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IN THE SUPREME COURT OF THE STATE OF IDAHO

FIRST SECURITY CORPORATION,

Plaintiff-Appellant,

v.

BELLE RANCH, LLC; JUSTIN FLOOD
STEVENSON; ELIZABETH BRETT
STEVENSON; and RABO AGRIFINANCE,
INC.,

Defendants-Respondents.

BELLE RANCH, LLC, an Idaho limited
liability company,

Plaintiff-Respondents,

v.

MOUNTAIN WEST BANK, a division of
Glacier Bank; GBCI OTHER REAL
ESTATE, LLC,

Defendants-Respondents,

and

SOUTH COUNTY ESTATES, LLC, an
administratively dissolved Idaho limited
liability company; PENSCO TRUST
COMPANY F.B.O. RICHARD D.
FOSBURY, IRA #F01EC; PENSCO TRUST
COMPANY CUSTODIAN F.B.O.
CHARLES HOLT, IRA #H01NH; PENSCO
TRUST COMPANY CUSTODIAN F.B.O.,
and DOES 1- 5, unknown persons who may
claim an interest in the subject water rights,

Defendants.

RICHARD D. FOSBURY, an individual

Plaintiff,

Idaho Supreme Court

Docket No. 46144-2018

46147-2018

Blaine County District Court

CV-2016-645, CV-2016-671 and CV -2016-
683

RESPONDENTS' JOINT BRIEF

v.

BELLE RANCH, LLC, an Idaho limited liability company; JUSTIN FLOOD STEVENSON, an individual; ELIZABETH BRETT STEVENSON, an individual; and RABO AGRIFINANCE, INC., a Delaware corporation,

Defendants-Respondents.

RESPONDENTS' JOINT BRIEF ON APPEAL

Appeal from the District Court of the Fifth Judicial District for Blaine County

the Honorable Jonathan Brody, District Judge, Presiding

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I. STATEMENT OF CASE

A. Nature of the Case

Belle Ranch, LLC (“Belle Ranch”) owns 289 acres of real property and appurtenant water rights 37-481C, 37-482H, 37-483C, 37-577BT, and 37-2630 (“Water Rights”) in Blaine County, south and east of Bellevue. Belle Ranch purchased this Property in December 2011 with loan proceeds provided by Rabo Agrifinance, Inc., now known as Rabo AgriFinance LLC (“RABO”), and ever since has farmed and irrigated the entire property with all 289 acres of the Water Rights. RABO holds a purchase money security interest in the real property and appurtenant Water Rights. Five Water Rights irrigate this property and have done so for many years. All Water Rights are appurtenant to the entire 289 acres. Four rights are surface water rights from the Big Wood River and one is from ground water. Appellants claim to be successors-in-interest to other successors-in-interest of a defunct LLC, South County Estates LLC (“South County”) that held this property for a time and defaulted on the mortgages when it was unable to develop the property. Appellants claim that the three former managers/members of this defunct LLC stripped off some of the water rights, placed the rights in their own name, and conveyed their interests to Appellants. Appellants claim that this purported interest in a portion of the Water Rights are senior and superior to the rights of Belle Ranch and RABO.

Appellants claim no interest in the land, nor do they claim to have ever put the water to beneficial use. The district court, Judge Brody, quieted title to the Water Rights in the name of the landowner, Belle Ranch, and subject to the perfected lien of RABO. Appellants then filed these appeals.

///

///

B. Course of the Proceedings

1. Initial Pleadings.

On December 2, 2016, First Security Corporation (“FSC”) filed a quiet title action against Belle Ranch, members Justin Flood Stevenson and Brett Stevenson, and RABO to quiet title to 7.5/289^{ths} of the Water Rights on the Belle Ranch Property. R. 14.¹ The complaint was served December 15, 2016. On December 21, 2016, Belle Ranch filed a quiet title action against the prior owner, South County, its member/managers, FSC, and the bank that conveyed the land to Belle Ranch, Mountain West Bank (“MWB”) and its successor GBCI Other Real Estate LLC (“GBCI”), to confirm title to the Water Rights. R2. 10. Big Stick LLC, Richard Fosbury and Charles Holt filed a third quiet title action against Belle Ranch and RABO, on December 28, 2016 seeking an interest in 7.8/289^{ths} of the Water Rights on the Belle Ranch Property. R3. 9. FSC, Big Stick, Holt and Fosbury all claimed to derive an interest in the Water Rights from South County. The three cases were consolidated on May 23, 2017. R. 374. The non-Belle Ranch parties asserted claims to a total of 15.3/289^{ths} of the Water Rights. R. 14, R3. 9. Only Belle Ranch asserted any interest in the remaining 273.7/289^{ths} of these five Water Rights. *Id.*; R2.10. Thus, it is undisputed that Belle Ranch owns at least 273/289^{ths} of the Water Rights, and the dispute here focuses only on the remaining 15.3/289^{ths} of the Water Rights.

2. Cross Motions for Summary Judgment.

The parties filed motions and cross-motions for summary judgment. R. 376, 384, 909. The district court heard oral argument on September 19, 2017, and the motions were taken under

¹ Respondents will keep the references to the Record consistent with Appellants’ Opening Brief. The primary record is 2,064 pages in length, and will be referenced as “R. __.” The second record is 376 pages in length and will be referenced as “R2. __.” The third record is 271 pages (or 311 by appellants’ count) and will be referenced as “R3. __”. Most references shall be to the primary record.

advisement. R. 1750-51. Belle Ranch's² Cross Motion for Summary Judgment sought judgment on a number of legal grounds.³

On October 30, 2017, the district court issued a written *Memorandum Decision on Cross-Motions for Summary Judgment Order Granting Plaintiff's Motion for Summary Judgment*. R. 1755-65. Of the 15.3/289^{ths} Water Rights at issue – the district court quieted title to 12.5/289^{ths} in the name of Belle Ranch. *Id.* The district court's decision rested on its analysis on the purported transfer documents and the effect of the unreleased mortgages held by MWB on those purported transfers. *Id.* The district court held that there were issues of fact that precluded summary judgment on remaining the 2.8/289^{ths} of the Water Rights claimed by Belle Ranch and Big Stick. *Id.*

3. Motion for Reconsideration

Big Stick, Fosbury, Holt and FSC filed a *Motion for Reconsideration* on November 13, 2017. R. 1766-69; R. 1780-82. The motions were fully briefed. On February 6, 2018, the matter was argued and taken under advisement. R. 1862-63. While the motions were under consideration, this Court issued its decision in *In Re SRBA Case No. 39576, Subcase No. 37-00864*, 164 Idaho 241, 429 P.3d 129 (2018). (“*Eden*”). The district court concluded that the *res judicata* and collateral estoppel issues addressed by this Court in *Eden* might affect the court's decision. The court then held a status conference, and provided the parties additional time to brief the effect of *Eden*. R. 1887-88.

² Throughout the underlying litigation Belle Ranch and RABO took joint positions on the issues in dispute. For purposes of this appeal, and where appropriate, the phrase “Belle Ranch” should be construed to mean both Belle Ranch and its secured lender, RABO.

³(1) statute of limitations; (2) the purported quitclaim deeds did not transfer title because of the outstanding unreleased mortgages; (3) the Water Rights remain appurtenant to Belle Ranch property, in which the Appellants have no interest; (4) the SRBA decree was preclusive; (5) the transfer proceeding for the Water Rights precluded claimants from later asserting any interest in the Water Rights; (6) waiver and estoppel; (7) abandonment and forfeiture; and that (8) there were issues of fact surrounding the fraudulent transfer of the water rights from South County to its managers/members.

The motions were once again taken under advisement on March 22, 2018, and on April 23, 2018, the district court issued its *Memorandum Decision on Motion to Reconsider Cross Motion for Summary Judgment*. R.1919-34. The district court re-affirmed its original decision, and also addressed the arguments pertaining to *res judicata* effect of the SRBA decrees and held that all Appellants' claims were barred. *Id.* Judgment was entered on May 8, 2018, quieting title to the entirety of water right nos. 37-481C, 37-482H, 37-483C, 37-577BT and 37-2630 in the name of Belle Ranch. R. 1935-38.

4. Motion to Correct Judgment

On June 18, 2019, FSC filed a motion to “correct” the Judgment under Rule 60(a), asking the district court to insert language referring to FSC’s attempt to create new water right numbers. R. 1954-57. Belle Ranch opposed the motion to correct Judgment as unnecessary and too narrow. On September 12, 2018, the district court issued an order denying the motion because there was no mistake in the Judgment and it correctly disallowed all prior splits of the five Water Rights.

5. Post-Appeal Proceedings

The day after FSC filed its motion to “correct” the Judgment, FSC filed its *Notice of Appeal*. R. 1958. Fosbury, Holt and Big Stick filed a separate Notice of Appeal. R. 2015. On September 6, 2018, Fosbury, Holt and Big Stick filed a *Notice of Substitution of Party* with this Court asserting that Big Stick and Holt had assigned their “interests in the case” to Fosbury. No actual assignment was filed. On September 24, 2018, the Court issued an *Order Granting Substitution of Party* Fosbury for Holt and Big Stick, and amending the caption. On October 4, 2018, counsel for FSC substituted in as counsel also for Fosbury. *See Notice of Substitution of*

Counsel. After previously consolidating the appeals for record and transcript purposes, the Court granted an uncontested Motion to consolidate the appeals for all purposes on April 10, 2019.

C. Statement of Facts

Appellants' Statement of Facts is lengthy and convoluted, but nevertheless incomplete. It does not do justice to the obscure timing and manner in which South County and its manager/members engaged in self-dealing through a series of exchanges and purported releases and the numerous documents they executed and recorded or filed in the county recorder's office, with the SRBA court and with IDWR in relation to these water rights claims. Significantly, the Appellants' Statement of Facts omits important material and undisputed facts. Accordingly, Belle Ranch must provide this Court with additional context. Belle Ranch has attached a table as Exhibit A to assist in understanding the timing of the execution, and recordation of the numerous quitclaim deeds, mortgages, and documents recorded with the county recorder's office. This table also appears at R.1706-07. Belle Ranch has also attached a table as Exhibit B to assist in understanding the timing of documents and orders filed before IDWR and the SRBA.

1. The Belle Ranch Property.

The Belle Ranch Property is located in Blaine County and consists of 289 acres. All the Water Rights are appurtenant to the same 289 acres, including the 15.3/289^{ths} interest in the water rights claimed by Appellants. Respondent, Belle Ranch, owns the Belle Ranch Property and the appurtenant Water Rights. R. 1467. It purchased the land and Water Rights in December 2011 using loan proceeds from RABO, and it is undisputed that Belle Ranch is a bonafide purchaser for value of the Belle Ranch Property. *Id.* The entire 289 acres is irrigated farmland, and is currently irrigated by all the Water Rights. Before Belle Ranch acquired the Belle Ranch Property, the entire property was irrigated by the same Water Rights. R. 1061.

These rights are stacked rights, limiting irrigation to a combined total of 289 acres. R. 1167.

The Water Rights are as follows:

Water Rights	Priority Date	Div. Rate	Source
37-481C	Aug. 1, 1882	3.014 cfs	Big Wood River
37-482H	Aug. 1, 1884	3.012 cfs	Big Wood River
37-483C	Aug. 1, 1902	15.086 cfs	Big Wood River
37-577BT	Mar. 24, 1883	2.2 cfs	Big Wood River
37-2630	Feb. 2, 1960	3.75 cfs	Groundwater

Since Belle Ranch acquired the property, it has consistently and timely paid all assessments due to the water district (“WD 37”) and to the irrigation district (“Triangle ID”) for delivery of the entirety of these Water Rights. R2. 10. Belle Ranch has also continuously put the full amount of the Water Rights to beneficial use on the Belle Ranch Property from the date of acquisition through the present. *Id.*

Water delivery records prepared by the Watermaster of WD 37 show that all the Water Rights have been delivered to the same headgate on Belle Ranch Property, in the same approximate quantity since 2003. R. 1061-1063. These records also show that the water had been delivered to “Scherer” at this same property from 2003 through 2011. *Id.* The water delivery records from 2012 forward show that the water was delivered to Belle Ranch at the same headgate. *Id.* The water delivery reports do not show that any of the Appellants have ever received any water under these Water Rights. *Id.* Appellants do not claim to have diverted any water or put it to beneficial use.

2. South County Estates, LLC.

South County was formed in 2003 and dissolved in 2011. R. 968, 1594-98. John Scherer (“Scherer”) was the “Managing Member,” R. 1594-98. Richard Fosbury (“Fosbury”), and Charles Holt (“Holt”) were also members. R. 970-1025. In 2003, South County acquired the Belle Ranch Property and appurtenant water rights. South County filed notice of change in

Water Right Ownership with the Idaho Department of Water Resources (“IDWR”) changing the name of the owner to South County. R. 970-1025. Various quitclaim deeds showing ownership of South County were attached. *Id.*

In October 2005, South County executed a Mortgage (Instrument #527439) against the Belle Ranch Property and appurtenant Water Rights with MWB. (“MWB”). R. 1444-49. A Modification of Mortgage was subsequently recorded December 01, 2006 (Instrument #542378), which stated the amount borrowed—\$5,670,000.00. R. 1027-28. South County executed a second mortgage against the Belle Ranch Property and appurtenant Water Rights which was recorded June 13, 2008 (Instrument #558904) in the amount of \$1,040,000.00. R. 1030-38. South County executed a third mortgage against the Property and Water Rights which was recorded October 24, 2008 (Instrument #562481), in the amount of \$249,000.00. R. 1040-47. Scherer, Fosbury and Holt, the members of South County guaranteed the mortgage or note to MWB. *See* R. 1049⁴.

