

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA)	Subcases: 65-03114, 65-03115 & 65-03116
)	(Roseberry Irrigation Dist.)
)	
Case No. 39576)	ORDER DENYING MOTION TO
)	CORRECT CLERICAL ERRORS
)	PURSUANT TO I.R.C.P. 60(a) BUT
)	ALLOWING PRIOR DECREE TO BE
)	SUPPLEMENTED WITH EVIDENCE ON
		FINDINGS OF AMBIGUITY; and
		ORDER SETTING TELEPHONE
		STATUS CONFERENCE

**I.
PROCEDURAL BACKGROUND**

This matter came before this Special Master pursuant to a *Motion to Correct Clerical Mistakes in Judgment Pursuant to I.R.C.P. 60(a)*, filed on behalf of Roseberry Irrigation District (Roseberry), claimant of the above-captioned water rights. Water right 65-03115 was previously decreed in a private adjudication, subsequently in the Payette River Adjudication (Payette Adjudication), and is now being claimed in the SRBA. Roseberry asserts that water right 65-03115 was claimed and ultimately decreed in the Payette Adjudication with the incorrect priority date. Roseberry also contends that the incorrect amount of irrigated acreage for the place of use was decreed in the Payette Adjudication for combined water rights 65-03114, 65-03115 and 65-03116. Roseberry seeks to have these alleged errors treated as clerical errors and the Payette Decree corrected pursuant to I.R.C.P. 60(a). Objectors Black Canyon Irrigation District and the United States each filed a memorandum in opposition.

II. FACTUAL BACKGROUND

1. Roseberry filed claims in the SRBA for water rights 65-03114, 65-03115 and 65-03116. Water right 65-03115 is a storage right for irrigation from Boulder Lake Reservoir. Boulder Lake Reservoir is fed by Boulder Creek. Water rights 65-03114 and 65-03116 are irrigation rights. On January 12, 1917, Roseberry filed a permit application with the state engineer for approval of the construction of Boulder Lake Reservoir and for an accompanying storage right. The application was approved January 20, 1917, and was made contingent on the completion of the project by January 20, 1920, and the beneficial use of the water made by January 20, 1922. The permit also indicated that the total amount of land to be irrigated was 2915.27 acres.

2. In 1925, Roseberry filed an action in state district court to have water rights on the Boulder Creek source adjudicated in order to have Roseberry's water rights confirmed. A decree was issued in 1926 in *Roseberry Irr. Dist. v. Shaw et al. (Shaw Decree)*, which decreed to Roseberry a water right for storage in Boulder Lake Reservoir for purposes of irrigation with a January 12, 1917, priority date. This right was later designated as 65-03115. The *Shaw Decree* also decreed the irrigation rights later designated as 65-03114 and 65-03116. Water right 65-03114 was decreed with a June 25, 1902, priority date and 65-03116 was decreed with a January 12, 1917, priority date. The priority dates for these two rights are not at issue. The place of use decreed for all three rights was 2990 acres of irrigable lands located within the boundaries of the district.

3. The Payette Adjudication, which was an adjudication of all surface and groundwater of the Payette River drainage, was commenced on November 12, 1969. On May 19, 1971, Roseberry filed claims in the Payette Adjudication for water rights 65-03114, 65-03115 and 65-03116. The *Notice of Claim* filed for 65-03115 claims a September 6, 1949, priority date in the line item for priority date. However, in the same *Notice of Claim*, the line item describing the basis for the claim refers to the *Roseberry v. Shaw*, decree.

4. The *Notices of Claim* for 65-03114, 65-03115 and 65-03116 contain a line item containing a table or grid indicating the number of acreage claimed within each $\frac{1}{4}$ section of the irrigation district for purposes of describing the place of use. The figures contained in the table in each of the three *Notices of Claim* are identical so as to describe a combined place of use and total number of acres for the three rights. In each of the three tables the total number of acres originally indicated in type is 2787. However, the 2787 is crossed out and replaced with a handwritten interlineation of 2679 and a notation to “see attachment” for the acreage. The attachment is a similar table but containing different acreage values in some of the columns. The total number of acres indicated in the table is the 2679 acres. See Exhibit E5 to *Affidavit of Dana L. Hofstetter*. In that same table, the total acreage for the place of use within Township 16N, Range 3E, section 11, indicates a total of 443 acres. However, in adding the figures contained in the row for section 11, the correct addition total should be 483 acres. Hence, the total combined acres should have read 2719 total acres not 2679 total acres.

