

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

|                                 |   |                                   |
|---------------------------------|---|-----------------------------------|
| JUDY CASH, an unmarried woman,  | ) | Case No: CV-2016-02               |
|                                 | ) |                                   |
| Petitioner,                     | ) | <b>ORDER DENYING PETITIONER'S</b> |
|                                 | ) | <b>SECOND MOTION FOR</b>          |
| vs.                             | ) | <b>RECONSIDERATION</b>            |
|                                 | ) |                                   |
| PHILIP CASH and DEBRA CASH,     | ) |                                   |
| husband and wife, and Does 1-5, | ) |                                   |
| unknown persons who may claim   | ) |                                   |
| interest,                       | ) |                                   |
|                                 | ) |                                   |
| Respondents.                    | ) |                                   |
|                                 | ) |                                   |

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## I.

## BACKGROUND

1. On January 26, 2017, Judge Robert Elgee entered *Findings of Fact and Conclusions of Law* in this matter. The facts set forth in the *Findings of Fact* are incorporated herein by reference and will not be repeated. Among other things, the *Findings of Fact and Conclusions of Law* quieted title to all or portions of water right numbers 37-444, 37-2541, and 37-7636, in the Petitioner.<sup>1</sup>

2. On August 17, 2017, the case was reassigned to this Court following Judge Elgee's retirement.

3. On September 1, 2017, the Respondents filed a *Motion* asking the Court to reconsider Judge Elgee's determination of ownership of the water rights. Following a hearing, the Court entered an *Order* granting the Respondents' *Motion* ("Reconsideration Order"). In the *Reconsideration Order*, the Court held that principles of res judicata preclude the Petitioner from

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<sup>1</sup> On May 23, 2017, Judge Elgee entered *Amended Findings of Fact and Conclusions of Law Re: Ownership of Twin Lakes Reservoir & Irrigation Company Shares*. The *Amended Findings* do not change or address his decision with respect to water right numbers 37-444, 37-2541, and 37-7636.

asserting ownership of the water rights in this proceeding. The Court then dismissed the Petitioner's ownership claims with prejudice.

4. On December 1, 2017, the Petitioner filed a *Second Motion for Reconsideration*, requesting that this Court reverse its *Reconsideration Order* ("Motion"). In support of the Motion, the Petitioner submits new evidence for the Court's consideration via the *Declaration of Robert L. Harris* filed December 1, 2017. The Respondents oppose the Motion. A hearing on the Motion was held before the Court on December 19, 2017.

## II. ANALYSIS

### A. Factual correction.

In the *Reconsideration Order*, the Court stated that "[i]n 1989, Philip Cash filed notices of claim for the three water rights at issue in the SRBA." The Petitioner submits new evidence with her Motion showing this statement to be inaccurate. Exhibit B to the *Declaration of Robert L. Harris* establishes that the three water rights at issue were originally claimed in the SRBA by Barbara Watts in 1989. Philip Cash succeeded Barbara Watts as claimant of the three water right claims in 2006, after he filed a *Notice of Change of Ownership* with the Idaho Department of Water Resources ("Department"). The water right claims were then updated and amended to reflect Philip Cash as claimant. Therefore, the Court corrects its *Reconsideration Order* to provide that the three water rights were originally claimed in the SRBA by Barbara Watts, and that Philip Cash succeeded as claimant to those water right claims in 2006. As discussed below, this factual correction does not affect the conclusions of law reached by the Court in its *Reconsideration Order*.

### B. Principles of res judicata preclude the Petitioner from asserting she is the owner of the water rights in this proceeding.

In its *Reconsideration Order*, the Court found the requirements of both claim and issue preclusion to be met, thereby precluding the Petitioner from asserting ownership of the subject water rights in this proceeding. The Petitioner asks the Court to reconsider and reverse its res judicata holding. Specifically, she asserts preclusion is not applicable because the SRBA District Court lacked jurisdiction to adjudicate ownership of water rights in the SRBA. The arguments

now advanced by the Petitioner do not change the res judicata analysis set forth by the Court, and it declines to reverse its *Reconsideration Order*. As a result, the Court will not rehash that res judicata analysis but rather incorporates it herein by reference. The Court will, however, address the argument that the SRBA District Court lacked jurisdiction to determine ownership of water rights at issue in the SRBA.

