

STATE OF IDAHO)
County of Bonner)
FILED 4-5-93
AT 3:01 O'Clock P M
CLERK, DISTRICT COURT
Tha
Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

In Re the General Adjudication of
Rights to the Use of Water from
the Smith Creek Water System.

Civil No. 27289

MAX L. SINGLETON,

Plaintiff,

vs.

FINAL DECREE

R. KEITH HIGGINSON, in his capacity
of Director of the IDAHO DEPARTMENT
OF WATER RESOURCES, TIM ALLEN STONE
and JANE DOE STONE, husband and wife,
BARRY A. IRELAND and ROXY IRELAND,
husband and wife, D. E. KEMP and JANE
DOE KEMP, husband and wife, WILLIAM
D. ELLERMEIER and JANE DOE ELLERMEIER,
husband and wife, RICHARD W. FUGEL and
JANE DOE FUGEL, husband and wife,
IRENE MATTHEWS SCHORI and JOHN DOE
SCHORI, wife and husband, PENNY WOOD
and JOHN DOE WOOD, wife and husband,
all being claimants to the right to
use portions of water from Smith
Creek, being a tributary of the Pend
Oreille River in Bonner County, Idaho,

Defendants.

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R. Keith Higginson, Director of the Idaho Department of Water Resources (IDWR), has filed a motion for final decree pursuant to Idaho Code §42-1412(10). The motion came on for hearing April 5, 1993.

I.

On April 8, 1992, this court entered a Partial Decree of Uncontested Portions of Director's Report pursuant to Idaho Code §42-1412(9). The decree provided that the rights to the use of surface and ground water from the Smith Creek water system are as described in the Director's Report, except for water right nos. 96-04017A, 96-04017B, 96-04013, 96-00227 and 96-00228. The partial decree incorporated the Director's Report by reference. The partial decree was certified as final pursuant to I.R.C.P. 54(B).

II.

On April 5, 1993, this court entered a Partial Decree of Contested Matters, which determined the water rights excepted from the Partial Decree of Uncontested Matters. The partial decree determined that water right nos. 96-04017A and 96-04017B are as described in the Director's Report for the Smith Creek water system, which was incorporated by reference, and that water right nos. 96-00227, 96-00228, 96-04013A and 96-04013B are as described in the exhibits attached to the partial decree.

IV.

Idaho Code §42-1412(10) provides, "Upon resolution of all objections and entry of partial decree(s) pursuant to subsection

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(8) of this section and entry of a partial decree for unobjected claims pursuant to subsection (9) of this section, the director shall combine all partial decrees into a final decree and submit the final decree to the district court for approval."

V.

The purpose of §42-1412(10) is to list in a single document all documents filed or issued in an adjudication which describe a water right, since in the usual adjudication there will be a director's report and a number of partial decrees. The purpose of the provision is not to provide for redetermination of any water rights determined in the partial decrees.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the documents filed or issued in this adjudication which describe a water right include the following:

A. Partial Decree of Uncontested Portions of Director's Report, entered April 8, 1992, which incorporates by reference the Director's Report for the Smith Creek Water System.

B. Partial Decree of Contested Matters, entered April 5, 1993, together with exhibits, which incorporates by reference the following Director's Report for the Smith Creek Water system.

DATED this 5 day of April, 1993.

STATE OF IDAHO

County of Bonner

I, Marie Scott, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Bonner, do hereby certify that the foregoing instrument is a true and correct copy of the original thereof now on file in this office. Witness my hand and seal of said Court on this,

the 8 day of April, 1993

Marie Scott, Clerk

By Hande Savage Deputy

FINAL DECREE, Page 3

J.R. MICHAUD

JAMES R. MICHAUD
District Judge

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APR 12 1993

Department of Water Resources

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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

In Re the General Adjudication of
Rights to the Use of Water from
the Smith Creek Water System.

Civil No. 27289

MAX L. SINGLETON,

Plaintiff,

vs.

PARTIAL DECREE OF
CONTESTED MATTERS

R. KEITH HIGGINSON, in his capacity
of Director of the IDAHO DEPARTMENT
OF WATER RESOURCES, TIM ALLEN STONE
and JANE DOE STONE, husband and wife,
BARRY A. IRELAND and ROXY IRELAND,
husband and wife, D. E. KEMP and JANE
DOE KEMP, husband and wife, WILLIAM
D. ELLERMEIER and JANE DOE ELLERMEIER,
husband and wife, RICHARD W. FUGEL and
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IRENE MATTHEWS SCHORI and JOHN DOE
SCHORI, wife and husband, PENNY WOOD
and JOHN DOE WOOD, wife and husband,
all being claimants to the right to
use portions of water from Smith
Creek, being a tributary of the Pend
Oreille River in Bonner County, Idaho,

Defendants.