5. On March 2, 1979, the Idaho Department of Water Resources issued a *Proposed Finding of Water Right* (essentially a director’s report) for water rights 65-03114, 65-03115 and 65-03116. The *Proposed Finding* for water right 65-03115 recommended a May 6, 1949, priority date. The *Proposed Finding* also indicated that the basis for the right was a prior decree. The *Proposed Findings* for the combined total acreage for the place of use for all three rights recommended the 2679 total acres. Roseberry did not contest any of these *Proposed Findings*. On January 21, 1986, a partial decree was entered in the Payette Adjudication adopting the uncontested portions of IDWR’s *Proposed Findings* and decreeing the three water rights as proposed. Roseberry also did not contest the partial decree.

6. In 1988, Robert M. Keyes, the former water master from 1954 to 1980 responsible for administering Roseberry’s water rights, and former secretary for water districts 20-K and 65-D from 1954 to 1988, which included Roseberry’s water rights, executed an affidavit stating that during Mr. Keyes’ tenure the storage right from Boulder Lake had always been administered according to the January 12, 1917, priority date as contained in the July 7, 1926, *Shaw* decree. See Exhibit F to *Affidavit of Dana L.*

Hofstetter. The record does not indicate whether or not the affidavit was ever actually filed with the Payette or SRBA Courts or IDWR.

7. Prior to the completion of the Payette Adjudication, on November 19, 1987, the SRBA was commenced. Consistent with the commencement, all parties to the Payette Adjudication were required to re-file new claims in the SRBA. Although the commencement of the SRBA in fact subsumed the Payette Adjudication, a formal order consolidating the Payette Adjudication with the SRBA was not issued until February 8, 2001.

8. On December 27, 1988, Roseberry filed respective claims in the SRBA for water rights 65-03114, 65-03115 and 65-03116. For water right 65-03115 Roseberry claimed the January 12, 1917, priority date. IDWR issued a director's report for 65-03115 initially recommending the January 12, 1917, priority date. However, IDWR later corrected its recommendation to reflect the May 6, 1949, priority date based on the partial decree issued in the Payette Adjudication. With respect to the combined acreage for the three water rights IDWR recommended the 2679 acres as the place of use for the three water rights.

III. APPLICABLE LAW, DISCUSSION AND FINDINGS

Roseberry now seeks to have these alleged errors treated as clerical errors and the partial decrees issued in the Payette Adjudication corrected pursuant to I.R.C.P. 60(a). Both objectors, Black Canyon Irrigation District and the United States, withdrew their opposition to amending the Payette Adjudication Partial Decree relative to the acreage calculation but not to amending the priority date. I.R.C.P. 60(a) allows a court to correct clerical mistakes in judgments arising from oversight or omission upon the court's motion or upon motion of any party at any time. Pursuant to the order consolidating the Payette Adjudication with the SRBA, the SRBA would be the proper forum for correcting the Payette Decree. However, it is the opinion of this Special Master that correcting the Payette Decree is not the appropriate remedy. Rather, the issue is whether Roseberry is permitted to collaterally attack the prior decree in conjunction with proving the elements of the subject water rights in the SRBA proceedings.

