

**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)	Subcase 74-14981
)	(Seaberg)
Case No. 39576)	
)	ORDER GRANTING MOTION FOR
)	RELIEF
)	UNDER I.R.C.P., RULE 60(a), SETTING
)	DEADLINE FOR OBJECTIONS AND
)	VACATING TRIAL SCHEDULE

Seabergs' Claim

Kathy and Glenn Seaberg, P.O. Box 471, Salmon, Idaho, 83467, filed a *Notice of Claim* in subcase 74-14981 on June 13, 2000, claiming .24 cfs from the Lemhi River to irrigate 8 acres in Lemhi County from April 1 to November 1 with a priority date of June 9, 1875, based on a 1931 decree, *Demich v. Sims*. Under remarks, the Seabergs wrote:

Due to error the 8 acres listed above was not included (and was not denied) in the adjudication for Lemhi River, 1971. See attached claim #74-447.

The Court's file contains two documents attached to the Seabergs' *Notice of Claim*. The first document, undated, is marked "Claim 74-14981" with the signature "R. Brown," Roxanne Brown, former IDWR senior water resource agent assigned to investigate Basin 74 claims in the SRBA. The typed portion reads:

This is a valid claim. At the time the Lemhi adjudication was initiated it was part of Clarence and Myra Miller's property. I am sure it was included in the "Brown" book. During the time the adjudication was in process, the Millers started selling parcels of the ranch. By the time it was concluded, they had sold everything SE of the road through the property, except this 8 acres. I am sure that because of their age and health, they simply overlooked objecting to the loss of water on this parcel. The parcel is currently and always has been irrigated from L-6.

s / Bob Loucks¹

Following the typed portion of the document, there is the following hand-written note and signature:

Claimed disallowed – was not decreed in Lemhi adjudication.
R. Brown

The second document attached to the Seabergs' SRBA *Notice of Claim* is a Lemhi River Drainage Basin Adjudication *Notice of Claim*, 74-0447, filed August 10, 1971, by Clarence and Myra Miller claiming .55 cfs from the Lemhi River to irrigate 18.6 acres from April 1 to November 1 with a priority date of June 9, 1875, based on the *Demich v. Sims* decree. The Millers' *Notice of Claim* was notarized by Lyle Glen Saxton, former supervisor of the Idaho Department of Water Administration (now IDWR) office in Salmon, Idaho.

Director's Recommendation and Objection

The Director of the Idaho Department of Water Resources filed his *Director's Report, Reporting Area 23, IDWR Basin 74* on January 23, 2006. The Director recommended claim 74-14981, filed by the Seabergs, be disallowed: "Right not claimed in prior adjudication."

The Seabergs filed an *Objection* on March 7, 2006, objecting to the Director's recommendation that their claim be disallowed. They wrote:

This land is now and has been irrigated continuously since 1875. A great deal of confusion occurred during the previous adjudication proceeding because of the ill health of the former owners and errors made by the Idaho Department of Water Resources. Claimant does not agree that the omission of this water right from the Lemhi Adjudication proceeding is a sufficient legal reason for denying this claim.

Motion for Relief

The Seabergs filed a *Motion for Relief under I.R.C.P., Rule 60(a)* on January 2, 2008, along with a *Brief in Support* and the *Affidavit of Glenn A. Seaberg*. In a nutshell, the Seabergs argued: "[T]he equities and justice demand

¹ Bob Loucks was a contract field agent with IDWR assigned to help investigate Basin 74 claims in the SRBA.

that the mistake be corrected and that a water right be decreed to the Seaberg parcel.” Seaberg’s *Brief in Support*, at 7.

The factual background of the Seabergs’ claim is fairly clear and not disputed. In the 1931 *Demich v. Sims* decree, the Seabergs’ predecessors-in-interest, the heirs of Alice McDonald, were awarded 5 cfs from the Lemhi River through the Andrews Ditch to irrigate certain lands with a priority date of June 9, 1875. In 1956, John and Minnie Goodman conveyed 80 of those acres to Clarence and Myra Miller. After Mr. Miller died in 1990, Mrs. Miller conveyed 8 acres to the Seabergs in 1994. The Seabergs have irrigated those 8 acres every year since they acquired it from Mrs. Miller and that parcel is the basis of their SRBA claim 74-14981.

