However, I.C. § 42-248 provides that IDWR will give notice of its actions to the owner of the water right shown in IDWR's records. I.C. § 42-248(3). No such notice was given to the owner of record, Jeffrey Baker. It is doubtful whether the change of ownership provisions of I.C. § 42-248 would trump a Transfer duly noticed under administrative Licensing procedures. Certainly where there was *no notice provided* to the owner, as here, such a Change of Ownership is ineffective.

Therefore, the Court finds that pursuant to Transfer 4547, the owner of License 92-7090 was Jeffrey Baker. The Bruners did not own the license in 2001, and could therefore not have sold or transferred something they did not own. The Change of Ownership was not an administrative proceeding which provided notice and other safeguards aimed at protecting water users. In addition, the notice required under I.C. § 42-248 was never provided. Thus, the legal owner had no way of challenging the Change of Ownership. As a result, the Court finds the best

claim to ownership for this water right is the License and Transfer 4547 which determined ownership in favor of Mr. Baker.

The Court is mindful of the difficulties this poses for the McInturffs who entered into a contract, paid for a water right they believed they were obtaining, and followed through with a Change of Ownership. Nevertheless, the Court is obligated to follow legal precedent.

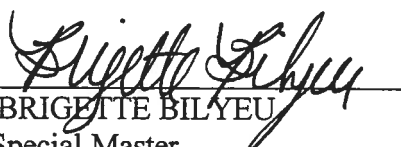
In addition, the Court is mindful of the reasonable argument regarding appurtenance made by Mr. Baker and Mr. Ross. The argument was made clearly and with good reasoning. Nevertheless, the Court ultimately finds that it is the License and Transfer which determine ownership under the facts of this subcase. Therefore, the owner of this water right is Jeffrey Baker .

VI. Recommendation

After considering the pleadings, evidence, testimony, and legal arguments of the parties, this Special Master concludes that Jeffrey Baker is the owner of water right 92-10502 as based on License 92-7090.

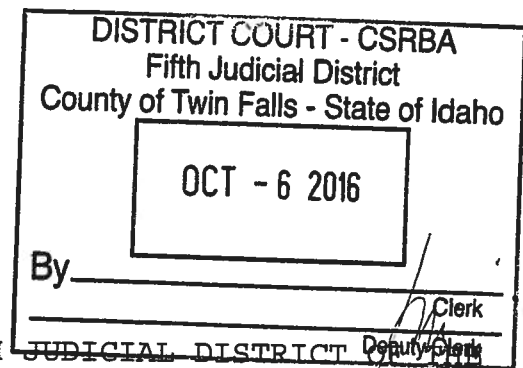
Based on the file and record herein, IT IS RECOMMENDED that water right 92-10502 is **decreed** with the elements as set forth in the attached *Special Master's Recommendation for Partial Decree*.

DATED October 6, 2016


BRIGETTE BILYEU
Special Master
Coeur d'Alene-Spokane River Adjudication

In Re CSRBA) PARTIAL DECREE PURSUANT TO
)
) I.R.C.P. 54(b) FOR
Case No. 49576)
)
) Water Right 92-10502

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Oct-06-2016



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re CSRBA)
Case No. 49576)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

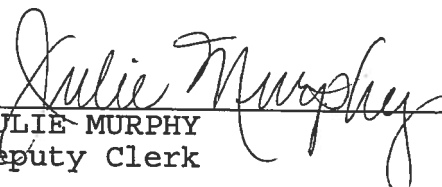
Water Right(s) : 92-10502

On October 06, 2016, Special Master BRIGETTE BILYEU issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s) pursuant to CSRBA Administrative Order 1 (A01), Section 18a.

Pursuant to CSRBA Administrative Order 1 (A01), Section 18a, any party to the adjudication including parties to the subcase, may file a Motion to Alter or Amend on or before the 28th day of the next month.

Failure of any party in the adjudication to pursue or participate in a Motion to Alter or Amend the SPECIAL MASTER'S RECOMMENDATION shall constitute a waiver of the right to challenge it before the Presiding Judge.

DATED October 06, 2016.


JULIE MURPHY
Deputy Clerk

DISTRICT COURT - CSRBA	
Fifth Judicial District	
County of Twin Falls - State of Idaho	
OCT - 6 2016	
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 CSRBA)
Case No. 49576)
_____)

CERTIFICATE OF MAILING

Water Right(s) : 92-10502

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT, SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on Unknown 00, 0000, with sufficient first-class postage prepaid to the following:

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

WILLIAM ROSS
PO BOX 161
ST MARIES, ID 83861
Phone: 208-245-3065

DARCY MC INTURFF
DOUGLAS MC INTURFF
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CERTIFICATE OF MAILING

Julie Murphy PAGE 1
JULIE MURPHY 10/06/16
Deputy Clerk