

RECEIVED
JUL 22 2019
DEPARTMENT OF
WATER RESOURCES



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. 63-303, 63-3613, 63-3614, and
) 63-3618
)
) ORDER GRANTING MOTION TO
) ALTER OR AMEND PARTIAL
) DECREES
)
) ORDER OF AMENDED PARTIAL
) DECREE

I.

BACKGROUND

The issue of federal reservoir “fill” and/or “refill” in Basin 63 has been the subject of controversy for some time.¹ The issue has presented itself in judicial proceedings before the SRBA District Court and Idaho Supreme Court. It has also presented itself in administrative proceedings before the Idaho Department of Water Resources (“Department”). After lengthy periods of litigation and negotiations, the parties to both the judicial and administrative proceedings have entered into a stipulated settlement. The purpose of the settlement is to:

[F]acilitate and expedite resolution of all disputes among the Parties that have arisen in various judicial and administrative proceedings pertaining to the issues of the “fill” and/or “refill” of the storage water rights for on-stream reservoirs in Idaho Department of Water Resources . . . Administrative Basin 63, known as Arrowrock, Anderson Ranch and Lucky Peak Reservoirs . . ., including but not limited to: SRBA subcase nos. 00-91017, 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738; the appeals and cross-appeals pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017; and the administrative and judicial proceedings underlying these same appeals and cross-appeals.

¹ The Court entered an *Order Denying Motions to Participate* in SRBA Subcase Nos. 63-33732, et seq., on July 8, 2019. In that *Order*, the Court set forth an in-depth background on the judicial and administrative proceedings pertaining to the issue of federal reservoir “fill” and/or “refill.” Rather than repeat that background the Court incorporates it herein by reference.

Stipulation, p.1.² The stipulation was entered into with the Department's concurrence. In February 2019, the parties placed the settlement before the Court.

The settlement anticipates the parties thereto supporting certain legislative and judicial actions. In the legislative arena, the parties agreed to jointly support passage of legislation pertaining to new or proposed projects to store more than one thousand acre feet of surface water. That legislation, which is now codified as Idaho Code § 42-115, was passed and made effective as of February 13, 2019. In the judicial arena, the parties agreed to jointly support the filing of the following *Motions* with the SRBA District Court: (1) *Motion to Decree Water Right No. 63-33734A*; (2) *Motion to Decree Water Right No. 63-33734B and Disallow Water Right Claim Nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738*; and (3) *Motion to Alter or Amend Partial Decrees for Water Right Nos. 63-303, 63-3613, 63-3614, and 63-3618*. The State of Idaho filed the *Motions* on February 19, 2019.

The three *Motions* filed by the State work in tandem. In the SRBA, the Court previously entered *Partial Decrees* for water right numbers 63-303, 63-3613, 63-3614, and 63-3618. These are storage water rights associated with Arrowrock, Anderson Ranch, and Lucky Peak dams. The Court will refer to these water rights as the "Base Rights." In 2013, the United States and other water users filed late claims in subcase numbers 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738 for storage water rights associated with the dams. The five claims are supplemental to the Base Rights and the Court will refer to them as the "Late Claims." The first two *Motions* ask the Court to decree water right numbers 63-33734A and B in the place of the Late Claims, with the understanding that they will be supplemental rights to the Base Rights. The third *Motion* – the *Motion to Alter or Amend* – asks the Court to make limited amendments to the Base Rights so that they may work in tandem, and be administered consistently, with the two supplemental rights.

It is the *Motion to Alter or Amend* that is the subject of this *Order*.³ The amendments proposed under the *Motion* are limited to the addition of two remarks to the Base Rights. The first is to be placed under the quantity element and reads as follows:

² A copy of the *Stipulation* is attached as Exhibit 1 to the State of Idaho's *Motion to Alter or Amend Partial Decrees for Water Right Nos. 63-303, 63-3613, 63-3614, and 63-3618*.

³ The Court entered *Orders* granting the first two *Motions* contemporaneously herewith.

Water right nos. 63-303, 63-3613, 63-3614, 63-3618, 63-33734A, and 63-33734B, are limited to the total combined annual diversion volume necessary to allocate a total of 1,044,011 acre-feet of storage water per year to the consumers or users of the storage water.

Motion to Alter or Amend, p.2. The second is to be placed under the other provisions element and reads as follows:

The annual time period for accruing natural flow to the on-stream reservoir storage water rights in IDWR Administrative Basin 63 will be determined by the Watermaster as supervised by the Director of the Department of Water Resources; provided, however, the annual time period will begin (1) after the day of allocation and when there is no natural flow available to water rights junior in priority to January 12, 1911, and (2) before natural flow has again become available to water rights junior in priority to January 12, 1911, or on November 1, whichever is earlier.