South County defaulted on its nearly seven million dollars in loans from MWB. Instead of facing foreclosure on the notes and Mortgages, and on the guaranty liability of Scherer, Holt and Fosbury, South County executed a *Deed in Lieu of Foreclosure* to MWB, which was recorded on June 17, 2010. R. 1460-62. At that time, no portion of the Water Rights had been moved off of the property by a transfer proceeding and the entirety of the Water Rights remained in South County’s name. The Deed in Lieu provided that the conveyance included all appurtenances, including “all water, water rights, watercourses and ditch rights (including stock in utilities with ditch or irrigation rights).” R. 1461. The Deed in Lieu also included the “TO HAVE AND HOLD” clause to MWB for the property with the appurtenances. *Id.*

⁴ Such a guaranty document was not produced, however the estoppel certificate specifically mentions the release of these individual guaranties. R. 1049-1052.

In conjunction with the Deed in Lieu, South County executed an Estoppel Certificate recorded the same day (Instrument #578332). R. 1049-52. South County's Estoppel Certificate expressly stated that the conveyance included "appurtenances", including "all water, water rights, watercourses and ditch rights (including stock in utilities with ditch or irrigation rights." R. 1050. At that time, and ever since, the entirety of the five Water Rights were appurtenant to the Belle Ranch Property. Of this there is no dispute. The Estoppel Certificate also included all Partial Releases described below. *Id.* It confirmed that the Deed in Lieu was an "absolute conveyance" of the property and included with the property was all appurtenances, including "all water [and] water rights". *Id.* This Deed in Lieu was exchanged for a release of all obligations under the Mortgages and the guaranty liabilities of Scherer, Fosbury and Holt. *Id.*

Simultaneously, on June 17, 2010, MWB transferred the property to GBCI. R.100-02. On or about December 20 or 21, 2011, GBCI executed a Special Warranty Deed and MWB executed a Quitclaim Deed to the Belle Ranch Property and Water Rights to Belle Ranch. R. 120, 123. The deeds expressly stated that they conveyed "without limitation, Water Right Nos. 37-481C, 37-577BT, 37-482H, 37-2630 and 37-483C." At that time, no changes to the Water Rights had been made in the SRBA and none appeared in the IDWR records. Contemporaneously with this transfer, counsel to MWB advised that the five Water Rights appurtenant to the Belle Ranch Property were all acquired by MWB and available to irrigate the entire 289 acres of the Property. R. 1709-1710.

In conjunction with the conveyance of the Belle Ranch Property and Water Rights to Belle Ranch, a Title Commitment was issued by Stewart Title Guaranty Company. R. 1054-1059. The Title Commitment includes the results of an exhaustive title search on the property and included, in Schedule B, a list of items of note relative to the title of the Property. *Id.*

Importantly, although the Title Commitment did reference the Releases, the title search did not uncover any of the quitclaim deeds, described below, purporting to convey portions of the Water Rights. *Id.* (Schedule B, Part I, Item 5). Merely stating that the first mortgage lien was released is not evidence that the second or third mortgages had been released or that any portion of the Water Rights had been conveyed.

3. Void Conveyance of 15.3/289ths of the Water Rights to Scherer, Holt, Fosbury or Related Affiliates (Quitclaim Deeds and Partial Releases).

Before the SRBA partial decrees were issued, South County purported to make seven attempts, via quitclaim deeds, to convey fractional portions (totaling 15.3/289ths) of the Water Rights to its managers/members, Scherer, Holt, Fosbury and/or their affiliated entities, accounts or holdings. R. 1065,1077,1085,1093,1101,1109,1117. Neither South County nor the purported grantees ever attempted to *transfer* those Water Rights to any other real property.

a) *Big Stick, LLC (Scherer, managing Member) Quitclaim Deed and Partial Release.*

On December 7, 2007, South County executed a Quitclaim Deed (Instrument #554098) to Big Stick, LLC (Big Stick) for 2.8/289^{ths} of the Water Rights. R. 1065. This Quitclaim Deed was recorded on December 14, 2007. *Id.* Scherer was the managing member of both Big Stick and South County. R.1392. On October 14, 2009, a Partial Release of Lien was executed from MWB to Big Stick (Instrument #574996). R. 1073-75. This partial release was not recorded until February 10, 2010. *Id.* No Notice of Change of ownership associated with this purported quitclaim of these portions of the water rights was filed with IDWR or the SRBA Court.

b) *Holt IRA (#HO1NH, #HO1NV) Quitclaim Deed and Partial Release.*

On April 28, 2008, South County executed a Quitclaim Deed (Instrument #575488) to Holt IRA #H01NH for 1/289^{ths} of the Water Rights. R. 1077-83. This quitclaim was not recorded

until March 1, 2010. *Id.* A Partial Release of Lien (Instrument #575000) was executed on October 14, 2009, and subsequently recorded on February 10, 2010. R.1428-30. This partial lien release covered only MWB liens on this fraction of the Water Rights under the first mortgage. *Id.* It did not release the liens attached under either MWB's second or third mortgages. *Id.* On August 8, 2008, South County executed a Quitclaim Deed to Holt IRA #HO1NV (Instrument #575489) for 1/289^{ths} of the Water Rights. R. 1085-92. This quitclaim was not recorded until March 1, 2010. *Id.* A Partial Release of Lien (Instrument #575999) was executed on October 14, 2009, and not recorded until February 10, 2010. R.1432-34. This partial lien release covered only MWB liens on this fraction of the Water Rights under the first mortgage. It did not release the liens attached under either MWB's second or third mortgages. On April 8, 2009, South County executed a Quitclaim Deed to Holt IRA #H01NV (Instrument # 575490) for 1/289^{ths} of the Water Rights. R. 1094-99. This quitclaim was not recorded until March 1, 2010. A Partial Release of Lien (Instrument #575001) was executed on October 14, 2009 and not recorded until February 10, 2010. R.1436-38. This partial lien release covered only MWB liens on this fraction of the Water Rights under the first mortgage. It did not release the liens attached under either MWB's second or third mortgages. No transfer of these portions of the water rights was filed with IDWR.

c) Fosbury IRA Quitclaim Deed and Partial Release.

On March 17, 2008, South County executed a Quitclaim Deed to Fosbury IRA (Instrument # 575491) for 1/289^{ths} of the Water Rights. R.1101-07. This quitclaim was not recorded until March 1, 2010. A Partial Release of Lien (Instrument #574998) was executed on October 14, 2009 and not recorded until February 10, 2010. R.1420-22. This partial lien release covered only MWB liens on this fraction of the Water Rights under the first mortgage. It did not

release the liens attached under either MWB's second or third mortgages. On September 18, 2008, South County executed a Quitclaim Deed to Fosbury IRA (Instrument # 575492) for 1/289^{ths} of the Water Rights. R. 1109. This quitclaim was not recorded until March 1, 2010. A Partial Release of Lien (Instrument #574997) was executed on October 14, 2009 and recorded on February 10, 2010. R.1424-26. This partial lien release covered only MWB liens on this fraction of the Water Rights under the first mortgage. It did not release the liens attached under either MWB's second or third mortgages. No transfer of these portions of the water right was filed with IDWR.

d) Holt and Scherer Quitclaim Deed and Partial Release And FSC's Claim.

On June 25, 2009, South County executed and recorded a Quitclaim Deed to Holt and Scherer (Instrument #568680) for 7.5/289^{ths} of the Water Rights. R. 1117-22. A Partial Release of Lien (Instrument #568681) was executed and recorded on June 25, 2009. R.1478-79. This partial lien release covered only MWB liens on this fraction of the Water Rights under the first mortgage. It did not release the liens attached under either MWB's second or third mortgages. Scherer and Holt executed a Mortgage (Instrument #568682) in favor of Idaho Independent Bank ("IIB") as to the purported 7.5/289^{ths} interest in the Water Rights. On or about September 2, 2014, Scherer and Holt defaulted on their obligation to IIB and executed a Non-Merger Deed (Instrument #622055). R. 1124-28. The Non-merger Deed was recorded on October 20, 2014, the same day that IIB granted via warranty deed to FSC an alleged interest in the 7.5/289^{ths} of the Water Rights. R. 1474-76. This purported quitclaim is the sole basis for FSC's claim to any of the Water Rights.

Each of the above purported quitclaims of a fractional share of the Water Rights have the following in common:

- I. the entirety of the Water Rights have at all times remained appurtenant to the Belle Ranch Property owned by, titled in the name of, and used by Belle Ranch;
 - II. the record owner of the Belle Ranch Property (i.e., Belle Ranch) has continually paid assessments for, diverted and beneficially used the Water Rights on the Belle Ranch Property;
 - III. none of the persons or entities who allegedly acquired any fractional portion of the Water Rights have made any attempt to divert and/or beneficially use any portion of the Water Rights.
 - IV. none of these conveyances were ever the subject of any transfers filed with IDWR to move the water to any other property.
 - V. at the time of South County's default and execution of Deed in Lieu of Foreclosure and Estoppel Certificate, the Water Rights remained in the name of South County.
 - VI. the quitclaim deeds purporting to transfer a portion of the water right did not show up in any Title Commitment.
 - VII. the Partial Releases identify only the 2005 Mortgage (Instrument #527439) and Modification of Mortgage (Instrument No. 542378) The Partial Releases did not release any of the other outstanding mortgages or encumbrances, including Instrument No. 558904 or Instrument No. 56248 (i.e., the second and third MWB mortgages, recorded in June and October of 2008, respectively.
 - VIII. All of the purported transfers by quitclaim were recorded after the MWB second and third mortgages were recorded in 2008, except the 2.8/289^{ths} interest purportedly transferred to Big Stick and recorded in 2007.
4. Adjudication in the SRBA Belle Ranch Transfer Proceeding and Records Of Ownership with IDWR (See Exhibit B)

In 1988, the predecessor owner of the Belle Ranch Property, G. Chapman Petersen, filed notices of claim in the Snake River Basin Adjudication ("SRBA") for the five Water Rights appurtenant to the Belle Ranch Property. R. 1130. In 2003, South County acquired the Belle Ranch Property and appurtenant Water Rights, and filed a notice of change in Water Right Ownership with IDWR in the name of South County along with various quitclaim deeds. R.

970-1025.

In early 2007, the Director of IDWR issued recommendations in the SRBA, in Basin 37, recommending that the Water Rights be decreed to authorize 289 acres of irrigation for beneficial use on the Belle Ranch Property. R. 1143-47. South County was listed as the owner of the Water Rights. *Id.* On June 28, 2010, the SRBA Court issued a Special Master's Report and Recommendation for each of the Water Rights, recommending (i) that the Water Rights be decreed, in their entirety, to South County, and (ii) that the entirety of the Water Rights are appurtenant to the 289 acres of the Belle Ranch Property. R. 1149. On July 9, 2010, the SRBA Court issued an Amended Special Master's Report and Recommendation, continuing to recommend that each of the Water Rights be decreed, in their entirety, in the name of South County. R. 1158-65. At no time did any person who claimed to have received quitclaim deeds to portions of these Water Rights file any challenges to the Special Master's Reports, Recommendations, or Amended Recommendations to the Water Rights. Scherer, Holt and Fosbury did not seek to have any portion of the Water Rights decreed in their names or the name of their entities.

On August 31, 2010, the SRBA Court entered an Order of Partial Decree for the Water Rights, decreeing the Water Rights, in their entirety, in the name of South County. R. 1167-73. The Partial Decrees were served on South County and included a Rule 54(b) Certification. As with the Special Master Recommendations, no challenges to the determination that the entirety of the Water Rights were owned by South County were made by Scherer, Holt or Fosbury, despite the fact that they were the members of the entity served with notice of the Recommendations and the Partial Decrees and clearly know of the SRBA proceedings. The Partial Decrees became final decisions and were not appealed.

Once MWB acquired the property and Water Rights, it submitted, on July 27, 2011, a Notice of Change in Water Right Ownership with IDWR, to change the Water Rights ownership records to reflect that MWB owned all of the Water Rights. R. 1175-82. The Deed and Assignment to MWB were included. R. 1177-82. On September 13, 2011, IDWR notified MWB that the Ownership Change request has been completed and that the records for the Water Rights reflected that MWB owned the Water Rights, in their entirety. R. 1184. On February 28, 2012, Belle Ranch submitted a Notice of Change in Water Right Ownership with IDWR to change the Water Rights ownership records to reflect that Belle Ranch owned the entirety of the Water Rights. R. 1186-92. Attached to the notice filed with the IDWR were the deeds from GBCI and MWB. R. 1187-92. On March 7, 2012, IDWR notified Belle Ranch that the Ownership Change request had been completed and that the records for the Water Rights reflected that Belle Ranch owned the Water Rights, in their entirety. R. 1194.

On or about April 2012, Belle Ranch, LLC and John Stevenson filed an Application for Transfer of Water Rights, seeking to amend elements of the Water Rights to create a Permissible Place of Use. R. 1196-97. Water from a nearby location would be transferred and used in conjunction with the Water Rights by Belle Ranch. R. 1196-220. IDWR published notice of the pending transfer in the Idaho Mountain Express on May 16 and 23, 2012. R. 1221. The Notice provided that Belle Ranch sought to transfer various water rights, including the Water Rights at issue in this case. *Id.* The Notice further provided that “any protest against the approval of this” transfer must be filed with IDWR “on or before June 4, 2012.” *Id.* No protests were filed by Appellants to challenge Belle Ranch’s ownership or authority to transfer any or all of the Water Rights. IDWR reviewed and processed the Transfer, approved the transfer as Transfer 77878 and amended the elements of the Water Rights in a July 6, 2012 decision. R. 1223. Significantly, the

Transfer stated that the “Right Holder” for the Water Rights was Belle Ranch, LLC. *Id.*

Following Transfer 77878, IDWR records continued to reflect that Belle Ranch owned the entirety of the Water Rights.