- i. **The SRBA District Court had jurisdiction to adjudicate the nature and extent of all elements of water rights located within the boundaries of the SRBA, including ownership.**

It is the Petitioner's position that principles of res judicata are inapplicable in this proceeding because the SRBA District Court lacked jurisdiction to adjudicate ownership of water rights claimed in the SRBA. This Court disagrees. The SRBA was a general adjudication commenced on November 19, 1987. Under Idaho law, a general adjudication is an action "both for the judicial determination of the extent and priority of the rights of all persons to use water from any water system within the state of Idaho *that is conclusive as to the nature of all rights to the use of water in the adjudicated water system*, and for the administration of those rights." I.C. § 42-1401A(5) (emphasis added). As a general matter, all persons asserting claims to water rights within the adjudicated water system are required to come forward and timely assert those claims in a general adjudication or be forever barred. *Id.*; I.C. § 42-1420(1). As a general adjudication is brought against property, not parties, it is akin to an in rem proceeding. *United States v. Black Canyon Irr. Dist., et al.*, 2017 Opinion No. 131, p.8 (Dec. 21, 2017). A final judgment in a general adjudication, like a final judgment in an in rem proceeding, bars subsequent proceedings arising from the same transaction or occurrence already litigated. *Id.*; I.C. § 42-1401A(5)

In the SRBA, "[a]ll *claimants* of water rights" within the Snake River Basin water system were required to assert their claims in the adjudication.<sup>2</sup> I.C. § 42-1409(4) (emphasis added). Of significance, the term "claimant" is defined as "any person *asserting ownership of rights to the use of water* within the state of Idaho. . . ." I.C. § 42-1401A(1). It follows that any person claiming ownership of the right to use water in the Snake River Basin water system was statutorily required to timely assert that ownership in the SRBA. *Id.* To do so, a claimant was

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<sup>2</sup> Subject to certain exceptions not applicable here. I.C. § 42-1420.

required to file a notice of claim for each claimed water right with the Director. I.C. § 42-1409(4). It was necessary to include “the name and address of the claimant [i.e., the person asserting ownership]” in the notice of claim. I.C. § 42-1409(1)(a). Once claims were filed, the Director issued recommendations to the SRBA District Court, which included his recommendation of the name and address of the claimant. I.C. § 42-1411(1) & (2). If multiple water users asserted competing claims to the same right to the use of water, then the Director was required to take those competing claims into account when making his recommendation. I.C. §§ 42-1410 & 42-1411.

If a party to the SRBA disagreed with another parties’ assertion of ownership to a water right, he was statutorily required to file an objection to that effect with the SRBA District Court. I.C. § 42-1412(1).<sup>3</sup> Thereafter, an opportunity was provided for the claimant and other parties to file a response. *Id.* The notice of claim, objections, and responses collectively “identif[ied] the issues to be heard” by the SRBA District Court in a particular subcase. I.C. §§ 42-1412(3). It was common for the notice of claim, objections, and responses to identify and frame issues of competing ownership. Indeed, there were many instances where competing claims were asserted to the same use of water in the SRBA, and the issue of ownership was at the forefront of dispute.<sup>4</sup> The SRBA District Court had not only the jurisdiction but the duty to resolve these

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<sup>3</sup> The SRBA District Court provided parties with a standardized check-the-box form (i.e., *Standard Form 1 Objection*) wherein a party could object to the “name and address” element of a recommendation if he or she believed it to be incorrect. This form allowed a party to the SRBA to object to another parties’ assertion of ownership to a water right.

<sup>4</sup> There were many instances in the SRBA where the issue of water right ownership was squarely placed before the SRBA District Court by the parties’ notices of claims, objections, and responses. It is not easily achievable, nor particularly useful, to recite all such instances, given that over 158,000 claims were processed in that adjudication. However, the following examples are illustrative of subcases where the issue of ownership was at the forefront of dispute:

In SRBA Subcase Nos. 02-00103 and 02-10300, Cottonwood Mutual Canal Co. and Black Mesa Farms, LLC filed competing ownership claims to water used to irrigate 400 acres in Elmore County, Idaho. The issue of ownership was resolved on summary judgment by the Special Master who ruled that “Cottonwood is the lawful owner of the water right that irrigates 400 acres referred to the Section 14 Land.” *Order on Motions for Summary Judgment*, SRBA Subcase Nos. 02-00103 and 02-10300, p.16 (Jan. 13, 2012).