In the SRBA, a prior decree entered in a private adjudication provides proof of the nature and extent of the water right. However, it does not provide conclusive proof. I.C. § 42-1401A(9); *State v. Hagerman Water Right Owners*, 130 Idaho 736, 742, 947 P.2d 409, 414. ¹ First, a prior decree is binding only upon those parties, or their successors-in-interest, to the prior decree. *Hagerman Water Right Owners*, at 742, 947 P.2d at 414. Thus, parties or their successors to the prior private adjudication are bound by principles of *res judicata* and are precluded from collaterally attacking the prior decree. However, parties to the SRBA who were not previously parties or privies to the prior action are not bound by the prior decree. *Id.* Second, previously, decreed rights are not insulated from loss or reduction based on forfeiture or other related concepts. *Id.* at 741, 947 P.2d at 413 (string citations omitted). Lastly, prior decrees introduced as proof of a water right in the SRBA are frequently vague or ambiguous.

Examples of vagueness can include the situation where the intended meaning of the use of a term cannot be ascertained from the face of the document or the situation where the older decree did not include all the elements of a water right that are now required by statute. Examples of ambiguous decrees occur where the use of a term has more than one meaning or where internal inconsistencies exist in the decree. In the situation where a prior decree is determined to be vague or ambiguous, the practice in the SRBA has been to allow parties to introduce evidence to supplement the decree, explain the ambiguity or assist the court with interpreting the prior decree in conjunction with proving up the water right claim in the SRBA as opposed to going back and amending the prior decree either through I.R.C.P. 60(a) or 60(b). *In SRBA Case No. 39576*, subcase nos. 36-00003A *et al.* (Nov. 23, 1999), the SRBA District Court addressed the issue of the meaning of the “other purposes” language contained in the *New International Decree*. The issue was whether the phrase “other purposes” included a purpose of use for fish propagation. The SRBA District Court ruled that the *Decree* was vague and internally inconsistent with respect to the purpose of use and allowed the claimant to put on evidence to supplement the decree and show the purpose of use at the time the decree was entered. This practice is consistent with the Supreme Court’s analysis that a decree in a

¹ Although the Payette Adjudication was commenced as, and had the attributes of a general adjudication as opposed to a private adjudication, because the Payette Adjudication was never completed it meets the statutory definition of a private adjudication. I.C. § 42-1401A.

prior adjudication is not conclusive proof of the nature and extent of a water right. *Hagerman Water Right Owners*, at 741, 947 P.2d at 413. This practice is also consistent with the exception to the general rule permitting a collateral attack on a prior judgment where the judgment is determined to be ambiguous. *See* 46 AM JUR 2d JUDGMENTS § 93 (general rule does not prohibit collateral attack on judgment where incomplete or ambiguous on face). Finally, this practice is consistent with the procedure set for the by the Idaho legislature with respect to supplementing vague decrees under the amnesty statute I.C § 42-1427 which allows water rights based on existing decrees containing undefined elements to be reported by IDWR based on the use at the time of the commencement of the SRBA. In this regard, evidence is required to supplement the prior decree.

Although I.R.C.P. 60(a) permits a decree to be amended at any time, there are a couple of problems with amending a prior decree that serves as the basis for a claim in the SRBA. A prior decree in a private adjudication is proof of the existence of the water right but it is not conclusive proof. This is because the decree is only binding on the parties or their privies to the prior action but not on all parties to the SRBA. Therefore the significance of the prior decree in the SRBA is essentially that of evidence of the existence of the water right. Thus it makes little sense to expend the effort to hold collateral or separate proceedings for purposes of going back and amending a prior decree the purpose of which is to provide evidence of a water right in the SRBA proceedings. Additionally, it is not always obvious from the face of a decree or related pleadings that an alleged discrepancy or error was necessarily the result of a clerical error. As a result, wide latitude may be required from the SRBA Court to allow an error to be treated as a clerical error under I.R.C.P.60(a). For example, in the instant case water right 65-03115 was claimed in the Payette Adjudication with a 1949 priority date, reported by IDWR with a 1949 priority date and decreed with a 1949 priority date, that is now asserted in the SRBA to be incorrect. While the alleged error may in fact have been the result of a clerical error there may be other equally plausible explanations. Because its not obvious from the face of the decree or related pleadings that the error was the result of a clerical error, extraneous evidence is required in order to demonstrate why the claimed priority date was not the priority date intended to be claimed. In contrast, the

alleged clerical error with respect to the total acreage in this case is at least apparent from the face of the claim. Where the alleged clerical error is not readily apparent and leads to an ambiguity in the decree, rather than stretch the application of I.R.C.P. 60(a) and amend the prior decree, the appropriate solution is to allow the prior decree to be collaterally attacked for purposes of explaining the ambiguity in conjunction with proving the claimed water right in the SRBA.