On August 26, 2014, the SRBA district court issued the Final Unified Decree.⁵ The Final Unified Decree superseded all prior water rights, except as set forth in the partial decrees and general provisions issued by the SRBA Court. *Final Unified Decree* ¶ 11. Significantly, the Final Unified Decree recognized administrative changes to water rights completed after the Partial Decree, but before the Final Unified Decree. *Id.* ¶ 13. Importantly for this appeal, only MWB and Belle Ranch filed Notices of Change of Ownership in that window of opportunity. Likewise, Belle Ranch’s Transfer 77878, which claimed all the Water Rights in the name of Belle Ranch, LLC, was also accomplished during this window. None of the efforts of the Appellants to claim ownership based on this void quitclaims that pre-dated the Partial Decree were attempted until after the Final Unified Decree was issued. *See* § C.5 *infra*. The SRBA Court also issued an Order with the Final Unified Decree retaining jurisdiction over certain specifically enumerated pending subcases. *Id.* The Water Rights appurtenant to Belle Ranch Property were not among those rights retained by the SRBA Court. *Id.*

5. Appellants’ Unilateral Attempts to Change of Ownership of the Water Rights with IDWR.

IIB first asserted a claim to the Water Rights in 2014. R. 1712-15. Counsel for Belle Ranch responded explaining that IIB had no valid interest. R. 1734-37. IIB apparently gave up, as nothing was heard back. IIB then purported to transfer its interest to FSC in October 2014. R. 156. So FSC took whatever interest it had with full notice of the deficiencies in its claim to the

⁵ The Final Unified Decree can be publicly found here: <http://srba.idaho.gov/Images/2014-08/0039576xx09020.pdf> (accessed 05/08/2019). All future references to “Final Unified Decree” or “Final Decree” are citing to this public document.

Water Rights and of Belle Ranch's ownership.

On October 28, 2014, FSC submitted a surreptitious ownership change notice to IDWR. R. 1296. FSC submitted the request without providing any notice to Belle Ranch, even though Belle Ranch was owner of record, and even though it knew of Belle Ranch's position. *Id.* IDWR processed the ownership change, splitting the Water Rights and creating the following new water rights: 37-22915, 37-22916, 37-22917, 37-22918 and 37-22919 (the "Split Water Rights"). *Id.* On March 17, 2016, Belle Ranch sent a letter to IDWR challenging the ownership change, asserting that the SRBA Decree quieted title in the Water Rights, in their entirety, in South County– the owner of the Belle Ranch Property – and that Belle Ranch, had acquired all of South County's interest in the Water Rights. R. 1315-64. On March 29, 2016, IDWR sent an email to Belle Ranch and FSC stating that it would change the ownership of the Split Water Rights to "South County LLC" and that the parties could "quiet title to the water rights in district court." R. 1366-67.

Thereafter the other claimants filed their own Notices. On June 15, 2016, Defendant Fosbury IRA submitted a Notice of Change in Water Rights Ownership records on 2/289^{ths} of the Water Rights allegedly conveyed to Fosbury IRA on March 17, 2008 and September 18, 2008. R. 1369-89. Fosbury IRA submitted the request without notice to Belle Ranch. *Id.* On June 24, 2016, Big Stick submitted a Notice of Change in Water Right Ownership, seeking to change the ownership records on 2.8/289^{ths} of the Water Rights allegedly conveyed to Big Stick on December 7, 2007. R. 1392-03. Big Stick submitted the request without providing any notice to Belle Ranch. *Id.* On June 24, 2016, Holt IRA submitted a Notice of Change in Water Right Ownership, seeking to change the ownership records on 2.8/289^{ths} of the Water Rights allegedly conveyed to Holt IRA on August 8, 2008 and April 8, 2009. R. 1405-16. Holt IRA submitted the

request without providing any notice to Belle Ranch. *Id.* In an email dated September 6, 2016 to counsel for Big Stick, Fosbury and Holt, IDWR notified them that it would not process the ownership change requests absent further instruction from a district court following a quiet title action. R. 1418. Throughout all this time Belle Ranch continued to irrigate the Property with all the Water Rights and pay all the assessments.

II. ADDITIONAL ISSUES ON APPEAL

Pursuant to IRAP 35(b)(4), Belle Ranch submits that the issues presented in Appellants' brief are insufficient and incomplete and therefore raises the following additional issues on appeal.

1. Whether Appellants, as successors to South County, are estopped to claim any interest in the Water Rights by virtue of South County's estoppel certificate acknowledging that all appurtenant water rights were transferred to MWB, when the entirety of the Water Rights were and remain appurtenant to the Belle Ranch Property and Appellants are purporting to claim their rights under South County?
2. Whether Belle Ranch's administrative transfer proceeding processed before the Final Unified Decree which recognized Belle Ranch LLC's ownership of all the five Water Rights, and for which notice was provided as required by law, is binding on Appellants who claim a portion of these same water rights?
3. Whether Appellants' claims to any portion of the Water Rights are barred by the Statute of Limitations?
4. Whether Appellants can claim ownership of water rights appurtenant to Belle Ranch Property when they have never beneficially used, banked or transferred those rights to another property?

III. ATTORNEY'S FEES ON APPEAL

In conformance with I.A.R. 35(b)(5), Respondents herein request an award of their attorney's fees and costs pursuant to I.C. § 12-121, I.A.R. 40 and 41 and any other applicable provisions of Idaho law.

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IV. ARGUMENT

A. **Standard of Review**

When this Court reviews a district court's ruling on a motion for summary judgment it employs the same standard properly employed by the district court when originally ruling on the motion. *Cherry v. Coregis Ins. Co.*, 146 Idaho 882, 884, 204 P.3d 522, 524 (2009) (citing *Farmers Ins. Co. of Idaho v. Talbot*, 133 Idaho 428, 431, 987 P.2d 1043, 1046 (1999)). Summary judgment is proper when there is no genuine issue of material fact and the only remaining questions are questions of law. *Id.* (citing *Harwood v. Talbert*, 136 Idaho 672, 677, 39 P.3d 612, 617 (2001)). This Court liberally construes all disputed facts in favor of the nonmoving party and draws all reasonable inferences and conclusions supported by the record in favor of the party opposing the motion. *Lockheed Martin Corp. v. Idaho State Tax Comm'n*, 142 Idaho 790, 793, 134 P.3d 641, 644 (2006). The fact that cross-motions have been filed does not change the standard of review. Each party's motion is evaluated on its own merits. *Petrus Family Trust v. Kirk*, 163 Idaho 490, 494, 415 P. 3d 358, 362 (2018).

The nonmoving party cannot rest upon mere speculation and must submit more than just conclusory assertions that an issue of material fact exists to withstand summary judgment. *Cantwell v. City of Boise*, 146 Idaho 127, 133, 191 P.3d 205, 211 (2008). A nonmoving party must come forward with evidence by way of affidavit, or otherwise, that contradicts the evidence submitted by the moving party and establishes the existence of a material issue of disputed fact. *Kiebert v. Goss*, 144 Idaho 225, 228, 159 P.3d 862, 865 (2007) (citations omitted). The nonmoving defendant has the burden of supporting a claimed affirmative defense on a motion for summary judgment. *Chandler v. Hayden*, 147 Idaho 765, 771, 215 P.3d 485, 491 (2009). A mere scintilla of evidence, or only slight doubt as to the facts, is not sufficient to create a genuine issue

of material fact. *Finholt v. Cresto*, 143 Idaho 894, 897, 155 P.3d 695, 698 (2007) (citations omitted). Summary judgment is appropriate where the nonmoving party bearing the burden of proof fails to make a showing sufficient to establish the existence of an element essential to the party's case. *Cantwell*, 146 Idaho at 133, 191 P.3d at 211. In the absence of genuine disputed issues of material fact, only questions of law remain and the Court exercises free review. *Stuard v. Jorgenson*, 150 Idaho 701, 704, 249 P. 3d 1156, 1159 (2011).

When an action will be tried before a court without a jury, the court is not constrained to draw inferences in favor of the party opposing a motion for summary judgment, but is free to arrive at the most probable inferences to be drawn from uncontroverted evidentiary facts. *Barnes v. Jackson*, 163 Idaho 194, 198, 408 P.3d 1266, 1270 (2018); *Loomis v. City of Hailey*, 119 Idaho 434, 437, 807 P.2d 1272, 1275 (1991) (citing *Riverside Dev. Co. v. Ritchie*, 103 Idaho 515, 650 P.2d 657 (1982)).

“[I]t is well-settled that where an order of a lower court is correct, but based on an erroneous theory, the order will be affirmed upon the correct theory. *Grabicki v. City of Lewiston*, 154 Idaho 686, 692, 302 P.3d 26, 32 (2013) (citation and internal quotation marks omitted). The Court will uphold the decision of a trial court if any alternative legal basis can be found to support it. *Daleiden v. Jefferson Cnty. Joint Sch. Dist. No. 251*, 139 Idaho 466, 470–471, 80 P.3d 1067, 1071–1072 (2003).” *Syringa Networks, LLC v. Idaho Dep't of Admin.*, 159 Idaho 813, 827, 367 P.3d 208, 222 (2016); see also *Hauser Lake Rod and Gun Club, Inc. v. City of Hauser*, 162 Idaho 260, 396 P.3d 689 (2017).

B. Introduction

The district court initially reviewed the evidence relating to the various attempts by the manager/members South County to strip out parts of the water rights from the LLC for their

personal use and concluded that those efforts were ineffectual; with the possible exception of the earliest such effort by Big Stick involving a 2.8/289^{ths} interest in the water rights. R. 1755-64. Upon Appellants' Motion for Reconsideration and in light of *Eden case* the district court concluded that its initial ruling on the basis of the recorded documents was correct, but that Appellants were precluded by the doctrines of collateral estoppel and *res judicata* from asserting any ownership interests in the Water Rights. R. 1919-34. Thus, it concluded that Belle Ranch owned the entirety of the Water Rights. Both conclusions are correct.

Appellants devote most of their argument to *res judicata* and collateral estoppel grounds, and so Belle Ranch will begin its response with these issues. In reviewing Appellants' arguments, this Court must bear in mind that Appellants' claims all derived from purported assignments from South County. As successors to South County, Appellants are in privity with South County and bound to the same extent as South County. In other words, Appellants stand in the same shoes as South County and, if South County could not make the arguments Appellants are making then neither can Appellants. *Silver Eagle Mining Co. v. State*, 153 Idaho 176, 179, 280 P. 3d 679, 682 (2012). Not only as successors are Appellants in privity with South County, the members-owners of South County when they attempted to strip some of the water from South County must be charged to the same degree as South County with its actions and inactions. These members-owners allowed a partial decree to be entered in favor of South County for the Water Rights and did nothing about it for over six years.

C. The District Court's Order Granting Belle Ranch's Motion for Summary Judgment Should be Affirmed Because The SRBA Quieted Title and Adjudicated Ownership in the Water Rights and Appellants' Claims are Barred by Collateral Estoppel.

The district court examined the SRBA and administrative proceedings with respect to these five water rights and correctly concluded that the rights were partially decreed to South

County in 2010, and that MWB and Belle Ranch filed change of ownership and transfer proceedings, as required by Idaho law, before the Final Unified Decree was issued in 2014. It was not until after the Final Unified Decree was issued that Appellants tried to go behind the Partial Decree, the administrative proceedings and the Final Unified Decree to assert their current claims. Accordingly, the district court properly held Appellants were barred by *res judicata* and collateral estoppel. The court correctly held there was a unity of parties, the same claim to water rights and a final judgment on the merits. R.1919 -34.

Appellants admit that their current claim of ownership is inconsistent with South County's Partial Decree and admit that they derive their claims from purported conveyances from South County preceding the Partial and Final Decrees. They do not challenge the conclusion that they are in privity with the parties or that there was a final judgment. Rather, they argue that they are not bound by the decree, contending that "ownership of these Water Rights was never litigated in the SRBA." *Opening Brief on Appeal* p. 23. They also argue that ownership "was not required to be litigated" *Id.* p. 24.

Significantly, Appellants do not assert that ownership of a water right could not be brought in the SRBA. Indeed, they explain that, had their ownership claims been asserted, the SRBA Court would have recognized the quitclaims to their "predecessors"⁶. *Id.* p. 30. Appellants even concede that the SRBA Court and this Court on appeal from SRBA decisions have made decisions about water right ownership. *Id.* p. 24.n.16.

In *United States v. Pioneer Irr. Dist.*, 144 Idaho 106, 108, 157 P. 3d 600, 602 (2007) this Court stated: "This is a water rights case arising from the Snake River Basin Adjudication (SRBA) regarding ownership interests of the United States and various irrigation entities."

⁶ This contention is incorrect, because, as the district court correctly ruled, these quitclaims were void and ineffective to transfer any title.

(emphasis added). There the Court fashioned a remark for the reservoir water rights describing the ownership interests of the United States, the irrigation organizations and the consumers or users of water. *Id* at 115, 157 P. 3d at 607. Quite clearly the SRBA and this Court could and did rule on ownership. Judge Wildman, who presides over the SRBA, held that the SRBA court had jurisdiction to adjudicate water right ownership interests. *Cash v. Cash*, Case No. CV-2016-02 (Camas County) *Order Denying Petitioner’s Second Motion for Reconsideration*. (Jan. 12, 2018). (“*Cash*”) Copy attached as Exhibit C; see also R. 1813. Judge Wildman extensively catalogued many of the ownership cases decided in the SRBA.⁷ He concluded that to accept FSC’s argument “would get a dangerous precedent wherein individuals could dispute ownership of a water right indefinitely into the future based on pre-decree factors...” *Id.* p. 7. FSC’s counsel must be convinced as he cited *Cash* to this Court.⁸

The fact that ownership could be and has been litigated in front of the SRBA is significant for *res judicata* purposes. Appellants’ brief at p. 23 quotes from *Black Canyon Irr. Dist. v. State*, 163 Idaho 144, 150, 408 P. 3d 899, 905 (2018). That quote includes the following statement: “Under this doctrine, a claim is also precluded if it could have been brought in the previous action, regardless of whether it was actually brought...”(emphasis added). Had Appellants or their predecessors wished to claim ownership to the water rights they assert were quitclaimed to them before the Partial and Final decrees, they “could have” done so by filing an objection but did not. *See Cash supra*. In *Black Canyon*, this Court held that Black Canyon

⁷ These decisions included this Court’s decisions in *Joyce Livestock v. U.S.*, 144 Idaho 1, 156 P. 3d 502 (2007); *Bedke v. City of Oakley*, 149 Idaho 532, 237 P. 3d 1 (2010); and *Fort Hall Water Users Ass’n v. US*, 129 Idaho 39, 921 P. 2d 739 (1996), and many other district court decisions.