In SRBA Subcases 63-166A, 63-166B, 63-167A, 63-167B, 63-179A, 63-179C, and 63-32580, the Pioneer Irrigation District, Franklin Ditch Company, Inc., and the Mason Creek Ditch Company filed competing ownership claims to water. The issue of ownership was resolved on summary judgment by the Special Master who ruled that Franklin Ditch Company, Inc. was the owner of water right numbers 63-166 and 63-176 as a matter of law, and that the Mason Creek Ditch Company was the owner of water right number 63-179C as a matter of law. *Memorandum Decision and Order on Motions for Summary Judgment*, Subcase Nos. 63-166A, 63-166B, 63-167A, 63-167B, 63-179A, 63-179C, and 63-32580 (Oct. 22, 2010). The Special Master then recommended that competing claim

competing ownership claims in the SRBA. I.C. §§ 42-1412(3). To conclude otherwise would offend the fundamental purpose of a general adjudication to determine all claims that anyone has to water rights within the adjudicated water system for future administration of those rights. I.C. § 42-1401A(5). It would also be contrary to the statutory scheme and processes governing general adjudications in Idaho.

Apparently, the Petitioner would have the claimants of over 158,000 water right claims first file and assert their ownership of a water right in the SRBA. Then, she would require those same claimants to again file and assert their ownership of those same rights in a separate legal proceeding in order to quiet title to their ownership and/or resolve any competing ownership claims. Such a process defies logic and notions of judicial economy. Any person asserting ownership of a water right in the Snake River Basin water system was required to come forward and assert that ownership in the SRBA. I.C. § 42-1409(4). Requiring all persons asserting ownership to come forward in one general adjudication proceeding ensured that all claims of competing ownership would be revealed and that competing claims would be asserted and resolved in the SRBA. I.C. § 42-1409(4).

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numbers 63-00166A, 63-00167A, and 63-00179A filed by the Pioneer Irrigation District be decreed disallowed. *Special Master's Report and Recommendation of Disallowance*, Subcase Nos. 63-166A, 63-167A, 63-179A (April 11, 2011).

In SRBA Subcase Nos. 63-132 and 63-133 competing claims to water rights were asserted by the Mace-Catlin Mutual Ditch Company and the State of Idaho. In SRBA Subcase No. 63-134 competing claims to a water right were asserted by Hart-Davis Ditch Company, Inc. and the State of Idaho. The State of Idaho filed a *Motion for Summary Judgment* in the subcases seeking a determination that it is the holder of legal title to all or a portion of the water rights. The issue of ownership was resolved on summary judgment by the Special Master who determined that the State of Idaho is the owner of the rights, or portion of the rights, at issue. *Memorandum Decision and Order on Cross Motions for Summary Judgment*, SRBA Subcase Nos. 63-132, 63-133 and 63-134 (June 4, 2008).

In consolidated SRBA Subcase No. 91-63, the United States and various irrigation entities filed separate and competing claims for water rights in Arrowrock, Lucky Peak, and Ander Ranch Reservoirs. On summary judgment, the SRBA District Court determined that ownership "was divided." *Order on Motion for Reconsideration*, SRBA Subcase No. 91-63, p.4 (March 3, 2005). It held that the United States "holds nominal legal title" and that "[b]eneficial or equitable title . . . is held in trust by the irrigation organizations . . . for the benefit of the landowners . . . ." *Id.*

The SRBA is completed, but other general adjudications are presently underway in Idaho in the form of the Coeur d'Alene-Spokane River Basin Adjudication ("CSRBA") and the Palouse River Basin Adjudication ("PRBA"). The SRBA District Court will continue to deal with competing claims to water rights in these adjudications. Most recently, in CSRBA Subcase No. 91-7094, competing claims to a water right were filed by Douglas and Darcy McInturff and Jeffrey Shippy. Following trial, the Special Master determined that "the owners of this water right are Douglas and Darcy McInturff." *Special Master's Report and Recommendation*, CSRBA Subcase No. 91-7094, p.11 (Oct. 6, 2016). On challenge, the issue of ownership was placed before the SRBA District Court, which held that "the Special Master did not err in determining that the McInturffs own the water right." *Memorandum Decision and Order*, CSRBA Subcase No. 91-7094, p.9 (August 17, 2017).

