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Water Right 61-10953

U.S. DISTRICT COURT - SIDA
WINNEMAN FALLS CO., IDAHO
FILED

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May-09-2005



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

)
)
) **ORDER GRANTING MOTION TO SET**
) **ASIDE PARTIAL DECREE,**
) **and**
) **ORDER OF AMENDED PARTIAL**
) **DECREE: I.R.C.P. 60(b)**
)

For water rights: 22-12906 *et al.* See
attached list.

Order Setting Aside Partial Decrees

Partial Decrees were issued for the attached water rights between June 1, 2004 and June 30, 2004. The ***Partial Decrees*** were issued in accordance with five ***Special Master's Reports and Recommendations*** issued by Special Master Thomas R. Cushman. The Claimant of the water rights, the United States of America, acting through the Bureau of Land Management (United States), filed a ***Motion to Set Aside and Reissue Partial Decrees*** on December 29, 2004. A hearing was held on the ***Motion*** on April 21, 2005, in Blackfoot, Idaho. Mr. Lee Leininger appeared for the United States. There was no opposition to the ***Motion***.

The rights were originally claimed by the United States as "dual-based" rights, meaning the rights were claimed as state-based beneficial-use water rights and as federal-reserved water rights pursuant to Public Water Reserve (PWR) 107. After initial objections to the rights were resolved, all of the above rights were heard by the Special Master at hearings pursuant to Idaho Code 42-1411A(12). The United States submitted affidavits in conjunction with those hearings. The affidavits are sufficient to show that the United States has met its burden under I.C. 42-1411A(12) of the existence of a federal-

reserved water right for the above rights. However, Special Master Cushman held that, as a matter of law, the United States was not entitled to PWR 107 water rights due to the existence of a pending homestead application on the subject properties underlying the water rights on April 17, 1926, the date of enactment of PWR 107. Those rulings were made in accordance with Special Master Cushman's ruling in Consolidated Subcases 25-13635 *et al*, in which the Special Master ruled that a pending homestead application defeated reservation under PWR 107, even though the homestead entry was never perfected. That ruling by the Special Master was subsequently reviewed by this Court on Challenge. In the *Memorandum Decision and Order on Challenge; Order of Partial Decrees, subcases 25-13635 et al* (October 4, 2004), this Court held that the Special Master erred as a matter of law in ruling that a pending homestead entry defeated reservation under PWR 107. Instead, the Court reversed the Special Master, and ruled that once a homestead entry failed, the federal withdrawal of the land attached and no subsequent withdrawal was required. The water rights in Subcases 25-12635 were decreed with April 17, 1926, priority dates.

The United States moved this Court to set aside the *Partial Decrees* in the above subcases pursuant to I.R.C.P. 60(b)(5), which allows the Court to relieve a party from a final judgment if a prior judgment upon which it is based has been reversed or otherwise vacated. It is apparent to this Court that the legal grounds for the *Special Master's Reports* and subsequent *Partial Decrees* were identical to the legal conclusions that were reversed by this Court in its *Memorandum Decision and Order on Challenge; Order of Partial Decrees, subcases 25-13635 et al*. Therefore, because this Court reversed the judgment of the Special Master in subcases 25-13635 *et al*, which contained the legal precedent for the above-captioned subcases, the Court finds it appropriate to set aside the *Partial Decrees* in the above-captioned subcases.

This ruling, pursuant to I.R.C.P. 60(b), is limited to the facts and circumstances of these subcases.

Order Amending Partial Decrees.

Special Master Cushman held hearings in accordance with I.C. 42-1411A(12) in the above-captioned subcases. Therefore, the Court finds that the requirements of I.C. 42-

1411A(12) have been met, and that no further evidentiary hearing is necessary. Affidavits were submitted by the United States as follows:

1) For water rights 22-12906 and 22-12960, the *Affidavit of Fredric W. Price in Subcases 22-12906 et al*, was filed on November 18, 2003.