⁸ Appellants’ attorney cited the *Cash* decision to this Court, and relied upon Judge Wildman’s authority stating, “the fact must not be lost that Judge Wildman, since 2009, has been the presiding judge of the SRBA; and, from 1999 until his appointment to the bench in 2009, Judge Wildman was the staff attorney for the SRBA...Clearly, Judge Wildman has experience and insight into the laws governing the adjudication, making his views persuasive.” *Respondent’s Brief*, p. 30, Supreme Court No. 45675.

Irrigation District was precluded based on the United States' prior claims to the water rights in the adjudication because the Irrigation District's claims were "derived from" the United States' water rights thus satisfying the unity of parties requirement. 163 Idaho at 152, 408 P. 3d at 907.

The SRBA was a general stream adjudication—precisely to determine the elements of the water rights, and ownership thereof. If Appellants had any claims or interest in these Water Rights, they were required to make their claims in the SRBA. There is no doubt they are "claimants" to Water Rights included in the adjudication. They failed to participate, even though they had actual knowledge of the SRBA proceedings, and are now attempting to collaterally attack the Partial and Final Decrees.

Pertinent portions of I.C. § 42-1409 state as follows:

(4) **All claimants** of water rights that are included in a general adjudication **shall file** with the director a notice of claim for all water rights, **except** for those types of water rights designated in paragraphs (a) through (d) of subsection (1) of section 42-1420, Idaho Code.

(5) Any person who fails to submit a required notice of claim shall be deemed to have been constructively served with notice of a general adjudication by publication and mailing as required by section 42-1408, Idaho Code.

(6) **Each purchaser** of a water right from the water system **shall** inquire of the director whether a notice of claim has been filed, and if not, **shall file** a notice of claim in accordance with this section. All claimants and purchasers **shall** provide the director written notice of any change in ownership or of any change in mailing address during the pendency of a general adjudication. All purchasers **shall** submit some evidence of ownership along with the notice of change of ownership.

I.C. 42-1409(4)-(6) (*emphasis added*).

Appellants cannot overcome the binding nature of the SRBA Partial and Final Decrees.

The Decree entered in a general adjudication is "conclusive as to the nature and extent of all water rights in the adjudicated water system". I.C. § 42-1420(1). *See also State v. Nelson*, 131 Idaho 12, 16, 951 P.2d 943, 947 (1998)("Finality in water rights is essential."). I.C. § 42-1420(1)

even goes as far as to state that unless the water right fits within specific exceptions as therein listed, the water right is lost by failure to file a notice of claim.

I.C. §§ 42-1411(2) and 42-1412(6) provide that a partial decree must list the “name and address of the claimant” of the water rights being adjudicated. A “claimant” is defined as “any person asserting ownership of rights to the use of water within the state of Idaho.” I.C. § 42-1401A(1). The decree unequivocally links the *claimant* to ownership of the water right. Appellants’ attempt to contend that claimant does not mean owner cannot withstand this statutory definition or the fact that ownership as among claimants has been decided in SRBA proceedings.

In *Mullinix v. Killgore's Salmon River Fruit Co.*, 158 Idaho 269, 277–78, 346 P.3d 286, 294–95 (2015), this Court stated:

Killgore’s argument contesting the existence of a water right on the Killgore-Mullinix parcel is foreclosed by virtue of James’s Joe Creek water right no. 79-4001 and the SRBA partial decrees. In a contested water rights case, this Court held that a water rights decree was “conclusive proof of diversion of the water, and of application of the water to beneficial use, *i.e.*, the decree is *res judicata* as to the water rights at issue herein.” *Crow*, 107 Idaho at 465, 690 P.2d at 920.

and continued:

Our holding of the presumption of accuracy of the decree is in keeping with the judicial policy of deterring the reopening of judgment long after cases are decided and the files are closed. Our holding is also consistent with the ruling of the trial judge, in which he stated that a decree affixing water rights and establishing priorities is bidding on all parties, and that such decree fixes the dates of priority *and the land to which the water is appropriated*.

(*emphasis in original*). The Final Unified Decree, provides that all persons are bound. See *Final Unified Decree*; See also *Order Re: Proposed Final Unified Decree and Adoption Proposed Procedures and Deadlines*, *In re* SRBA Case No. 39576, Subcase No. 00-92099 (Jan. 30, 2012).

In 2010, the SRBA court entered a *Partial Decree* for all the Water Rights at issue in this

case (including the portion of the rights held by Belle Ranch which are not challenged by Appellants) in the name of South County. R. 1167-73. In 2011 and 2012, prior to the 2014 *Final Unified Decree*, MWB and Belle Ranch both took the required procedural administrative steps to change the water right ownership of these rights into their respective names. R. 1175-82, 1186-92. Belle Ranch also filed an administrative transfer proceeding unambiguously asserting ownership to all the Water Rights in the name of Belle Ranch. R. 1196-21. Before the *Final Unified Decree* Appellants did not make any claim of ownership to IDWR or the SRBA court.

Appellants assert that their status as “claimants” to these Water Rights pre-dated the 2010 *Partial Decree*. However, they and their predecessors did not move to alter or amend the notice of claims or the *Partial Decree* to have the SRBA court recognize their purported interests. I.C. § 42-1409A (2) authorizes amendment of the name of the claimant “at any time”. The SRBA Court issued a deadline order requiring late claims to be filed by January 13, 2013. *In Re SRBA Case No. 39576, Subcase No. 37-00864*, 164 Idaho 241, 429 P.3d 129 (2008). (“*Eden*”). Appellants did nothing. Furthermore, I.C. § 42-1409(6) requires that each claimant and purchaser of a water right “shall” inquire of the director whether a notice of claim has been filed, and if not, “shall” file a notice of claim, “shall” provide a written notice of change in ownership and submit evidence of ownership during the pendency of a general adjudication. “Shall” means mandatory. *Simpson v. Louisiana Pacific Corp.* 134 Idaho 209, 213, 998 P.2d 1122, 1126 (2000) (legislature’s use of “shall” establishes a mandatory requirement); *Roesch v. Klemann*, 155 Idaho 175, 178 307 P.3d 192, 195 (2014) (same). Appellants did not follow these mandatory SRBA procedures for the general adjudication, and are attempting to excuse their failures by filing this untimely collateral attack.

In *Eden*, claimants sought to set aside the Partial and Final Decrees to assert ownership to

a right that had been decreed as disallowed. Similarly, Appellants assert a claim to a previously decreed water right and in effect seek to set-aside the *Partial Decree* and the *Final Unified Decree* to name themselves as owners. As this Court held in *Eden*, “after a 27-year effort the SRBA Court issued the *Final Unified Decree* that is ‘conclusive as to the nature and extent of all water rights within the Snake River Basin within the State of Idaho with a priority date prior to November 19, 1987’ and is “binding against all persons.” *Id.* at 245, 429 P.3d at 133 (*quoting Final Unified Decree*). “All persons” includes Appellants.

Appellants would have this Court overlook the mandatory provisions of I.C. 42-1409(6) by asserting that IDWR does not make ownership decisions. The problem with this argument is that it ignores the fact that 42-1409(6) is part of the adjudication statutes. “The notice requirements specific to the SRBA are set forth by statute.” *Id.* at 249, 429 P.3d at 137.

Appellants argue that the statutory adjudication procedures do not apply to them, and they are free to assert ownership of decreed water rights, based on pre-decree transactions, at any time. The adjudication statutes and *Eden* make it clear that all claimants are bound to follow the SRBA statutory procedures. *See Holden v. Werce*, 162 Idaho 393, 414 P. 3d 215 (2018)(requiring the parties to follow the established adjudication procedures or forfeit their claims).

This Court “has long accepted that water rights adjudications present unique circumstances often requiring a departure from established rules of procedure.” *Eden, supra*, 164 Idaho at 251, 429 P.3d at 139. The adjudication procedures are clearly set forth by statute. I.C. § 42-1409A authorizes a claimant to amend its notice of a claim. Under I.C. § 42-1401A(1), a “claimant” is “any person asserting ownership of rights to the use of water...” Obviously that definition includes Appellants. I.C. § 42-1409 establishes a procedure for filing claims in the

SRBA. Thus, “any person asserting ownership of rights use of water” must provide a notice of claim with the Director. I.C. § 42-1409(1)(a).

The SRBA is “conclusive” as to the nature of the water rights and “[a]ll prior rights that were required to be claimed in the SRBA were superseded by the *Final Unified Decree*.” *Eden*, 164 Idaho at 253, 429 P.3d at 141 (2018). This Court’s holding in *Eden* makes clear that this “conclusive” decision applies to claims of ownership of water rights. Judge Wildman in *Cash v. Cash*, Camas County, Case No. CV-2016-02, *Order Denying Petitioners Second Motion for Reconsideration*, pp. 6-7 (January 12, 2018) held that the *Final Unified Decree* is conclusive as to the nature and extent of all water rights in the SRBA and “[t]his includes all the defining elements of a water right, including the key defining element of ownership.” R. 1813-22; Exhibit C.

When the SRBA court adjudicated the Water Rights to South County, it adjudicated the Water Rights against all other claimants who could have asserted competing claims at the time, including Appellants. As Appellants are claiming their rights under and pursuant to the rights previously held by South County then, if South County had no rights, then Appellants have no rights either. “[I]f a court has the general power to adjudicate the issues in the class of suits to which the case belongs its interim orders and final judgments, *whether right or wrong*, are not subject to collateral attack, so far as jurisdiction over the subject matter is concerned.” *Gordon v. Gordon*, 118 Idaho 804, 807, 800 P.2d 1018, 1021 (1990) (emphasis in original). See also *Rangen v. IDWR*, 159 Idaho 796, 367 P. 3d 193 (2016) (impermissible collateral attack on decree). The SRBA court had the statutory authority and jurisdiction to adjudicate water rights “against other water users,” and did exactly that, finding that the Water Rights belonged to South County and not to Appellants. The SRBA court’s determination may not be challenged now.

D. The District Court's Order Granting Belle Ranch's Motion for Summary Judgment Should be Affirmed Because Belle Ranch and MWB followed the Requirements of Idaho Code §§ 42-1409(a) and 42-248 Prior to Issuance of the Final Decree—and Appellants did not.

After ownership of the Water Rights was adjudicated to South County, both MWB and Belle Ranch did exactly what they were required to do under the mandatory statutory adjudication procedures to document the transfer of ownership of the Water Rights to Belle Ranch. I.C. §§ 42-428, 42-1409(6). Belle Ranch purchased the Property and Water Rights from MWB and GCBI who had acquired the Property and appurtenant Water Rights from South County. Belle Ranch and MWB both filed Notices of Change of Ownership. R. 1175 and R. 1186. Thereafter, Belle Ranch also filed a Transfer Application under I.C. § 42-222, asserting ownership to all 289 acres of the Water Rights in the name of Belle Ranch appurtenant to the Belle Ranch Property. R. 1196 and R. 1223. Appellants did nothing during the adjudication. No notices of change of ownership or transfer applications were filed prior to the Final Unified Decree.

Appellants would have this Court believe that Belle Ranch is arguing that every Notice of Change of Ownership is binding on the world. Not so. Rather, I.C. § 42-1409(6) makes it mandatory to provide notice to the Director during the course of an adjudication, then those persons acting as required by law who file the required notice with IDWR are entitled to protection of the adjudication and Final Unified Decree. Those who don't are precluded. Belle Ranch filed the required notice. Appellants' failure to take action prior to the Final Unified Decree is fatal to Appellants' claims.

E. The District Court's Order Granting Belle Ranch's Motion for Summary Judgment Should be Affirmed Because Belle Ranch's Transfer Proceedings of the Water Rights through IDWR Acts as Res Judicata and Binding as to Appellants' Claims.

Appellants had proper notice and a more than adequate number of opportunities to

contest, object, or make a claim to some portion of the Water Rights, but they simply did not. The administrative transfer proceedings before IDWR provided another opportunity to raise their claims to the Water Rights, which they also ignored. It too is binding and acts as *res judicata* upon Appellants' claims.

The "doctrine of *res judicata* covers both claim preclusion (true *res judicata*) and issue preclusion (collateral estoppel)." *Ticor Title Co. v. Stanion*, 144 Idaho 119, 123, 157 P.3d 613, 617 (2007). "Claim preclusion bars a subsequent action between the same parties upon the same claim or upon claims 'related to the same cause of action...which might have been made.'" *Id.* Issue preclusion protects litigants from litigating an identical issue with the same party or its privity. *Id.* (internal citations omitted). Fundamentally: (1) it preserves the acceptability of judicial dispute resolution against the corrosive disrespect that would follow if the same matter were twice litigated to inconsistent results; (2) it serves the public interest in protecting the courts against the burdens of repetitious litigation; and (3) it advances the private interest in repose from the harassment of repetitive claims. *Id.* See also *Black Canyon Irr. Dist. v. State*, 163 Idaho 144, 408 P. 3d 899 (2018).