Id.

Suez Water Idaho Inc., the Ditch Companies⁴, and the Boise Project Board of Control filed briefing in support of the *Motion to Alter or Amend*. Responses to the *Motion to Alter or Amend* were filed by the Coalition of Cities⁵, the City of Boise, and the City of Pocatello. The *Responses* do not oppose the *Motion*. The City of Mountain Home filed a *Motion to Participate* in these subcases for purposes of opposing the *Motion*. However, the Court denied the *Motion to Participate* via separate order. *Order Denying Motions to Participate*, SRBA Subcase Nos. 63-33732, et seq., (July 8, 2019). A hearing on the *Motion to Alter or Amend* was held on July 16, 2019. At the hearing, the Court informed the parties it would grant the *Motion* and noted that it would support its determination with a written order.

⁴ The term "Ditch Companies" refers collectively to Ballentyne Ditch Company, Boise Valley Irrigation Ditch Company, Canyon County Water Company, Eureka Water Company, Farmers' Co-Operative Ditch Company, Middleton Mill Ditch Company, Middleton Irrigation Association, Inc., Nampa & Meridian Irrigation District, New Dry Creek Ditch Company, Pioneer Ditch Company, Pioneer Irrigation District, Settlers Irrigation District, South Boise Water Company, and Thurman Mill Ditch Company.

⁵ The term "Coalition of Cities" refers collectively to the Cities of Bliss, Burley, Carey, Declo, Hazelton, Heyburn, Jerome, Paul, Rupert, Shoshone and Wendell.

II. ANALYSIS

The *Motion to Alter or Amend* is filed pursuant to Idaho Rule of Civil Procedure 60(b)(6). Under that Rule, a court may relieve a party from a final judgment for “any ... reason that justifies relief.” Rule 60(b)(6) “presents a discretionary decision for the trial court.” *In Re SRBA Case No. 39576 Subcase No. 37-00864*, 164 Idaho 241, 429 P.3d 129 (2018). Although the court is vested with broad discretion, “its discretion is limited and may be granted only on a showing of unique and compelling circumstances justifying relief.” *Id.*

The Court in an exercise of its discretion finds unique and compelling circumstances justifying relief under Rule 60(b)(6) in this case. The complexity and length of this litigation present unique and compelling circumstances. The issue of federal reservoir “fill” and/or “refill” in Basin 63 has been one of the more complex and challenging issues addressed by the Court in the SRBA. The complexity of the issue has resulted in protracted litigation in both judicial and administrative proceedings. The settlement, which the Court finds to be a fair and appropriate resolution, is unique and compelling in that it is comprehensive of both the judicial and administrative proceedings. It is further unique and compelling in the fact that it has been reached to the satisfaction of all the parties to both proceedings, with the Department’s concurrence, and without opposition from any other water user in the basin.

The Court further finds the *Motion to Alter or Amend* to be unique and compelling in that it does not seek a wholesale reopening of the Base Rights. Rather, it seeks limited and narrow amendments to the Base Rights so that they may be reconciled and administered in conjunction with supplemental rights 63-33734A and B. The remark proposed for the quantity element is a combined use limitation remark. By its terms its limitations apply equally to the Base Rights and supplemental rights 63-33734A and B. Amending the Base Rights to include the remark would act as a limitation on those rights, not an expansion. The remark is already contained in the proposed supplemental rights. Amending the Base Rights to also include the remark clarifies that the combined use limitation applies to both the Base Rights and the two supplemental rights. In this respect, the Court finds the remark necessary for the efficient administration of the rights and to reconcile the Base Rights to the *Partial Decrees* to be entered for water right number 63-33734A and B. Furthermore, and importantly, the Court finds the proposed amendment to be unopposed by any other water user in the basin.

The remark proposed for the other provisions element is a reset remark. It affects the annual time period under which the Department will accrue natural flow to the Base Rights and supplemental rights 63-33734A and B. More simply stated, it controls when the annual volume authorized to be diverted under the rights is reset to zero under the Department's accounting. The Court finds the proposed amendment to be narrow in scope and necessary for the efficient administration of the Base Rights as they relate to supplemental rights 63-33734A and B. The remark is also contained in the proposed supplemental rights. Furthermore, and importantly, the Court finds the proposed amendment to be unopposed by any other water user in the basin.