As illustrated in footnote 4, the SRBA District Court addressed competing claims to water rights on many occasions. Likewise, the Idaho Supreme Court has addressed issues of ownership arising out of the SRBA. In *United States v. Pioneer Irr. District*, 144 Idaho 106, 157 P.3d 600 (2007), the Court reviewed ownership interests of the United States and various irrigation entities who filed separate and competing claims for water rights in Arrowrock, Lucky Peak, and Anderson Ranch Reservoirs. The Court declared that “[t]his is a water rights case arising from the Snake River Basin Adjudication (SRBA) *regarding ownership interests* of the United States and various irrigation entities.” *Pioneer Irr. Dist.*, 144 Idaho at 108, 157 P.3d 600 at 601 (emphasis added). The Court went on to determine the competing ownership interests of the parties, holding 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. Of significance, the Court did not declare the SRBA District Court lacked the jurisdiction to resolve the ownership issues raised in that case.

In *Joyce Livestock Co. v. United States*, 144 Idaho 1, 4, 156 P.3d 502, 505 (2007), the Idaho Supreme Court addressed competing claims to a water right filed in the SRBA by Joyce Livestock Company and the United States. The Court affirmed the SRBA District Court’s determination to decree Joyce Livestock Company’s claim to the water right and to disallow the United States competing claim. *Joyce Livestock Co.*, 144 Idaho at 20, 156 P.3d at 521. Likewise, in *Bedke v. City of Oakley*, 149 Idaho 532, 237 P.3d 1 (2010), the Idaho Supreme Court addressed a scenario where Bruce and Jared Bedke asserted ownership of water rights that the City of Oakley asserted it owned. *Bedke*, 149 Idaho at 535, 237 P.3d at 4 (the City argued “the Bedkes’ claimed water rights were simply derived from the City’s pipeline and thus, the Bedkes were claiming water rights belonging to the City”). In *Fort Hall Water Users Assoc. v. United States*, 129 Idaho 39, 42, 921 P.2d 739, 742 (1996), the Idaho Supreme Court reviewed whether the United States asserted ownership of various water rights in the SRBA on its behalf, or on behalf of the Fort Hall Water Users Association. The Court held that the United States was “claiming ownership of the water rights on its own behalf.” *Id.* Again, in neither *Joyce Livestock Co.*, *Fort Hall Water Users Assoc.*, nor *Bedke* did the Court declare that the SRBA District Court lacked the jurisdiction to resolve the ownership issues raised in those cases.

On August 26, 2014, the Court entered the SRBA *Final Unified Decree* which, save certain exceptions not applicable here, completed the adjudication. The *Final Unified Decree* “is conclusive as to the nature and extent of all water rights within the Snake River Basin within the

State of Idaho with a priority date prior to November 19, 1987 . . .” *Final Unified Decree*, p.9. This includes all the defining elements of a water right, including the key defining element of ownership. See e.g. *City of Blackfoot v. Spackman*, 162 Idaho 302, 397, 396 P.3d 1184, 1189 (2017) (under Idaho law, water rights are defined by elements); I.C. §§ 42-1411(2)(a) & 42-1412(6). Indeed, *SRBA Administrative Order 1, Rules of Procedure*, § 14.c. provides that “the form of the partial decrees and the maintenance of partial decrees *as the sole legal record of title to the water right* shall be decided by the Presiding Judge.”<sup>5</sup> (emphasis added). Once issued, the *Final Unified Decree* was recorded in the office of the county recorder of each county in which the place of use or point of diversion of any individual decreed water right is located. I.C. § 42-1413(1); *Final Unified Decree*, p.15. By its terms, it superseded “[a]ll water rights based on beneficial uses, licenses, permits, posted notices, and statutory claims” required to be claimed in the SRBA.<sup>6</sup> *Final Unified Decree*, pp.11-12.

Therefore, based on the foregoing, the Petitioner’s argument that the SRBA District Court lacked the jurisdiction to determine ownership in the SRBA must be rejected. To accept such an argument would set a dangerous precedent wherein individuals could dispute ownership of a water right indefinitely into the future based on pre-decree factors that were required to be timely asserted and raised in the SRBA.