A water right transfer results in a *permanent or long-term change* to a water right's point of diversion or a change to the place of use, period of use, and/or nature of use and ownership. I.C. § 42-222; R. 1196. Appellants claim that ownership change cannot, as a matter of law, be included in a transfer. Appellants are wrong as a matter of statutory construction. Contrary to Appellants' assertions, I.C. § 42-248(4) specifically provides that change of ownership can be accomplished under a Section 42-222 transfer proceeding. The law could not be more clear. In order to accomplish the transfer, a person has to be entitled to the use of the water right by license, claims or decree, and has to make application with IDWR describing the water rights

ownership and the requested transfer so the department can hold an administrative proceeding and the public has an opportunity to protest the same. *Id.*

Res judicata applies to agency decisions. *Astorie Fed. Sav. & Loan Assoc. v. Solimino*, 501 U.S. 104, 107-08, 111 S. Ct. 2166, 2169 (1991) (“We have long favored application of the common-law doctrines of collateral estoppel (as to issues) and *res judicata* (as to claims) to those determinations of administrative bodies that have attained finality.”); *Magee v. Thompson Creek Mining Co.*, 152 Idaho 196, 268 P.3d 464 (2012); *Welch v. Del Monte Corp.*, 128 Idaho 513, 915 P.2d 1371 (1976). In Idaho, “the doctrine of *res judicata* means that ‘in action between the same parties upon the same claim or demand, the former adjudication concludes parties and privities not only as to every matter offered and received to sustain or defeat the claim but also every matter which might and should have been litigated in the first suit.’” *Magee*, 152 Idaho at 202, 268 P.3d at 470 (quoting *Farmers Nat’l Bank v. Shirey*, 126 Idaho 63, 70, 87 P.2d 762, 769 (1994)). This Court has held that a prior IDWR administrative proceeding precludes re-litigation of issues before the Department. *Branson v. Higginson*, 128 Idaho 274, 275, 1912 P.2d 642, 643 (1996). Objectors to a transfer application must follow IDAPA judicial review requirements. *Chisholm v. IDWR*, 142 Idaho 159, 161, 125 P.3d 515, 517 (2015). Appellants did not participate or file an appeal.

This Court faced a similar situation in *Hillcrest Irr. Dist. v. Nampa & Meridian Irr. Dist.*, 57 Idaho 403, 66 P.2d 115 (1937). There, Hillcrest Irrigation District had submitted the equivalent of a transfer application to the state engineer (now IDWR). The transfer was approved and not appealed. *Id.* Thereafter Hillcrest put the water to beneficial use after obtaining approval of the transfer. *Id.* Years later, Nampa & Meridian Irr. Dist. challenged the validity of the transfer. This Court stated:

Long and continuous knowing acquiescence in another's use and enjoyment of a property or privilege may preclude one from subsequently asserting a claim.

In *Ryan v. Wooding*, 9 Idaho, 525, 75 P. 261 the just and fair rule is stated as follows: “[c]ourts of equity do not favor antiquated or stale demands and refuse to interfere when there has been gross laches in commencing the proper action, or long acquiescence in the assertion of adverse rights.”

Id. at 411.

This Court held that Hillcrest had used the water after the transfer and that title to the water should be quieted in Hillcrest's name. *Id.* at 412. In *Hillcrest* the adverse use of the water following the transfer was twenty years. Here the adverse use has been since the 2011 irrigation season and then 2012 transfer. Appellants do not explain why five irrigation seasons adverse use following a transfer where they sat idly on their rights, is not sufficient. Compare I.C. § 42-222(2) (all rights are lost or forfeited for five years of non-use).

All of Appellants' claims derive from South County's prior interest in the Water Rights. After Belle Ranch acquired the Belle Ranch Property and appurtenant Water Rights, it filed for an administrative transfer of those water rights with IDWR. R. 1196-1221. Legal notice of the application was prepared and published in the Idaho Mountain Express on May 16, and 23, 2017. *Id.* The Notice provided that Belle Ranch sought to transfer various water rights, including all the Water Rights at issue in this case. *Id.* The Notice further provided that “any protest against the approval of this” transfer must be filed with IDWR “on or before June 4, 2012.” *Id.* South County and its members had the opportunity to contest the transfer. They failed to do so. No protests were received to challenge Belle Ranch, LLC's authority to transfer the entirety of the Water Rights. IDWR reviewed and processed the Transfer, and then issued a final decision approving the transfer and amending the elements of the Water Rights in a July 6, 2012 decision. R. 1223. No one appealed. The order is final and precludes Appellants' claims.

The transfer proceedings occurred after the Partial Decrees, but prior to the *Final Unified Decree*. The court order approving that Decree states that, “the Final Unified Decree does not supersede the results of water right transfers initiated and completed after the entry of a partial decree but prior to entry of the Final Unified Decree.” *Memorandum Decision and Order on Challenge in the Matter of the Final Unified Decree*, (June 28, 2012) at p. 7 (emphasis added)⁹ *see also Final Unified Decree, supra*, at p. 12, ¶ 13(1). Appellants agree that transfers that took place prior to the Final Decree and after the Partial Decree are valid. Therefore, based upon the administrative transfer proceedings, preserved by the Final Unified Decree, Appellants’ claims are barred by *res judicata* and collateral estoppel.

F. The District Court’s Order Granting Belle Ranch’s Motion for Summary Judgment Should be Affirmed Because Belle Ranch’s Ownership was Preserved under the Final Unified Decree as an Administrative Change.

Appellants argue that even if they are precluded, the Court should decree the 15.3/289^{ths} interest in the rights to South County (a defunct entity) as owner since the *Partial Decree* was in the name of South County, and Belle Ranch’s ownership suffers the same fate as Appellants. This is wrong. “This Final Unified Decree shall not be construed to supersede or affect.... any administrative changes to the elements of a water right after entry of a partial decree, but prior to the entry of this Final Unified Decree” *Final Unified Decree, supra* p. 12 ¶ 13(emphasis added), *Memorandum Decision, and Order on Challenge in the Matter of the Final Unified Decree, supra*, pp. 7, 18. Thus, any administrative proceedings after the *Partial Decree* and before the *Final Decree* are preserved.

The *Final Unified Decree* is also clear that the term “administrative changes” is

⁹ <http://srba.idaho.gov/Images/2012-06/0092099xx00199.pdf> (accessed 05/09/2019)

intentionally broad. The breadth of the *Final Unified Decree* is supported by the SRBA briefs on this very issue showing that the SRBA court broadened “transfer” to include “any administrative changes.”¹⁰ Specifically, in these briefs, “transfers” was given as one example of an administrative proceeding. *Id.* Likewise, the participating parties did not object to the SRBA court’s decision to preserve “any administrative changes” post *partial decree* as opposed to simply referencing to transfers.¹¹

Moreover, there is a fundamental difference between Appellants’ claims to ownership and Belle Ranch’s claims to ownership. Appellants base their claims to ownership solely on South County transactions that allegedly occurred prior to the entry of both the *Partial Decree* and *Final Unified Decree*. Appellants did not attempt any administrative steps until after the Final Unified Decree. Belle Ranch, on the other hand, complied with I.C. §§ 42-1409(6) and 42-248(4). Appellants did not. Belle Ranch bases its claims of ownership on facts, transactions and following the appropriate administrative procedural steps prior to the *Final Unified Decree*. Belle Ranch followed the legislature’s directions. Belle Ranch’s ownership was documented through IDWR’s administrative proceedings, before the Final Unified Decree and Belle Ranch properly traces its title to the title granted to South County in the *Partial Decree*.

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¹⁰ See *Sinclair Oil Corporation’s Notice of Challenge* (filed February 16, 2012); see also *Opening Brief in Support of Notice of Challenge* (filed April 3, 2012). These cases and briefs filed in opposition, support and response to the *Final Unified Decree* are all publicly available under SRBA Subcase No. 00-92099, which can be found online at: <http://www.srba.state.id.us/SREPT.HTM>

¹¹ See *State of Idaho’s Memorandum in Response to Briefs in Support of Notices of Challenge to Order re: Proposed Final Unified Decree and Adopting Proposed Procedures and Deadlines*, pp. 4-5 (lodged May 9, 2012); *Ground Water Districts’ Rebuttal Brief on Notice of Challenge*, at p. 2 (lodged May 9, 2012); *Pocatello’s Rebuttal Brief on Challenge*, at p. 2, (lodged May 9, 2012). Available publicly under the aforementioned SRBA Subcase.

G. The District Court’s Order Granting Belle Ranch’s Motion for Summary Judgment Should be Affirmed Because All of Appellants’ Claims are Void, Except for the 2.8/289ths Claim by Big Stick LLC.

The District Court held that FSC’s claims to the 7.5/289ths of the water right were invalid, because its right was derivative of IIB, which never had title to convey, and both had record notice of MWB’s second and third mortgages. R. 1755-65. As to the other 7.8/289^{ths} Fosbury claims, the District Court found that 5/289^{ths} are invalid for the same reasons as FSC’s 7.5/289^{ths} claims. *Id.* Title never passed. As to the remaining 2.8/289th interests alleged by Big Stick, the district court found that Big Stick’s quitclaim was recorded prior to MWB’s second and third mortgages and therefore was not facially for summary judgment purposes.

Belle Ranch is the record owner of the Belle Ranch Property and the 289/289^{ths} interest in the appurtenant Water Rights. Idaho law presumes that the record holder of title to property is the legal owner. *Luce v. Marble*, 142 Idaho 264, 270, 127 P.3d 167, 173 (2005) (citing *Hettinga v. Sybrandy*, 126 Idaho 467, 469, 886 P.2d 772, 774 (1994); *Russ Ballard & Family Achievement Inst. v. Lava Hot Springs Resort, Inc.*, 97 Idaho 572, 579, 548 P.2d 72, 79 (1976)). “[O]ne who would claim the ownership of property of which the legal title stands of record in another ... must establish such claim by evidence that is clear, satisfactory and convincing.” *Id.* (quoting *Russ Ballard & Family Achievement Inst.*, 97 Idaho at 579, 548 P.2d at 79).

Appellants’ claims are invalid because Appellants’ cannot reconcile their interests with I.C. § 55-812, which states in pertinent part:

[e]very conveyance of real property... **is void as against any subsequent purchaser or mortgagee** of the same property, or any part thereof, in good faith and for a valuable consideration, **whose conveyance is first duly recorded.**

(emphasis added).

There is no dispute of fact. All the quitclaims, except the one to Big Stick, were recorded

after the 2008 second and third mortgages. Based upon the timing of execution and recording of the underlying quitclaim deeds, I.C. § 55-812 renders all the purported quitclaim deeds from South County *void* as against the subsequent purchaser or mortgagee. That clearly means MWB and its successor, Belle Ranch. Under I.C. § 55-813 a *conveyance* “embraces every instrument in writing by which any estate or interest in real property is created, alienated, mortgaged or encumbered, or by which the title to any real property may be affected,” which includes deeds to water. Idaho’s race-notice recording statute voids a prior conveyance when (1) a subsequent conveyance was made in good faith and for valuable consideration and (2) the subsequent conveyance is the first duly recorded. *Insight LLC v. Gunter*, 154 Idaho 779, 787, 302 P.3d 1052, 1060 (2013). Here there is no dispute that the second the third mortgages were in good faith. The South County Estoppel Certificate is more than adequate proof of that fact. Nor is there any dispute that the mortgages were recorded before the quitclaims.

The use of “void” in the statute versus voidable has important legal consequences. “A void thing is as no thing,” whereas something that is voidable can be ratified and although can be declared void, is not void in itself. *Yvanova v. New Century Mortg. Corp.*, 62 Cal. 4th 919, 929–30, 365 P.3d 845, 852 (2016); *see also Rogers v. Household Life Ins. Co.*, 150 Idaho 735, 738, 250 P.3d 786, 789 (2011) (discussing the difference between void and voidable contract for incapacitated persons). Indeed, in *Rogers*, the court held that it was bound by the Legislature’s use of the word “void” in I.C. § 32-108. *Rogers*, 150 Idaho at 739, 250 P.3d at 790. “Void contracts are deemed to have never existed in the eyes of the law.” *Syringa Networks LLC v. Idaho Department of Administration*, 159 Idaho 813, 827, 367 P.3d 208, 222 (2016); *see also Drug Testing Compliance Grp., LLC v. DOT Compliance Serv.*, 161 Idaho 93, 100-01, 383 P.3d 1263, 1270-71 (2016) (a void contract “is not a promise at all; it is the promise of something that

is void of legal effect”).

South County’s purported quitclaim conveyances to its members were not merely voidable, but were *void* as against the mortgagee (MWB) and successor in interest (Belle Ranch). The District Court was correct in holding Appellant FSC’s 7.5/289^{ths} and 5/289^{ths} of Appellant Fosbury’s claim as invalid or void.

Appellants argue that MWB’s second and third mortgages did not convey title to MWB. Appellants must be confused. The Deed in Lieu conveyed title. Title included all the Water Rights because the quitclaim deeds that Appellants rely upon were void as to MWB, they are likewise void against Belle Ranch.

Appellants also argue whether the Deed in Lieu was a proper “foreclosure” and assert that the IIB liens somehow survived the Deed in Lieu. It should be clear to this Court that the IIB liens attached only to the property purportedly conveyed by the quitclaim deeds. Since the quitclaims are “void,” they have no legal effect on the Water Rights. There is nothing for IIB’s lien to attach to.

H. The District Court’s Order Granting Belle Ranch’s Motion for Summary Judgment Should be Affirmed Because Appellants’ Quiet Title Actions are Barred by the Applicable Statute of Limitations. (I.C. § 5-224).

The district court initially concluded that there were questions of fact over whether the statute of limitations had run on Appellants’ claims to the Water Rights. R. 1919-34. However, in its *Memorandum Decision on Motion for Reconsideration of Summary Judgment* the court stated that, “[i]t appears that the statute of limitations has run as against those making claims against Belle Ranch...However, this issue is not necessary to this decision.” *Id.* at 1932. The District court was correct. Appellants’ later actions and administrative filings with IDWR cannot extend the statute of limitations or when Appellants’ claims accrued. When the district court’s

decision can be affirmed on any ground, this Court will affirm. *Syringa Networks LLC v. Idaho Dept. of Administration*, 159 Idaho 813, 827, 367 P.3d 208, 222 (2016).