RECORDED
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R. Keith Higginson, Director of the Idaho Department of Water Resources (IDWR), has filed a motion a partial decree of contested matters pursuant to Idaho Code §42-1412(8). The motion came on for hearing April 5, 1993.

I.

On April 8, 1992, this court entered a Partial Decree of Uncontested Portions of Director's Report pursuant to Idaho Code §42-1412(9). The decree provided that the rights to the use of surface and ground water from the Smith Creek water system are as described in the Director's Report for the Smith Creek water system, except for water right nos. 96-04017A, 96-04017B, 96-04013, 96-00227 and 96-00228. The decree incorporated the director's report by reference. The partial decree was certified as final pursuant to I.R.C.P. 54(B).

II.

The objection to water right nos. 96-00227 and 96-00228 was resolved by the Stipulation Resolving Contested Water Right Nos. 96-00227 and 96-00228, in which it was agreed that the priority date of the water rights would be August 15, 1970, rather than the August 15, 1969 priority date originally recommended by the Director. The objection to water right nos. 96-04017A, 96-04017B and 96-04013 was resolved by the Stipulation Resolving Contested Water Right Nos. 96-04017A, 96-04017B and 96-04013. In this latter stipulation it was agreed water right nos. 96-04017A and 96-04017B are as described in the director's report. It was further agreed that water right no. 96-04013 would be split into

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96-04013A and 96-04013B; 96-04013A would include domestic and stockwater use as described in the Director's Report; and 96-04013B would include irrigation use as described in the Director's Report, except that 96-04013B shall have a priority date of July 2, 1970, rather than the January 1, 1960 priority date originally recommended by the Director. Water right nos. 96-00227, 96-00228, 96-04013A and 96-04013B, as described in the stipulations, are set forth in the exhibits attached hereto and incorporated herein by reference. Finally, it was agreed that the parties to the contested matters would bear their own costs and attorney fees. The stipulations were filed with this court along with this motion.

III.

Idaho Code §42-1412(8) provides, "The district court shall enter a partial decree determining the nature and extent of the water right[s] which is [are] the subject of an objection."

IV.

Idaho Code §42-1412(10) provides, "Upon resolution of all objections and entry of partial decree(s) pursuant to subsection (8) of this section and entry of a partial decree for unobjected claims pursuant to subsection (9) of this section, the director shall combine all partial decrees into a final decree and submit the final decree to the district court for approval."

V.

The purpose of §42-1412(10) is to list in a single document all documents filed or issued in an adjudication which describe a

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water right, since in the usual adjudication there will be a director's report and a number of partial decrees. The purpose of the provision is not to provide for redetermination of any water rights determined in the partial decrees.

VI.

I.R.C.P. provides, "When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third party claim, or when multiple parties are involved, the court may direct entry of a final judgment upon one or more but less than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for entry of the judgment."

VII.

There is no just reason for delay in entry of a final judgment on contested matters because all of the uncontested matters have been decreed by a partial decree that was certified as final, because this partial decree of contested matters determines all of the remaining contested matters, and because the final decree required by Idaho Code §42-1412(12) will not determine any water rights.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED and DECREED, pursuant to Idaho Code §42-1412(8), that water right nos. 96-04013A and 96-04013B are as described in the Director's Report for the Smith Creek water system, which is incorporated herein by reference, and that water right nos. 96-00227, 96-00228, 96-

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04017A and 96-04017B are as described in the exhibits attached hereto and incorporated herein by reference. Each party to the contested matters shall bear its own costs and attorney fees.

DATED this 5 day of April, 1993.

J.R. MICHAUD

JAMES R. MICHAUD
District Judge

RULE 54(B) CERTIFICATE

With respect to the issues determined by the above decree, is hereby CERTIFIED, in accordance with Rule 54(B), I.R.C.P., that the court has determined that there is no just reason for delay of entry of a final decree and that the court has and does hereby direct that the above decree shall be a final decree and an appeal may be taken as provided by the Idaho Appellate Rules.

DATED this 5 day of April, 1993

J.R. MICHAUD

JAMES R. MICHAUD
District Judge

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