2) For water rights 24-10235, 24-10237, 24-10259, 24-10261, 24-12065, 24-10279, 24-10351, 24-10357, 24-10541, 24-10542, 24-10544; the *Affidavit of Fredric W. Price in Subcases 24-10235 et al*, was filed on November 17, 2003.

3) For water rights 55-10460, 55-10462, 55-10464, 55-10719, 55-10721, 55-11735, 55-11886, 55-12133, 55-12287, 55-12560, 55-12568, 55-12570, 55-12576, 55-12629, 55-12707, 55-12713, 55-12821, 61-10949, 61-11010, 61-11012, 61-11312, 61-11425, 61-11479, 61-11533, 65-19742, 65-19746, 65-20017, 65-20019, 65-20021, 65-20023, 65-20025, 65-20027, 65-20029, 65-20031, 65-20065, 65-20067, 65-20119; the *Affidavit of Robert R. Mallis in Subcases 51-10499 et al* was filed on July 31, 2003.

4) For Water Right 61-10953, the *Affidavit of Robert R. Mallis in Subcases 51-10398 et al* was filed on February 12, 2004.

5) For Water Right 29-13042, the *Affidavit of Fredric W. Price in Subcases 29-12626 et al* was filed on November 18, 2003.

After reviewing the affidavits, the Court finds that the United States has met its burden in proving a federal reserved water right pursuant to P.W.R. 107.

Based upon the file and record in these subcases, and the affidavits, the Court makes the following findings of fact and conclusions of law:

1. Prior to April 17, 1926, no water rights had been established pursuant to state law for the use of the water from the subject water source for each claim.

3. On April 17, 1926, President Coolidge executed Public Water Reserve 107, which withdrew the 40 acre tract of land upon which the subject water source for the claims is located from the public domain. The tract of land withdrawn for each claim is described as the "place of use" element on the attached *Partial Decrees*.

4. The subject water sources for the claims consist of a spring or water hole of the type contemplated by Public Water Reserve 107.

5. Contemporaneously with the withdrawal of the land, President Coolidge impliedly reserved enough water to fulfill the primary purpose of the land reservation for each claim.

6. The minimum amount of water necessary to fulfill the primary purpose of the land reservation is the amount set forth in the "quantity" element on the attached *Partial Decree* for each claim.

7. The United States has satisfied its burden under Idaho Code section 42-1411A(12) as to the nature and existence of the claimed federal reserve water right for each claim.

8. The elements of the federal reserved water right for each claim are set forth on the attached *Partial Decrees*.

Therefore, IT IS ORDERED, that the *Partial Decrees* for the above water rights are set aside, and are hereby amended and decreed as set forth in the attached *Amended Partial Decrees Pursuant to I.R.C.P. 60(b)*.

Dated: ~~April~~ ^{May} 6th 2005.


JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

EXHIBIT A 22-12906, ET AL.

Subcase Nos:

22-12906 65-20067
22-12920 65-20119
24-10235
24-10237
24-10259
24-10261
24-10265
24-10279
24-10351
24-10357
24-10541
24-10542
24-10544
29-13042
55-10460
55-10462
55-10464
55-10719
55-10721
55-11735
55-11886
55-12133
55-12287
55-12560
55-12568
55-12570
55-12576
55-12629
55-12707
55-12713
55-12821
61-10949
61-10953
61-11010
61-11012
61-11312
61-11425
61-11479
61-11533
65-19742
65-19746
65-20017
65-20019
65-20021
65-20023
65-20025
65-20027
65-20029
65-20031
65-20065

(Subcase list: 22-12906JM)
5/09/05

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING MOTION TO SET ASIDE PARTIAL DECREE, AND ORDER OF AMENDED PARTIAL DECREE: I.R.C.P. 60(B) was mailed on May 09, 2005, with sufficient first-class postage to the following:

STATE OF IDAHO

Represented by:
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ATTORNEY GENERAL'S OFFICE
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Represented by:
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DIRECTOR OF IDWR

PO BOX 83720
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A handwritten signature in cursive script, reading "Julie Murphy", is written over a horizontal line. The signature is in dark ink and is positioned to the right of the printed text "Deputy Clerk".