

6-26-2017

Order Granting Mtn to Reconsider

Eric J. Wildman

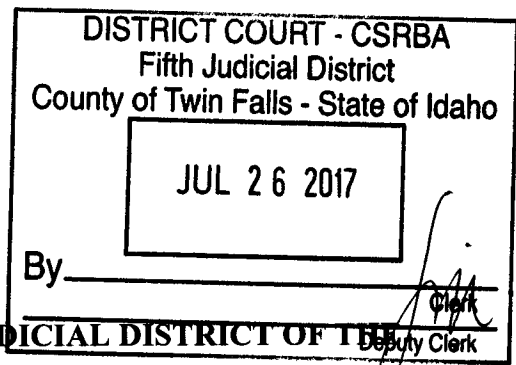
Presiding Judge, Coeur d'Alene-Spokane River Basin Adjudication

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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) Subcase No. 91-7755
Case No. 49576) (353 consolidated subcases (see attached list))
ORDER GRANTING MOTION TO RECONSIDER

I. BACKGROUND

1. On May 3, 2017, the Court entered an Order on Motions for Summary Judgment. The background set forth in the Order on Motions for Summary Judgment is incorporated herein by reference and will not be repeated. Among other things, the Order addresses the priority date for federal reserved water rights claimed by the United States on behalf of the Coeur d'Alene Tribe ("Tribe").

2. On May 16, 2017, the State of Idaho filed a Motion to Reconsider ("Motion"). The Motion requests that the Court clarify its holding regarding the following issues:

- (a) Do spring and wetland water rights on reacquired lands have a priority date as of the date of reacquisition?
(b) Does the Court's holding, which refers only to lands reacquired after being homesteaded, also apply to allotted lands that were sold to non-Indians and later reacquired by the Tribe?

3. The following Objectors join in the State's Motion: Benewah County; City of St. Maries; City of Harrison; Buell Bros., Inc.; Jack Buell; Eleanor Buell; David Corkill; Mary Corkill; Whiteman Lumber Co., Inc.; and the North Idaho Water Rights Group.1 The United States and the Tribe filed a response in opposition to the Motion.

1 The term "North Idaho Water Rights Group" refers collectively to the Objectors identified on Exhibit A to the Court's Order on Motions for Summary Judgment.

4. A hearing on the *Motion* was held on June 23, 2017, at the Kootenai County Courthouse in Coeur d'Alene, Idaho.

II. ANALYSIS

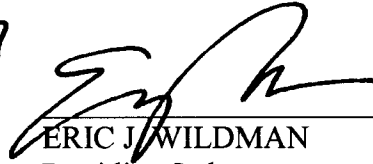
In its *Order on Motions for Summary Judgment*, the Court addresses the priority date of federal reserved water right claims filed by the United States on behalf of the Tribe. With respect to reacquired lands, the Court found that the appropriate priority date for water rights associated with lands homesteaded by non-Indians and later reacquired by the Tribe “is the date the homesteader perfected a water right on the homesteaded lands under state law, or if no water right was so perfected, then the date of reacquisition.” The Court did not limit its holding in this respect to federal reserved claims for agricultural and domestic use. The holding applies equally to spring and wetland water rights on homesteaded lands reacquired by the Tribe. Thus, the appropriate priority date for federal reserved spring and wetland water rights is the date the homesteader perfected a water right on the homesteaded lands under state law - to the extent such a right could even be perfected under state law - or if no water right was so perfected, then the date of reacquisition.

The *Order on Motions for Summary Judgment* did not address the priority date for water rights appurtenant to lands that were reacquired by the Tribe after allotment and sale to non-Indian purchasers. The Court again finds the holding in *U.S v. Anderson*, 737 F.2d 1358 (1984), to be persuasive on this issue. These claims, which were not lost to non-use, carry a date of reservation priority date. *Id.* at 1362. The caveat is with respect to non-diversionary springs and wetlands claims, which carry a time immemorial priority date. However, non-Indian successors cannot hold, appropriate or exercise non-diversionary or instream rights, except for stockwater. As a result, to the extent such rights are non-diversionary or are for instream purposes, such rights would be lost through non-use. Springs and wetlands as well as other rights lost to non-use would carry a date of reacquisition priority date.

III.
ORDER

Therefore, based on the foregoing, IT IS ORDERED that the State of Idaho's *Motion* is hereby granted.