The difference with this approach is the allocation of the benefit of the presumption created by the director's report. IDWR based its recommendation on the prior decree. If the Court corrects the prior decree IDWR will have to amend its recommendation in accordance therewith. The claimant then gets the benefit of the presumption. If on the other hand the claimant is instead allowed to collaterally attack the prior decree for purposes of demonstrating an error the claimant must overcome the presumption in proving the water right. However, given the fact that the water right went through a full prior adjudication process it makes more sense require the claimant to overcome the presumption by collaterally attacking the decree and proving up the water right, as opposed to the court merely accepting the representations of counsel that the alleged discrepancy was the result of a clerical error. In this regard the Court can make appropriate findings regarding any errors.

To summarize, unless it is unequivocal from the face of the prior decree or related pleadings that an alleged error contained in a prior decree is a clerical error this Special Master declines to proceed under I.R.C.P. 60(a). However, when a clerical error is apparent the practice is not to go back and amend the prior decree but rather recommend the water right based on the prior decree and the finding of a clerical error. Where the alleged error is not unequivocally the result of a clerical error and upon the finding of an ambiguity or inconsistency, this Special Master will allow the prior decree to be supplemented with additional evidence for purposes of explaining the alleged error and recommending the right taking the correction into account based on a satisfactory showing. This procedure not only provides for the consistent application of I.R.C.P. 60(a) but also allows the claimant the opportunity to put on evidence and explain an error in a prior decree so as not to be bound in the SRBA by what may ultimately be determined to be an error.

In the instant case, this Special Master finds that the partial decree entered in the Payette Adjudication for water right 65-03115 is ambiguous with respect to the priority date. The partial decree decrees a September 6, 1949 priority date but indicates a prior (*Shaw*) decree as the basis for the decree. The *Shaw Decree* decreed a 1917 priority date. IDWR's *Proposed Findings* recommend a 1949 priority date but also references the prior decree as the basis for the recommendation. The *Notice of Claim* filed for 65-03115 claims a September 6, 1949, priority date but also describes the *Shaw Decree* as the basis for the claim. This Special Master finds that the partial decrees entered for water rights 65-03114, 65-03115 and 65-03116 contain an error or inconsistency with respect to the total irrigated acreage, which is obvious from the face of the claims. In addition, the objections to treating this as a clerical error were withdrawn.

VI. ORDER

Based on the foregoing, this Special Master declines to recommend that the alleged clerical errors in the partial decree issued in the Payette Adjudication be corrected. However, based on the finding of ambiguity, this Special Master will permit Roseberry to supplement the record with evidence with respect to the priority date in water right claim 65-03115, for purposes of demonstrating the priority date alleged to be correct. Based on the finding of clerical error, this Special Master will also recommend that the 2719 total acres as opposed to the 2679 total acres be reflected in the respective partial decrees.

IT IS ORDERED that a Telephone Status Conference is set for October 10, 2002, at 3:00 pm. Parties may participate by telephone by calling 1-225-383-1099 and entering a participation code of 675342.

DATED October 1, 2002.

Thomas R. Cushman
Special Master for the Snake
River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER DENYING MOTION TO CORRECT CLERICAL ERRORS PURSUANT TO I.R.C.P. 60(a) BUT ALLOWING PRIOR DECRE TO BE SUPPLEMENTED WITH EVIDENCE ON FINDINGS OF AMBIGUITY; and ORDER SETTING TELEPHONE STATUS CONFERENCE was mailed on November 20, 2002, with sufficient first-class postage prepaid to the following:

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