**ii. The Petitioner failed to timely assert her ownership interest in water right numbers 37-444, 37-2541, and 37-7636.**

If the Petitioner believed she acquired ownership of water right number 37-444, 37-2541, and 37-7636 in 2002, she was required to assert that ownership in the SRBA. I.C. §§ 42-1409(4) & 42-1409(6). She did not. If the Petitioner disagreed with Philip Cash’s assertion of ownership of those same rights in the SRBA, she was required to file an objection to that effect with the SRBA District Court. I.C. § 42-1412(1). She did not. If the Petitioner believed the SRBA District Court erred in decreeing the water rights in the name of Philip Cash in 2010, she was required to timely file a notice of appeal. I.A.R. 14. She did not. The Petitioner was a party to the SRBA and had the full and fair opportunity to take all the actions that were required of her

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<sup>5</sup> Post decree changes in ownership can be recognized through the statutory process provided in Idaho Code § 42-248(1).

<sup>6</sup> The *Final Unified Decree* also superseded all prior water right decrees and general provision within the Snake River Basin water system. *Final Unified Decree*, p.12.

under the law. Had the Petitioner taken any of these actions, her competing claims of ownership to water right numbers 37-444, 37-2541, and 37-7636 would have been properly asserted and adjudicated within the context of the SRBA.<sup>7</sup> I.C. §§ 42-1409(4) & 42-1409(6).

Rather, the Petitioner sat on her rights for nearly 15 years until she filed the instant action in 2016. By that time the water rights had been decreed to Philip Cash in the SRBA. Her attempt to dispute the propriety of the *Partial Decrees* in this proceeding constitutes an impermissible collateral attack on those *Partial Decrees*. See e.g., *Cuevas v. Barraza*, 152 Idaho 890, 894, 277 P.3d 337, 341 (2012) (stating generally, that “final judgments, whether right or wrong, are not subject to collateral attack”).

**iii. Department policy.**

The Petitioner cites Department policies and certain actions of the Director in support of her position. The Court notes that Department policies and actions of the Director are not binding on the district court. More importantly, the Court does not consider or review the policies and actions of the Department cited by the Petitioner, as those policies and actions have not been properly raised or placed before the Court under the Idaho Administrative Procedure Act. I.C. §§ 67-5271, *et seq.*

**iv. Idaho Code § 6-401.**

The Petitioner cites Idaho Code § 6-401 in support of her argument. That statute expressly exempts “all actions to adjudicate water rights” and directs that such actions shall be brought under chapter 14, title 42, Idaho Code. I.C. § 6-401. As set forth above, chapter 14, title 42, Idaho Code expressly requires water users to assert ownership of their water rights in a general adjudication. Furthermore, Idaho Code § 6-401 expressly recognizes that ownership issues will be present in actions to adjudicate water rights. It speaks to actions to adjudicate water rights and obtain a decree “as against other water users.” *Id.* If the Petitioner’s position is accepted that the SRBA District Court simply determines whether or not a right exists, but does not determine who owns that right, then the language addressing actions to adjudicate water

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<sup>7</sup> The three water rights at issue here went through the SRBA uncontested. It must be noted however that in a general adjudication wherein water users are required to come forward and assert their claims, uncontested claims “are still . . . decided on the merits.” *Order on Motion to Set Aside Partial Decrees and File Late Objections*, SRBA Subcase No. 65-19812, *et al.*, p.8 (January 31, 2001).

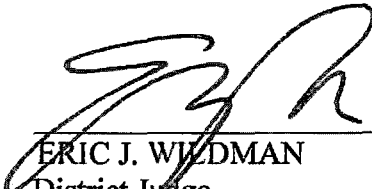
rights and obtain a decree “as against other water users” is rendered meaningless as the issue of ownership is never breached. Therefore, the Court finds the Petitioner’s argument that Idaho Code § 6-401 supports her position to be unavailing.

**III.**

**ORDER**

Therefore, IT IS ORDERED that the *Petitioners’ Second Motion for Reconsideration* is hereby denied.

Dated January 12, 2018.

  
\_\_\_\_\_  
ERIC J. WILDMAN  
District Judge

## Certificate of Service

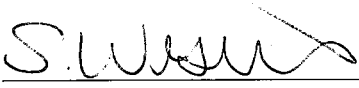
I HEREBY CERTIFY that on this 12th day of January, 2018, a true and correct copy of the foregoing ORDER was delivered to:

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