Dated: July 26, 2017



ERIC J. WILDMAN

Presiding Judge

Coeur d'Alene-Spokane River Basin Adjudication

Subcase Nos:

| | | | | | |
|----------|----------|----------|----------|----------|----------|
| 91-07755 | 92-10921 | 93-07510 | 93-07560 | 93-07610 | 94-09251 |
| 91-07756 | 92-10922 | 93-07511 | 93-07561 | 93-07611 | 94-09252 |
| 91-07757 | 93-07462 | 93-07512 | 93-07562 | 93-07612 | 94-09253 |
| 91-07758 | 93-07463 | 93-07513 | 93-07563 | 93-07613 | 94-09254 |
| 91-07759 | 93-07464 | 93-07514 | 93-07564 | 93-07614 | 94-09255 |
| 91-07760 | 93-07465 | 93-07515 | 93-07565 | 93-07615 | 94-09256 |
| 91-07761 | 93-07466 | 93-07516 | 93-07566 | 93-07616 | 94-09257 |
| 91-07762 | 93-07467 | 93-07517 | 93-07567 | 93-07617 | 94-09258 |
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| 91-07764 | 93-07469 | 93-07519 | 93-07569 | 93-07619 | 94-09260 |
| 91-07765 | 93-07470 | 93-07520 | 93-07570 | 93-07620 | 94-09261 |
| 91-07766 | 93-07471 | 93-07521 | 93-07571 | 93-07621 | 94-09262 |
| 91-07767 | 93-07472 | 93-07522 | 93-07572 | 93-07622 | 94-09263 |
| 91-07768 | 93-07473 | 93-07523 | 93-07573 | 93-07623 | 94-09264 |
| 91-07769 | 93-07474 | 93-07524 | 93-07574 | 93-07624 | 94-09265 |
| 91-07770 | 93-07475 | 93-07525 | 93-07575 | 93-07625 | 94-09266 |
| 91-07771 | 93-07476 | 93-07526 | 93-07576 | 93-07626 | 94-09267 |
| 91-07772 | 93-07477 | 93-07527 | 93-07577 | 93-07627 | 94-09268 |
| 91-07773 | 93-07478 | 93-07528 | 93-07578 | 93-07628 | 94-09269 |
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| 92-10920 | 93-07509 | 93-07559 | 93-07609 | 94-09250 | 95-16684 |

(Subcase list: CSRBATRIBE)

7/26/17

Subcase Nos:

95-16686 95-16740
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(Subcase list: CSRBATRIBE)
7/26/17

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING MOTION TO RECONSIDER was mailed on July 26, 2017, with sufficient first-class postage to the following:

ALBERT P BARKER
BARKER ROSHOLT & SIMPSON LLP
1010 W JEFFERSON ST STE 102
PO BOX 2139
BOISE, ID 83701-2139

PO BOX 83720
BOISE, ID 83720-0010

IDWR
PO BOX 83720
BOISE, ID 83720-0098

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

RATLIFF FAMILY LLC #1
13621 S HWY 95
COEUR D'ALENE, ID 83814

CHRISTOPHER H MEYER
JEFFREY C FEREDAY
JEFFREY W BOWER
MICHAEL P LAWRENCE
GIVENS PURSLEY LLP
601 W BANNOCK ST
PO BOX 2720
BOISE, ID 83701-2720

JOHN T MCFADDIN
20189 S EAGLE PEAK RD
CATALDO, ID 83810

WILLIAM M GREEN
2803 N 5TH ST
COEUR D'ALENE, ID 83815

SCHROEDER, WILLIAM J
KSB LITIGATION PS
221 N WALL STE 210
SPOKANE, WA 99201

HOWARD A. FUNKE
424 SHERMAN AVE STE 308
PO BOX 969
COEUR D ALENE, ID 83816-0969

CANDICE M MCHUGH
CHRIS M BROMLEY
MCHUGH BROMLEY PLLC
380 S 4TH STREET STE 103
BOISE, ID 83702

RONALD D HEYN
828 WESTFORK EAGLE CREEK
WALLACE, ID 83873

NORMAN M SEMANKO
MOFFATT THOMAS BARRETT ROCK
& FIELDS CHARTERED
999 WEST MAIN STREET STE 1300
PO BOX 829
BOISE, ID 83701-0829

MARIAH R DUNHAM
NANCY A WOLFF
MORRIS & WOLFF PA
722 MAIN AVE
ST MARIES, ID 83861

CHIEF NATURAL RESOURCES DIV
OFFICE OF THE ATTORNEY GENERAL
STATE OF IDAHO