

6-26-2017

## Order on Mtn to Set Aside or Modify

Eric J. Wildman

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

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### Recommended Citation

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Harrison; Buell Bros., Inc.; Jack Buell; Eleanor Buell; David Corkill; Mary Corkill; Whiteman Lumber Co., Inc.; and the North Idaho Water Rights Group

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

## II. ANALYSIS

The *Motion* seeks two categories of relief. First, it requests that the Court set aside and modify its *Final Orders* to allow the United States' federal reserved water right claims for gathering to proceed in the adjudication. Second, it requests that the Court set aside and modify its *Final Order Disallowing Water Right Claims* to remove certain water rights disallowed by that *Order*.

### A. **The Court declines to amend the *Final Orders* to allow the United States' federal reserved water right claims for gathering to proceed in the adjudication.**

The United States and the Tribe ask the Court to reconsider its disallowal of the United States' federal reserved claims for plant habitat for Tribal gathering. Rule 59(e) allows a district court to "correct legal and factual errors in proceedings before it." *Straub v. Smith*, 145 Idaho 65, 71 (2007). A Rule 59(e) "motion to amend a judgment is addressed to the discretion of the court." *Lowe v. Lym*, 103 Idaho 259, 263 (Ct. App. 1982). In its *Order on Motions for Summary Judgment*, the Court analyzed the United States' claims under the reserved rights doctrine. Pursuant to the primary-secondary purposes distinction set forth in *U.S. v. New Mexico*, 438 U.S. 696, 715 (1978), the Court found the primary purposes of the Coeur d'Alene Indian Reservation to be agriculture, fishing and hunting, and domestic. It disallowed the United States' claims for all other purposes of use as a matter of law. The United States and Tribe do not offer any new argument regarding the Court's primary-secondary purposes analysis, but simply reiterate arguments already made to this Court. The Court fully addressed the primary purposes of the reservation in its *Order on Motions for Summary Judgment* and does not find any legal or factual error in the analysis. It therefore declines to amend its *Final Orders* as requested by the United States and the Tribe.

**B. The Court will amend its *Final Order Disallowing Water Right Claims* to remove water right claims erroneously included therein.**

The United States and the Tribe ask the Court to remove the following water right claims from its *Final Order Disallowing Water Right Claims*: 91-7777; 92-10906; 92-10907; 93-7469; 93-7470; 94-9244; 94-9245; 94-9246; 95-16678; 95-16679; 95-16680; 95-16681; 95-16682; 95-16683; and 95-16684. The claims seek federal reserved water rights for “fish habitat for fish species harvested within the Reservation . . . .” On summary judgment, the Court found fishing and hunting to be a primary purpose of the Coeur d’Alene Indian Reservation. That said, it limited the United States’ claims to those located within the boundaries of the reservation. The Court therefore disallowed the United States’ claims for off-reservation federal reserved water rights in its *Final Order Disallowing Water Right Claims*.

The United States and Tribe assert that water right claims 92-10906, 94-9244, 94-9245, 95-16680, 95-16681, 95-16682, 95-16683, and 95-16684 are located entirely within the boundaries of the reservation. Since the claims are for on-reservation water rights it was not the intent of the Court to disallow these claims. The claims were included on the list of rights disallowed by the Court’s *Final Order* as a result of clerical error. Therefore, the claims will be removed from the Court’s *Final Order* pursuant to Idaho Rule of Civil Procedure 60(a).

The United States and the Tribe assert that water right claims 91-7777, 92-10907, 93-7469, 93-7470, 94-9245, 94-9246, 95-16678, and 95-16679 straddle the reservation boundaries. Portions of these claims are located within the boundaries of the reservation and portions are located outside the boundaries of the reservation. Since the claims seek on-reservation water rights in part, it was not the intent of the Court to disallow these claims. Rather, it was the intent of the Court to allow the claims to proceed limited to points of diversion and places of use located within the reservation’s boundaries. The claims were included on the list of rights disallowed by the Court’s *Final Order* as a result of clerical error. Therefore, the claims will be removed from the Court’s *Final Order* pursuant to Idaho Rule of Civil Procedure 60(a).