Thus, Appellants' quiet title claims are also barred by application of the four year (4) statute of limitations. I.C. § 5-224; § 6-401. This includes any claim for water right ownership. *Brown v. Greenheart*, 157 Idaho 156, 162, 335 P. 3d 1,7 (2014). In *Brown v. Greenheart*, this Court addressed the accrual and the statute of limitations relating to claims to water rights. This Court held that a cause of action to quiet title to water rights, pursuant to I.C. § 5-224 and § 6-401, accrues when another person claims an interest in the property (or water right) "adverse to" another. *Id.* "[W]here discovery of a cause of action commences the statute of limitations the date of discovery is a fact question for the jury unless there is no evidence creating a question of fact." *Id.* (quoting *McCoy v. Lyons*, 120 Idaho 765, 773, 820 P.2d 360, 368 (1991)). Thus, when the facts are undisputed with respect to the dates when the other party asserts an adverse interest, summary judgment on the statute of limitations is proper.

FSC waited until December 2, 2016, and Big Stick, Fosbury and Holt waited until December 28, 2016, to file their quiet title actions, R. 14; R. 39. Here, the undisputed facts make clear that Appellants were put on notice of adverse claims, many times over, more than 4-years prior to filing the quiet title actions. Thus, Appellants' claims are time-barred under I.C. § 5-224.

Appellants argued that, because the 2010 SRBA Partial Decrees identified South County as the owner of the water rights, there was no adverse claim. Appellants do not claim they had no notice of the acts of the SRBA Court. Nor could they. If they are claiming to own the water rights, the issuance of a decree in the name of another entity is clearly an adverse claim. They did nothing to correct that partial decree issued in the name of another party for over six years.

Appellants argue that the partial releases had the effect of perfecting their *inchoate* right in the water rights. The partial releases were all *executed* by October 2009, and recorded by February 2010. R. 1420-42, 1478-79. On June 28, 2010, after the execution and recordation of the documents Appellants rely on for their claims, the SRBA Court issued a Recommendation that the Water Rights be decreed, in their entirety, to South County. R. 1149-56. On July 9, 2010, the SRBA Court issued an Amended Recommendation, confirming the recommendation that each of the Water Rights be decreed, in their entirety, to South County. R. 1158-65. Ultimately, on August 31, 2010, the SRBA Court entered Partial Decrees, formally decreeing all the Water Rights, in their entirety, to South County Estates. The place of use is on the 289 acres transferred to MWB and now owned by Belle Ranch. Based upon the foregoing, it is indisputable that no later than the summer of 2010, six and a half years before these cases were filed, the SRBA Court made findings and rulings adverse to the claims that Appellants now assert.

The other clearly “adverse” claim to Appellants is that the water rights were and are appurtenant to Belle Ranch Property. The continued possession and use of all these water rights by someone other than Appellants is certainly adverse. Belle Ranch began using and paying for the water right to use the water in the 2012 irrigation season. Belle Ranch submitted its change of ownership and transfer application with IDWR in February 2012, more than four years before the quiet title action s were filed.

In *Brown v. Greenheart*, Brown had possession of the real property and used the water rights. It was not until Greenheart filed a notice with IDWR claiming an interest in the water rights, based on an alleged error in the deed, that Greenheart’s adverse claim arose and the time in which Brown could file a quiet title lawsuit began to run. In this case, Belle Ranch actually had possession of the property, paid the taxes and assessments, and used all the Water Rights.

Appellants did not. These acts of ownership and possession are adverse to Appellants' claims of title and ownership of the Water Rights. The Appellants knew these facts, and knew that they were not using the water. They were not billed by the Water District, even though South County had been billed when it owned and used the water. R. 1061-63. Appellants were also on notice of the adverse claim by Belle Ranch's use and possession no later than the start of the 2012 irrigation season.

In 2010, the Belle Ranch Property with all appurtenant Water Rights was conveyed to MWB, and thence to GBCI. R. 1460; R. 660. MWB filed a notice of change of ownership with IDWR claiming all the water rights in July 2011, five and a half years before the quiet title action was filed. R. 1175-82. On December 22, 2011, the Belle Ranch Property and all appurtenant water rights was conveyed to Belle Ranch LLC. R. 680-84. Belle Ranch the filed its Notice of Change of Ownership with IDWR on February 28, 2012, as provided in I.C. § 42-1409(6). R. 1186. Thus, Belle Ranch asserted a claim to the Water Rights adverse to Appellants, their predecessors, and to South County. Shortly thereafter, in April 2012, Belle Ranch filed a Transfer Application with IDWR, claiming ownership of these same Water Rights. R. 717. That transfer application was properly noticed in the Mountain Express. *Id.* at 747. Appellants thus had at least constructive notice of Belle Ranch's claims no later than April 2012, four and one-half years before filing their quiet title actions.

"[T]he purpose of a statute of limitations in general is to prevent fraudulent and stale claims from arising after a great lapse of time while preserving for a reasonable period the right to pursue a claim." *Hawley v. Green*, 117 Idaho 498, 501, 788 P.2d 1321, 1324 (1990).

Ownership of the Belle Ranch Property and appurtenant water rights are in control of and in the name of Belle Ranch. Any one of the aforementioned *notices* were adequate to give Appellants

proper notice of the adverse claims to the Water Rights and would have caused the cause of action for *quiet title* to commence accruing. Appellants had multiple notices of the adverse claims to the Water Rights and did not take any action. Appellants had four years to file an action to quiet title and failed to do so, and their claims are now barred. I.C. § 5-224.

Appellants' quiet title claims should be dismissed by the Court as time-barred by the four year statute of limitations, and ownership of the Water Rights should be confirmed in the name of Belle Ranch.

I. The District Court's Order Granting Belle Ranch's Motion for Summary Judgment Should be Affirmed Because Appellants' Claims Should be Denied Pursuant to the Doctrines of Equitable Estoppel, Quasi Estoppel, and/or Waiver.

Equitable estoppel arises:

[w]hen a party makes a false representation or concealment of a material fact with actual or constructive knowledge of the truth; it is made with the intent that it be relied upon; the party asserting estoppel does not know or could not discover the truth; and the party asserting estoppel relies on it to the party's prejudice.

Allen v. Reynolds, 145 Idaho 807, 812, 186 P.3d 663, 668 (2008)(quoting *Hecla Min. Co. v. Star-Morning Min. Co.*, 122 Idaho 778, 782, 839 P.2d 1192, 1196 (1992)).

The doctrine of quasi-estoppel is distinguishable from equitable estoppel in that “no concealment or misrepresentation of existing facts on the one side, nor ignorance or reliance on the other, is a necessary ingredient.” *Schiewe v. Farwell*, 125 Idaho 46, 49, 867 P.2d 920, 923 (1993)(quoting *Obray v. Mitchell*, 98 Idaho 533, 538, 567 P.2d 1284, 1289 (1977)). To prove quasi-estoppel, it is not necessary to show detrimental reliance; instead, there must be evidence that it would be unconscionable to permit the offending party to assert allegedly contrary positions.” *Atwood v. Smith*, 143 Idaho 110, 114, 138 P.3d 310, 314 (2006) (quoting *Thomas v. Arkoosh Produce, Inc.*, 137 Idaho at 357, 48 P.3d at 1246). Quasi-estoppel applies when: (1) the offending party took a different position than his or her original position, and (2) either (a) the

offending party gained an advantage or caused a disadvantage to the other party; (b) the other party was induced to change positions; or (c) it would be unconscionable to permit the offending party to maintain an inconsistent position from one he or she has already derived a benefit or acquiesced in. *C & G, Inc. v. Canyon Highway Dist. No. 4*, 139 Idaho 140, 145, 75 P.3d 194, 199 (2003).

Waiver is a voluntary, intentional relinquishment of a known right or advantage. *Nelson v. Hopper*, 86 Idaho 115, 383 P.2d 588 (1963); *Crouch v. Bischoff*, 78 Idaho 364, 304 P.2d 646 (1956). Waiver does not necessarily depend on any new or additional consideration. *Hawkins v. Smith*, 35 Idaho 349, 205 P. 188 (1922). See *Idaho Bank of Commerce v. Chastain*, 86 Idaho 146, 383 P.2d 849 (1963) (waiver arising out of conduct partakes of the nature of estoppel, and no consideration is necessary). “Even though consideration is not necessary to establish a waiver, it must appear that the adversary party has acted in reliance upon such a waiver and altered his position.” *Brand S Corp. v. King*, 102 Idaho 731, 639 P.2d 429, 432 (1981).

The undisputed facts in this case support quasi and equitable estoppel, and a waiver of any of Appellants’ claims to the Water Rights. John Scherer, the managing member of South County, executed an *Estoppel Certificate*, recognizing that South County had delivered and deeded the entirety of the Belle Ranch Property and appurtenances, including all water and water rights. R. 1049-52. The plain language is clear and unambiguous. It states:

Included with the real property conveyed to Grantee: all erected or affixed buildings, improvements and fixtures; **all** easements, rights of way, and **appurtenances; all water, water rights**, watercourses and ditch rights (including stock in utilities with ditch or irrigation rights), and **all other rights**, royalties and profits relating to the conveyed real property, including without limitation all minerals, oil, gas, geothermal and similar matters, collective; including any after-acquired title and any right of redemption. **Partial Release of Water Rights recorded as Instrument. No’s 568681, 574997, 574998, 574999, 575000, 575001, records of Blaine County, Idaho.**

R. 1050 (emphasis added).

An estoppel certificate is “[a] signed statement by a party (such as a tenant or a mortgagee) certifying for another's benefit that certain facts are correct, such as that a lease exists, that there are no defaults, and that rent is paid to a certain date. A party's delivery of this statement estops that party from later claiming a different state of facts.” *Pocatello Hosp., LLC v. Quail Ridge Med. Inv'r, LLC*, 156 Idaho 709, 716, 330 P.3d 1067, 1074 (2014) (quoting Black's Law Dictionary 6319 (9th ed.2009)).

South County's Estoppel Certificate further stated that included in the transfer were “Partial Release of Water Rights recorded as Instrument Nos. 568681, 574996, 574998, 574999, 575000 and 575001. Consideration for the Deed in Lieu included a covenant not to sue on all three mortgages as well as “release of the guaranty liability of John Scherer, Richard D. Fosbury, and Charles Holt.” R 1050. The estoppel certificate further recited that the certificate was made for the purpose of “inducing” MWB to accept this Deed in Lieu. R 1052. MWB relied on this inducement and accepted the Deed in Lieu.

MWB then submitted an ownership change request to IDWR on July 27, 2011, which was processed and acknowledged on September 13, 2011 and resulted in the ownership of the entirety of the Water Rights being changed from South County Estates, LLC to MWB. R. 1184. After review of the IDWR records MWB's counsel further advised that MWB acquired and was prepared to convey the entirety of the Water Rights for the 289 acres of the Property to Belle Ranch, R. 1709-11.

Appellants are or claim to be successors to South County. As successors they are estopped from asserting any claim to the appurtenant Water Rights, and have waived any right to assert claims by virtue of South County's Estoppel Certificate. R 1049-1052. In other words,

because South County disclaimed any further interest in these Water Rights then Appellants necessarily did so too. In addition, for the reasons discussed in the Statute of Limitations section H, *supra*, Appellants' inactions between 2010 and the end of 2016 should likewise be grounds for waiver and estoppel of all of their claims to the Water Rights.

J. The District Court's Order Granting Belle Ranch's Motion for Summary Judgment Should be Affirmed Because The District Court Was Correct in Determining Rabo's Secured Interest in the 7.5/289ths Interest in the Water Rights Claimed by Appellant FSC.

Appellant FSC argues that it is the successor in interest to IIB and as such its secured interests predate that of RABO's interest. Opening Brief on Appeal, p. 39. Appellants' request that any Judgment should omit reference to the secured interests of any creditor. *Id.*

Appellant FSC is incorrect in its analysis. The reality is IIB's mortgage and security interest was never recorded upon the real property, and is based upon a void conveyance—Scherer and Holt did not have any property for the IIB mortgage to encumber, and later could not have quitclaimed any interest upon Scherer and Holt's default.

Appellants have already acknowledged that the second and third mortgages were never released. They try, however, to create ambiguity by alleging a MWB Letter Agreement. *Opening Brief on Appeal*, p. 39. The partial releases are clear on their face, and are the only documents recorded, or that which would have put Belle Ranch and the public on notice, including RABO. RABO loaned money to Belle Ranch to acquire the property and Water Rights, and it was entitled as a good faith purchaser to rely upon the public record which showed that Belle Ranch owned the property and Water Rights, and therefore could pledge them to RABO, free and clear of prior liens and claims. If FSC wishes to litigate against IIB, and/or MWB for breach of some alleged letter agreement—this is of no consequence to Belle Ranch and RABO, and likely beyond any statute of limitations. The deeds and partial releases are clear

and unambiguous. As explained in *Jolley v. Idaho Sec., Inc.*, 90 Idaho 373, 383–84, 414 P.2d 879, 885 (1966), the general rule is that a deed “is considered as a merger of the agreements of an antecedent contract into the terms of the deed, and any claim for relief must be based on the covenants or agreements contained in the deed, not the covenants or agreements as contained in the prior agreement.”

Unfortunately for FSC and IIB, they attempted to record secured interests that were unsecured upon void property. In short, this Court should affirm not only that Belle Ranch owns the entirety of these Water Rights, but that the entirety of the Water Rights are encumbered by RABO’s properly perfected lien.

