

6-26-2017

Order Granting Mtn to Reconsider

Eric J. Wildman

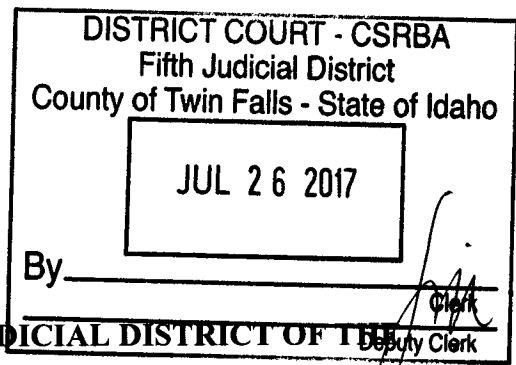
Presiding Judge, Coeur d'Alene-Spokane River Basin Adjudication

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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

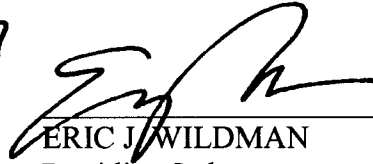
In its *Order on Motions for Summary Judgment*, the Court addresses the priority date of federal reserved water right claims filed by the United States on behalf of the Tribe. With respect to reacquired lands, the Court found that the appropriate priority date for water rights associated with lands homesteaded 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
91-07763	93-07468	93-07518	93-07568	93-07618	94-09259
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
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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:

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