The Objectors contend the United States’ claims for fish habitat in waterways other than Lake Coeur d’Alene and the Coeur d’Alene and St. Joe Rivers were correctly disallowed. They assert the Court’s *Order on Motions for Summary Judgment* concluded the primary purpose of the reservation was to provide the Tribe with the important waterways needed to facilitate its traditional fishing and hunting practices. Further, that those important waterways are limited to

Lake Coeur d'Alene and the Coeur d'Alene and St. Joe Rivers. In its *Order*, the Court found fishing and hunting to be a primary purpose of the reservation. It did not limit claims for such purposes to Lake Coeur d'Alene and the Coeur d'Alene and St. Joe Rivers. The Court found that the Tribe's historic fishing and hunting practices "were reliant upon important waterways *such as* Lake Coeur d'Alene and the Coeur d'Alene and St. Joe Rivers." The Court's identification of these three waterways provided an illustrative list, not an exhaustive one. Since the Court found fishing and hunting to be a primary purpose of the reservation the United States may seek such claims within the boundaries of the reservation necessary to fulfill that purpose.

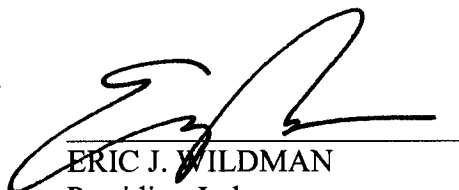
**III.**  
**ORDER**

THEREFORE, BASED ON THE FOREGOING, THE FOLLOWING ARE HEREBY ORDERED:

1. The *Motion* is granted in part and denied in part.
2. The request that the Court amend its *Final Orders* to allow federal reserved water right claims for plant habitat for Tribal gathering is hereby denied.
3. The request that the Court amend its *Final Order Disallowing Water Right Claims* to remove water right claims 91-7777; 92-10906; 92-10907; 93-7469; 93-7470; 94-9244; 94-9245; 94-9246; 95-16678; 95-16679; 95-16680; 95-16681; 95-16682; 95-16683; and 95-16684 is hereby granted.

IT IS SO ORDERED.

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
91-07773	93-07478	93-07528	93-07578	93-07628	94-09269
91-07774	93-07479	93-07529	93-07579	93-07629	94-09270
91-07775	93-07480	93-07530	93-07580	93-07630	94-09271
91-07776	93-07481	93-07531	93-07581	93-07631	94-09272
91-07777	93-07482	93-07532	93-07582	93-07632	94-09273
91-07778	93-07483	93-07533	93-07583	93-07633	94-09274
91-07779	93-07484	93-07534	93-07584	93-07634	94-09275
91-07780	93-07485	93-07535	93-07585	93-07635	94-09276
91-07781	93-07486	93-07536	93-07586	93-07636	94-09277
91-07782	93-07487	93-07537	93-07587	93-07637	94-09278
91-07783	93-07488	93-07538	93-07588	93-07638	94-09279
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91-07786	93-07491	93-07541	93-07591	93-07641	94-09282
91-07787	93-07492	93-07542	93-07592	93-07642	94-09283
91-07788	93-07493	93-07543	93-07593	93-07643	95-16668
91-07789	93-07494	93-07544	93-07594	93-07644	95-16669
92-10906	93-07495	93-07545	93-07595	93-07645	95-16670
92-10907	93-07496	93-07546	93-07596	93-07646	95-16671
92-10908	93-07497	93-07547	93-07597	93-07647	95-16672
92-10909	93-07498	93-07548	93-07598	93-07648	95-16673
92-10910	93-07499	93-07549	93-07599	93-07649	95-16674
92-10911	93-07500	93-07550	93-07600	93-07650	95-16675
92-10912	93-07501	93-07551	93-07601	93-07651	95-16676
92-10913	93-07502	93-07552	93-07602	93-07652	95-16677
92-10914	93-07503	93-07553	93-07603	94-09244	95-16678
92-10915	93-07504	93-07554	93-07604	94-09245	95-16679
92-10916	93-07505	93-07555	93-07605	94-09246	95-16680
92-10917	93-07506	93-07556	93-07606	94-09247	95-16681
92-10918	93-07507	93-07557	93-07607	94-09248	95-16682
92-10919	93-07508	93-07558	93-07608	94-09249	95-16683
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)  
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