K. This Court Should Grant Belle Ranch an award of Attorneys’ Fees and Costs on Appeal

Pursuant to I.C. § 12-121, Idaho Appellate Rules 40, 41 and 35, Belle Ranch requests an award of attorney’s fees and costs upon appeal. “The Court will award fees to a prevailing party under Idaho Code section 12–121 when the Court believes that the action was pursued, defended, or brought frivolously, unreasonably, or without foundation.” *Thornton v. Pandrea*, 161 Idaho 301, 320, 385 P.3d 856, 875 (2016)(quoting *Sweet v. Foreman*, 761, 767, 367 P.3d 156, 162 (2016)). Appellants have done just that. Appellants have pursued this lawsuit and appeal without a sound legal or factual theory in the face of overwhelming legal precedent and clear statutory requirements.

They have omitted both facts and law contrary to their arguments and have essentially re-hashed the arguments that were unpersuasive to the district court. On appeal, the Court has granted fees where the nonprevailing party “continued to rely on the same arguments used in front of the district court, without providing any additional persuasive law or bringing into doubt the existing law on which the district court based its decision.” *Thornton v. Pandrea*, 161 Idaho

301, 320, 385 P.3d 856, 875 (2016)(*quoting Castrigno v. McQuade*, 141 Idaho 93, 98, 106 P.3d 419, 424 (2005)). This Court can see that Appellants raised the same arguments that previously failed before the district court. They are simply rehashing its same old arguments. There is nothing here. Lastly, there are numerous theories upon which Belle Ranch still prevails upon its claims, and therefore Appellants have clearly pursued this lawsuit on appeal frivolously.

Belle Ranch should be awarded its reasonable attorney's fees and costs.

V. CONCLUSION

Belle Ranch bought the property and all the Appurtenant Water Rights. Ever since it has used all the Appurtenant Water Rights on its property. It followed the requirements of the adjudication statutes and it processed a transfer without any one objecting. The Final Decree was entered. More than two years after the Final Decree along came FSC asserting claims to portions of the Water Rights appurtenant to the Belle Ranch Property. Its claims are based on void quitclaims. Whatever scheme South County, its members and financiers have concocted, it is not sufficient to overcome the bonafide purchase by Belle Ranch or the SRBA and IDWR proceedings.

This Court should affirm the decisions of the district court and further grant the Belle Ranch attorney's fees and costs on appeal.

DATED this 9th day of May, 2019.

BARKER ROSHOLT & SIMPSON LLP

RAY QUINNEY & NEBEKER P.C.

s/ Albert P. Barker

Albert P. Barker

*Attorneys for Belle Ranch, LLC, Justin Flood
Stevenson and Elizabeth Brett Stevenson*

s/ Michael R. Johnson

Michael R. Johnson

Michael D. Mayfield

James A. Sorenson

*Attorneys for Rabo AgriFinance LLC, fka
Rabo Agrifinance, Inc.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of May, 2019, I caused a true and correct copy of the foregoing **RESPONDENTS' JOINT MOTION FOR LEAVE TO FILE OVERLENGTH BRIEF** upon the following the person(s) listed below by method indicated:

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Boise, ID 83720

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☐ Hand Delivery
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/s/ Albert P. Barker
Albert P. Barker

EXHIBIT A

Recorded Documents
First Security Corporation v. Belle Ranch, LLC, et al.

Fosbury IRA = PENSCO Trust Company Custodian F.B.O. Richard D. Fosbury, IRA #F01EC
Holt IRA #H01NH = PENSO Trust Company Custodian F.B.O. Charles Holt, IRA #H01NH
Holt IRA #H01NV = PENSO Trust Company Custodian F.B.O. Charles Holt, IRA #H01NV
SCE = South County Estates, LLC (J. Scherer)
MWB = Mountain West Bank
IIB = Idaho Independent Bank
Big Stick = Big Stick, LLC (J. Scherer)
GBCI = GBCI Other Real Estate

Date Recorded	Date Executed	Title of Document	Description	Parties	Instrument No.	Ex. # from SAM Decl. (unless stated otherwise)
10/14/2005	10/14/2005	First Mortgage		SCE to MWB	527439	Ex. 42
12/01/2006	11/28/2006	Modification of Mortgage		SCE and MWB	542378	Ex. 3
12/14/2007	12/07/2007	Quitclaim Deed	2.8/289 th	SCE to Big Stick	554098	Ex. 9
06/13/2008	06/13/2008	Second Mortgage		SCE and MWB	558904	Ex. 4
10/24/2008	10/17/2008	Third Mortgage		SCE and MWB	562481	Ex. 5
06/25/2009	06/10/2009	Mortgage	7.5/289 th	Scherer and Holt to IIB	568682	Ex. 43
06/25/2009	06/25/2009	Quitclaim Deed	7.5/289 th	SCE to Scherer and Holt	568680	Ex. 16
06/25/2009	06/25/2009	Partial Release of Lien (1 st Mortgage)	7.5/289 th	MWB to SCE	568681	Ex. 48
02/10/2010	10/14/2009	Partial Release of Lien (1 st Mortgage)	2.8/289 th	MWB to Big Stick	574996	Ex. 10 Ex. 41
02/10/2010	10/14/2009	Partial Release of Lien (1 st Mortgage)	1/289 th	MWB to Fosbury IRA	574997	Ex. 37
02/10/2010	10/14/2009	Partial Release of Lien (1 st Mortgage)	1/289 th	MWB to Fosbury IRA	574998	Ex. 36
02/10/2010	10/14/2009	Partial Release of Lien (1 st Mortgage)	1/289 th	MWB to Holt IRA	574999	Ex. 39
02/10/2010	10/14/2009	Partial Release of Lien (1 st Mortgage)	1/289 th	MWB to Holt IRA #H01NH	575000	Ex. 38

Recorded Documents
First Security Corporation v. Belle Ranch, LLC, et al.

Date Recorded	Date Executed	Title of Document	Description	Parties	Instrument No.	Ex. # from SAM Deal (unless stated otherwise)
02/10/2010	10/14/2009	Partial Releases of Lien (1 st Mortgage)	1/289 th	MWB to Holt IRA #H01NV	575001	Ex. 40
03/01/2010	03/17/2008	Quitclaim Deed	1/289 th	SCE to Fosbury IRA	575491	Ex. 14
03/01/2010	04/28/2008	Quitclaim Deed	1/289 th	SCE to Holt IRA #H01NH	575488	Ex. 11
03/01/2010	08/08/2008	Quitclaim Deed	1/289 th	SCE to Holt IRA #H01NV	575489	Ex. 12
03/01/2010	09/18/2008	Second Quitclaim Deed	1/289 th	SCE to Fosbury IRA	575492	Ex. 15
03/01/2010	04/08/2009	Second Quitclaim Deed	1/289 th	SCE to Holt IRA #H01NV	575490	Ex. 13
06/17/2010	06/17/2010	Deed in Lieu of Foreclosure		SCE to MWB	578331	Ex. 44
06/17/2010	06/17/2010	Estoppel Certificate		Scherer, SCE to MWB	578332	Ex. 6
12/22/2011	12/20/2011	Special Warranty Deed		GBCI to Belle Ranch	593292	Ex. 46
12/22/2011	12/20/2011	Special Warranty Deed		GBCI to Belle Ranch	593252	Ex. 46
12/22/2011	12/21/2011	Quitclaim Deed		MWB and Belle Ranch	593254	Ex. 45
10/20/2014	06/02/2014	Non-Merger Deed	7.5/289 th	Scherer and Holt to IIB	622055	Ex. 17
12/20/2014	10/15/2014	Warranty Deed	7.5/289 th	IIB and FSC	622056	Ex. 47
11/14/2016	11/07/2016	Quitclaim Deed	1/289 th	Fosbury IRA to Fosbury	639647	O'Leary Aff. Ex. 10
11/14/2016	11/07/2016	Quitclaim Deed	1/289 th	Fosbury IRA to Fosbury	639648	O'Leary Aff. Ex. 10
12/01/2016	11/28/2016	Quitclaim Deed	1/289 th	Holt IRA #H01NV to Holt	640058	O'Leary Aff. Ex. 12
12/01/2016	11/28/2016	Quitclaim Deed	1/289 th	Holt IRA #H01NH to Holt	640059	O'Leary Aff. Ex. 11
12/02/2016	11/28/2016	Quitclaim Deed	1/289 th	Holt IRA #H01NV to Holt	640107	O'Leary Aff. Ex. 12

EXHIBIT B

SRBA and IDWR Documents
First Security Corporation v. Belle Ranch, LLC, et al.

Fosbury IRA = PENSCO Trust Company Custodian F.B.O. Richard D. Fosbury, IRA #F01EC
Holt IRA #H01NH = PENSO Trust Company Custodian F.B.O. Charles Holt, IRA #H01NH
Holt IRA #H01NV = PENSO Trust Company Custodian F.B.O. Charles Holt, IRA #H01NV
South County=South County Estates
MWB=Mountain West Bank

Date	Record No.	Title of Document	Party Agency or Court Filing/Issuing/Ordering	Location Filed (SRBA or IDWR)
10/26/1988	1130-41	Notice of Claim to Water Right	G. Chapman Petersen	SRBA
10/09/2003	970-1025	Notice of Change in Water Right Ownership	South County	IDWR
2007	1143-47	Recommendations of Water Right	Director IDWR	SRBA
06/28/2010	1149-56	Special Master's Report and Recommendation	SRBA	SRBA
07/09/2010	1158-65	Amended Special Master's Report and Recommendation	SRBA	SRBA
08/31/2010	1167-73	Order of Partial Decrees for Water Rights	SRBA	SRBA
07/27/2011	1175-82	Notice of Change in Water Right Ownership	MWB	IDWR
02/28/2012	1186-92	Notice of change in Water Right Ownership	Belle Ranch	IDWR
04/20/2012	1196-1221	Application for Transfer of Water Rights	Belle Ranch	IDWR
07/06/2012	1223-94	Transfer of Water Right No. 77878	IDWR	IDWR
08/26/2014		Final Unified Decree http://srba.idaho.gov/Images/2014-08/0039576XX09020.pdf	SRBA	SRBA
10/28/2014	1296-1313	Notice of change in Water Right Ownership	FSC	IDWR
03/17/2016	1315-64	Letter from Belle Ranch Challenging FSC Ownership Change	Belle Ranch	IDWR
03/29/2016	1366-67	Email from IDWR indicating change ownership to South County LLC, as listed in Partial Decree	IDWR to Belle Ranch and FSC	IDWR
06/15/2016	1369-89	Notice of change in Water Right	Fosbury IRA	IDWR
06/24/2016	1392-1403	Notice of change in Water Right	Big Stick LLC	IDWR
06/24/2016	1405-16	Notice of change in Water Rights	Holt IRA	IDWR

EXHIBIT C

FILED
10/13/17
HR 2:31 P M
KORRI BLODGETT
CLERK OF THE DISTRICT COURT
S. Weller

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CAMAS

JUDY CASH, an unmarried woman,) Case No: CV-2016-02
)
Petitioner,) **ORDER GRANTING RESPONDENTS'**
) **MOTION FOR RECONSIDERATION**
vs.)
)
PHILIP CASH and DEBRA CASH,)
husband and wife, and Does 1-5,)
unknown persons who may claim)
interest,)
)
Respondents.)
)
_____)

I.

BACKGROUND

1. On January 26, 2017, Judge Elgee entered *Findings of Fact and Conclusions of Law* in this matter. The facts set forth in the *Findings of Fact* are incorporated herein by reference and will not be repeated. Among other things, Judge Elgee quieted title to all or portions of water right numbers 37-444, 37-2541, and 37-7636, in the Petitioner.¹

2. Then, on August 17, 2017, the case was reassigned to this Court following Judge Elgee's retirement.

3. On September 1, 2017, the Respondents filed a *Motion* asking the Court to reconsider Judge Elgee's determination regarding ownership of the water rights. The Petitioner opposes the *Motion*. A hearing on the *Motion* was held before the Court on September 29, 2017.

¹ On May 23, 2017, Judge Elgee entered *Amended Findings of Fact and Conclusions of Law Re: Ownership of Twin Lakes Reservoir & Irrigation Company Shares*. The *Amended Findings* do not change or address his decision with respect to water right numbers 37-444, 37-2541, and 37-7636.

II. ANALYSIS

This proceeding involves a dispute over the ownership of water right numbers 37-444, 37-2541, and 37-7636. These water rights were previously decreed in the Snake River Basin Adjudication (“SRBA”) to Respondent Philip Cash. Notwithstanding, Judge Elgee subsequently quieted title in the rights to the Petitioner based on pre-decree considerations. In doing so, Judge Elgee offended principles of res judicata by failing to place appropriate weight on the SRBA proceeding and the water right decrees entered as a result of that proceeding.

A. SRBA proceeding.

The SRBA was a general adjudication commenced on November 19, 1987. All water users within the adjudication boundaries were required to file claims for existing water uses in the adjudication. In 1989, Philip Cash filed notices of claim for the three water rights at issue in the SRBA. He identified himself as the sole claimant of the rights in his claims. On December 5, 2006, the Director of the Idaho Department of Water Resources issued his recommendations for the claims. He recommended the claims be decreed in the name of Philip Cash as sole owner. The Petitioner did not object to the Director’s recommendations, and the time for doing so has expired.

On September 24, 2010, the SRBA District Court entered *Partial Decrees* for the water rights consistent with the Director’s recommendations. The *Partial Decrees* vest ownership of the water rights in Philip Cash as sole owner, and were Rule 54(b) certified as final judgments subject to appeal. The Petitioner did not appeal the issuance of the *Partial Decrees* and the time for doing so has passed. Additionally, the Petitioner has not sought relief from the *Partial Decrees* before the SRBA District Court at any time. On August 26, 2014, the Court entered the SRBA *Final Unified Decree* which, save certain exceptions not applicable here, completed the adjudication. Again the Petitioner has neither appealed, nor sought relief from, the *Final Unified Decree*.