Based on the foregoing, the Court in an exercise of its discretion finds unique and compelling circumstances justifying relief under Rule 60(b)(6). It follows that the State's *Motion to Alter or Amend* should be granted.

III.

ORDER

Therefore, IT IS ORDERED that the State of Idaho's *Motion to Alter or Amend Partial Decrees for Water Right Nos. 63-303, 63-3613, 63-3614, and 63-3618* is hereby granted.

IT IS FURTHER ORDERED that the above-captioned water rights be amended as set forth in the attached *Amended Partial Decrees*. The previously issued *Partial Decrees* are superseded thereby.

DATED: July 19, 2019



ERIC J. WILDMAN

Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING MOTION TO ALTER OR AMEND PARTIAL DECREES / ORDER OF AMENDED PARTIAL DECREE was mailed on July 19, 2019, with sufficient first-class postage to the following:

ALBERT P BARKER
1010 W JEFFERSON ST STE 102
PO BOX 2139
BOISE, ID 83701-2139
Phone: 208-336-0700

SAWTOOTH LAW OFFICES PLLC
1101 W RIVER ST STE 110
PO BOX 7985
BOISE, ID 83707
Phone: 208-629-7447

ANDREW J WALDERA
SAWTOOTH LAW OFFICES PLLC
1101 W RIVER ST STE 110
PO BOX 7985
BOISE, ID 83707
Phone: 208-629-7447

ERIKA E MALMEN
PERKINS COIE LLP
1111 W JEFFERSON ST STE 500
PO BOX 737
BOISE, ID 83701-0737
Phone: 208-343-3434

ANGELA SCHAEER KAUFMANN
101 S CAPITOL BLVD, 10TH FLOOR
PO BOX 829
BOISE, ID 83701-0829
Phone: 208-345-2000

FRITZ X HAEMMERLE
HAEMMERLE LAW OFFICE
PO BOX 1800
HAILEY, ID 83333
Phone: 208-578-0520

CANDICE M MCHUGH
380 S 4TH STREET STE 103
BOISE, ID 83702
Phone: 208-287-0991

GERMAINE, ABIGAIL R
BOISE CITY ATTORNEY'S OFFICE
150 N CAPITOL BLVD
PO BOX 500
BOISE, ID 83701-0500
Phone: 208-384-3870

CHIEF NATURAL RESOURCES DIV
OFFICE OF THE ATTORNEY GENERAL
STATE OF IDAHO
PO BOX 83720
BOISE, ID 83720-0010
Phone: 208-334-2400

JERRY A. KISER
620 WEST HAYES
BOISE, ID 83702
Phone: 208-336-1020

CHRIS M BROMLEY
380 S 4TH STREET STE 103
BOISE, ID 83702
Phone: 208-287-0991

JOHN K SIMPSON
1010 W JEFFERSON ST STE 102
PO BOX 2139
BOISE, ID 83701-2139
Phone: 208-336-0700

CHRISTOPHER H MEYER
601 W BANNOCK ST
PO BOX 2720
BOISE, ID 83701-2720
Phone: 208-388-1200

MATTHEW J MC GEE
SPINK BUTLER LLP
PO BOX 639
BOISE, ID 83701
Phone: 208-388-1000

D. KIRK BYBEE
PO BOX 4169
POCATELLO, ID 83201
Phone: 208-234-6148

MICHAEL P LAWRENCE
601 W BANNOCK ST
PO BOX 2720
BOISE, ID 83701-2720
Phone: 208-388-1200

DANIEL V STEENSON
ORDER

(Certificate of mailing continued)

S. BRYCE FARRIS
SAWTOOTH LAW OFFICES PLLC
1101 W RIVER ST STE 110
PO BOX 7985
BOISE, ID 83707
Phone: 208-629-7447

SARAH A KLAHN
SOMACH SIMMONS & DUNN
2701 LAWRENCE ST, STE 113
DENVER, CO 80205
Phone: 720-279-7868

SCOTT L CAMPBELL
CAMPBELL LAW CHTD
PO BOX 170538
BOISE, ID 83717
Phone: 208-949-0599

SHELLEY M DAVIS
1010 W JEFFERSON ST STE 102
PO BOX 2139
BOISE, ID 83701-2139
Phone: 208-336-0700

TRAVIS L THOMPSON
163 2ND AVENUE WEST
PO BOX 63
TWIN FALLS, ID 83303-0063
Phone: 208-733-0700

Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

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


Deputy Clerk