B. Principles of res judicata preclude the Petitioner from asserting she is the owner of the water rights in this proceeding.

The doctrine of res judicata covers both claim preclusion and issue preclusion. *Hindmarsh v. Mock*, 138 Idaho 92, 94, 57 P.3d 803, 805 (2002). Claim preclusion bars a subsequent action between the same parties upon the same claim or upon claims “relating to the same cause of action . . . which might have been made.” *Id.* Issue preclusion protects litigants from litigating an identical issue with the same party or its privy. *Rodriguez v. Dep’t. of Corr.*, 136 Idaho 90, 92, 29 P.3d 401, 403 (2001).

For claim preclusion to bar a subsequent action there are three requirements: (1) same parties; (2) same claim; and (3) final judgment. *Ticor Title Co. v. Stanion*, 144 Idaho 119, 124, 157 P.3d 613, 618 (2007). For issue preclusion to bar the relitigation of an issue determined in a prior proceeding there are five requirements: (1) the party against whom the earlier decision was asserted had a full and fair opportunity to litigate the issue decided in the earlier case; (2) the issue decided in the prior litigation was identical to the issue presented in the present action; (3) the issue sought to be precluded was actually decided in the prior litigation; (4) there was a final judgment on the merits in the prior litigation; and (5) the party against whom the issue is asserted was a party or in privity with a party to the litigation. *Id.* Whether res judicata bars the relitigation of issues adjudicated in prior litigation between the same parties is a question of law over which the Court exercises free review. *Lohman v. Flynn*, 139 Idaho 312, 319, 78 P.3d 379, 386 (2003). The Court finds the requirements res judicata to be met here.

i. Parties.

Philip Cash and Judy Cash were both parties to the SRBA. In a general adjudication, a party is defined as “any person who is a claimant or any person who is served or joined.” I.C. § 42-1401A(6). Philip Cash claimed and was decreed the water rights at issue here in the SRBA. Water right numbers 37-21701, 37-1692, 37-21683, 37-21674, and 37-2166 were claimed by and decreed to Judy Cash in the SRBA. Thus, both individuals filed water right claims in, and were decreed water rights as a result of, the adjudication.

ii. Claims, issues and final judgment.

This proceeding and the SRBA involve the same claims and issues. When the SRBA was commenced, the SRBA District Court obtained the exclusive jurisdiction “to resolve all of the water right claims within the scope of the general adjudication.” *Walker v. Big Lost River Irr. Dist.*, 124 Idaho 78, 81, 856 P.2d 868, 871 (1993). The water rights at issue here are located in Basin 37, which is part of the Snake River Basin water system. As a result, they fell within the exclusive jurisdiction of the SRBA District Court. The water rights were claimed, adjudicated, and decreed in the SRBA. This is undisputed. The *Partial Decrees* issued for the rights were certified as final judgments in 2010, and the SRBA proceeding itself was completed upon entry of the *Final Unified Decree* in 2014. Thus, both the subcases involving these individual water rights and the main adjudication proceeding were finalized prior to the commencement of the instant action.

Notwithstanding, it is the Petitioner’s position that the SRBA District Court did not address or adjudicate the issue of ownership of the many water rights claimed in the adjudication. The Court disagrees. Under Idaho law, water rights are defined by elements. *City of Blackfoot v. Spackman*, 162 Idaho 302, 397, 396 P.3d 1184, 1189 (2017). The name and address of the owner is one of those defining elements. I.C. §§ 42-1411(2)(a) & 42-1412(6). The legislature directed that a decree issued in the SRBA “shall contain or incorporate a statement of each element of a water right. . . .” I.C. § 42-1412 (emphasis added). This would of course include the owner of the right. The legislature has further directed that a decree entered in a general adjudication “shall be conclusive as to the nature and extent of all water rights in the adjudicated water system. . . .” I.C. § 42-1420(1).

Here, the precise question of ownership of these water rights was finally resolved in the SRBA. The water rights were claimed by Philip Cash as sole owner. The rights were then investigated by the Department, after which the Director recommended that the claims be decreed to Philip Cash as sole owner. Then, in 2010, the SRBA District Court entered a *Partial Decree* for each right identifying Philip Cash as sole owner. If the Petitioner believed she acquired ownership of these water rights in 2002, she failed to timely assert her alleged ownership interest as required by law. Idaho Code § 42-248(1) directs in part as follows:

All persons owning or claiming ownership of a right to use the water of this state, whether the right is represented by decree of the court, by claim to a water right filed with the department of water resources or by permit or license issued by the

director of the department of water resources, shall provide notice to the department of water resources of any change in ownership of any part of the water right or of any change in the owner's mailing address, either of which occurs after June 30, 2000. Notice shall be provided within one hundred twenty (120) days of any change using forms acceptable to the director.

Likewise, with respect to ownership changes taking place during a general adjudication, Idaho Code § 42-1409(6) directs:

Each purchaser of a water right from the water system shall inquire of the director whether a notice of claim has been filed, and if not, shall file a notice of claim in accordance with this section. All claimants and purchasers shall provide the director written notice of any change in ownership or of any change in mailing address during the pendency of a general adjudication. All purchasers shall submit some evidence of ownership along with the notice of change of ownership.

These statutes are mandatory. *Paolini v. Albertson's Inc.*, 143 Idaho 547, 549, 149 P.3d 822, 824 (2006).

Here, the Petitioner asserts she acquired the subject water rights via quit claim deed in 2002. Yet, at no time prior to commencing this action in 2016 did she assert ownership via the filing of a notice of change of ownership with the Department as required by Idaho Code § 42-248. Nor did she inquire of the Director whether notices of claim for these right had been filed in the SRBA, or otherwise comply with the requirements of Idaho Code § 42-1409(6) despite acquiring the rights during the pendency of the SRBA. Had the Petitioner timely taken either of these statutorily-required actions, the Director would have taken her ownership assertions into account when making his recommendation for these rights in the SRBA.

Further, it cannot be said that the Petitioner did not have the full and fair opportunity to raise the issue of ownership of these water rights in the SRBA. It must be noted that despite being a party to the SRBA, the Petitioner did not object to the Director's recommendations for these claims in 2006, when he recommended that they be decreed to Philip Cash as sole owner. If the Petitioner believed she was the rightful owner of the water rights at that time, she was required to file objections to the recommendations with the SRBA District Court "within the time specified in the notice of filing of the director's report." I.C. § 42-1412(1). She did not despite having the full and fair opportunity to do so. Nor did she seek reconsideration of, or appeal from, the Court's issuance of the *Partial Decrees* for these rights in 2010, though they identified Philip Cash as sole owner. Had the Petitioner timely taken any of these actions, the

issue of ownership would have been addressed in a timely manner and on a fresh record in the SRBA.

Instead, the Petitioner sat on her rights for approximately 15 years without action. During that time the pertinent record grew stale and the delay worked to the detriment of Philip Cash who properly asserted his ownership interests in the SRBA. It was not until 2016 that the Petitioner asserted her ownership interests by initiating this proceeding. However, by that time the rights had been decreed to Philip Cash in the SRBA. Her attempt to dispute the propriety of the *Partial Decrees* in this proceeding constitutes an impermissible collateral attack on the *Partial Decrees*.² See e.g., *Cuevas v. Barraza*, 152 Idaho 890, 894, 277 P.3d 337, 341 (2012) (stating generally, that “final judgments, whether right or wrong, are not subject to collateral attack”). The Court holds that the Petitioner sat on her rights for too long and failed to timely assert her ownership interests in the proper forum –the SRBA. As a result, principles of res judicata preclude the Petition from asserting she is the owner of the water rights in this proceeding based on pre-decree considerations.

iii. Judge Elgee’s decision and the Petitioner’s attempt to relitigate ownership of the water rights offend the fundamental purposes of the doctrine of res judicata.

In his decision, Judge Elgee recognized that the water rights placed at issue in this proceeding were adjudicated in the SRBA. *Findings of Fact and Conclusion of Law*, p.17. He also acknowledged that the rights were decreed to Philip Cash in that proceeding. *Id.* Notwithstanding, he placed no weight or significance on the *Partial Decrees* issued in the SRBA or on the SRBA proceeding itself. To the contrary, he allowed the parties to relitigate the issue of ownership based on pre-decree considerations. Such a result cannot stand.

Res judicata serves three fundamental purposes: (1) it preserves the acceptability of judicial dispute resolution against the corrosive disrespect that would follow if the same matter were twice litigated to inconsistent results; (2) it serves the public interest in protecting the courts against the burdens of repetitious litigation; and (3) it advances the private interest in repose from the harassment of repetitive claims. *Ticor Title Co.*, 144 Idaho at 124, 157 P.3d at 618. Here all the policy rationales behind res judicata have been thwarted. Ownership of these water

² At no time did the Petitioner attempt to seek relief from the *Partial Decrees* in the SRBA District Court under Idaho Rule of Civil Procedure 60.

rights has now been litigated twice in two separate forums resulting in the unnecessary expenditure of resources by both the parties and the judiciary. The two litigations have resulted in inconsistent decisions, with the SRBA District Court decreeing the rights to Philip Cash, and a separate district court quieting title to the same rights in Judy Cash. Allowing Judge Elgee's decision to stand would set a dangerous precedent, whereby parties to the SRBA may simply go to an outside forum to relitigate basic elements of water rights decreed in the adjudication. Such a precedent would make the *Partial Decrees* entered in the SRBA, as well as the adjudication proceeding itself, worthless.³ Therefore, based on the foregoing, the Court will grant the Respondents' *Motion for Reconsideration* and find that the principles of res judicata preclude the Petitioner from asserting she is the owner of the water right numbers 37-444, 37-2541, and 37-7636.

C. Idaho Code § 42-1402.

Judge Elgee relied upon Idaho Code § 42-1402 in making his determination that the Petitioner is the owner of the subject water rights. That statute provides that a water right confirmed by a decree "shall be appurtenant to and shall become part of the land on which the water is used, and such right will pass with the conveyance of such land, and such decree shall describe the land to which such water shall become so appurtenant." I.C. § 42-1402. The Court holds that the proper time for the Petitioner to have presented her Idaho Code § 42-1402 argument was during the SRBA, not this proceeding. When the Director recommended that the subject water rights be decreed to Philip Cash as sole owner in the SRBA, the Petitioner was required to file a timely objection if she disagreed with the recommendations.⁴ I.C. § 42-1412(1). To support her objections, she could have properly cited Idaho Code § 42-1402 in support of her ownership claims at that time. However, the Petitioner sat on her rights, failed to object, and did not assert any ownership interest in the subject water rights until 2016. For the

³ The Court notes that changes to the elements of water rights adjudicated in the SRBA based on post-decree factors and considerations are properly processed through the Idaho Department of Water Resources under statutes that include but are not limited to Idaho Code §§ 42-248(1) and 42-222.

⁴ It must be remembered that had the Petitioner complied with the requirements of either Idaho Code §§ 42-248(1) and/or § 42-1409(6) when she acquired the subject property in 2002, it is likely the Director would have recommended the subject water rights in her name in the SRBA as opposed to Philip Cash, and this whole problem would have been avoided. But the Petitioner did not comply with those statutes when she acquired the property.

reasons stated above, principles of res judicata preclude her from now asserting ownership interests that were required to be previously raised and asserted in the SRBA.

The Court further notes that while the appurtenance of a water right to a particular piece of land may be relevant to determining the ownership of that water right in some circumstances, it is not in and of itself dispositive of the issue of ownership in all circumstances. It is true that very often the owner of a piece of land is also the owner of the water rights appurtenant to that land. However, it can be equally true that the owner of a piece of land is not the owner of the water rights appurtenant to that land. Indeed, it has long been held that “water may be appropriated for beneficial use on land not owned by the appropriator, and this water right becomes the property of the appropriator.” *First Security Bank of Blackfoot v. State*, 49 Idaho 740, 291 P. 1064 (1930). Thus, Idaho law recognizes there may be a bifurcation between ownership of the land and of the water right used on the land. *Id.* It follows that the term “appurtenance” signifies that the *use* of a water right is tied to a particular piece of land (i.e., place of use), and may not be used on another piece of land without first obtaining a transfer to do so. It does not signify, as argued by the Petitioner, that the owner of piece of land served by a water right is by operation of law the owner of that water right in all circumstances. Reading the term “appurtenance” in this fashion is contrary to Idaho’s long recognition that there may be a bifurcation between ownership of the land and of the water right used on the land. Accordingly, the proper time to raise this issue was in the SRBA proceeding.

D. The Court need not reach the alternate legal theories advanced by the Respondents.

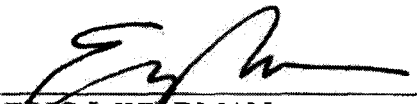
In addition to res judicata, the Respondents raise alternate theories of laches and statute of limitations in their *Motion*. Because the Court finds the Petitioner is clearly precluded from asserting ownership of water right numbers 37-444, 37-2541, and 37-7636 in this proceeding under principles of res judicata, it does not reach the alternate theories raised by the Respondents.

III.
ORDER

Therefore, IT IS ORDERED that the Respondents' *Motion for Reconsideration* is hereby granted.

IT IF FURTHER ORDERED that the Petitioner's claims asserting ownership of water right numbers 37-444, 37-2541, and 37-7636 are hereby dismissed with prejudice.

Dated October 13, 2017



ERIC J. WILDMAN
District Judge

Certificate of Service

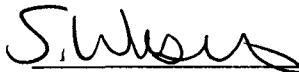
I HEREBY CERTIFY that on this 13th day of October, 2017, a true and correct copy of the foregoing ORDER GRANTING RESPONDENTS' MOTION FOR RECONSIDERATION was delivered to:

Travis L. Thompson
Baker Rosholt & Simpson
P.O. Box 63
Twin Falls, Idaho 83303-0063

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Deputy Clerk