It was Mrs. Miller who filed claim 74-0447 in the Lemhi Adjudication on August 10, 1971, claiming .55 cfs from the Lemhi River to irrigate 18.6 acres, including the 8 acres now owned by the Seabergs. From that point, the record gets fuzzy:

After the filing of the claim by Mrs. Miller, and without her knowledge, someone lined through the number “74-0047” [sic], and wrote above it in longhand, the number 74-0321C, presumably Mr. Saxton or another IDWR employee. Some months or years later, Millers received a “book” with IDWR recommendations for the claimed water rights and Mr. Miller became aware that no water right had been recommended for the eight acre parcel now owned by the Seabergs. Although Mrs. Miller did not accompany her husband in most of his visits and efforts, she knew that Mr. Miller made a number of contacts with Mr. Saxton and visits to his office, and perhaps other officials, in an attempt to correct the mistake. During much of this time Mr. Miller was quite ill, but at some point he communicated to Mrs. Miller that he felt he had accomplished his objective of correcting the mistake. Since Mrs. Miller had gained this understanding from her husband, she took no further action. Irrigation of the eight acres continued as it always had and she did not become aware that the decree entered in the Lemhi Adjudication proceeding omitted any water right for the eight acre parcel until the Seabergs informed her of the problem during the more recent SRBA processing.

...

It is clear that Millers were water users who, prior to the entry of the Decree in the Lemhi Adjudication, diverted water from the Lemhi River and owned land to which previously established rights were appurtenant. They were also joined in the action we referred to as the Lemhi Adjudication proceeding. But they did not fail to claim a water right or to appear and submit proof of such claim.

For reasons that no one, including IDWR, has been able to explain, the portion of the Miller's claim which included the eight acre parcel now owned by Seabergs, was omitted from the Decree.

...

At this point, there appears to be no better explanation for the omission than that it was an oversight or clerical error on the part of IDWR, or left out by mistake.

Seaberg's *Brief in Support*, at 3-5.

Supplemental Director's Report

At the request of the Special Master, IDWR filed a *Supplemental Director's Report Regarding Subcase No. 74-14981* on May 20, 2008, and attached a May 5, 2008 letter from Lyle Glen Saxton and a "Draft" of how it would recommend the Seabergs' claim if it is decreed as a water right by the SRBA Court.²

In its *Supplemental Director's Report*, IDWR wrote: "To the extent the Seabergs' claim goes beyond the scope of the previously decreed right, IDWR considers itself barred in this instance from recommending elements inconsistent with the prior judicial determination."

In his March 5, 2008 letter attached to IDWR's *Supplemental Director's Report*, Mr. Saxton wrote that the Lemhi Adjudication was conducted under his direct supervision from an office of the Idaho Department of Water Administration located in Salmon, Idaho. To refresh his memory from 35 years ago, he reviewed the Millers' claim, the office's *Proposed Finding of Water Rights in the Lemhi River Basin in Civil No. 4948* (the "Green Book") and a map prepared during the adjudication. His conclusions:

I don't know why the 8 acres were not included in the recommendation of right no. 74-0321C. I can only conclude that the omission of the 8 acres was an error or oversight and should have been included as a part of the recommendation of right 74-0321C [emphasis added].

Hearing

A hearing on the Seabergs' *Motion for Relief under I.R.C.P., Rule 60(a)* was held by telephone on May 22, 2008. Robert L. Harris appeared for the Seabergs and Chris M.

² If the Seabergs' claim 74-14981 is allowed, IDWR would recommend it be decreed for .24 cfs from the Lemhi River to irrigate 7.15 acres in Lemhi County from March 15 to November 15 with a priority date of June 9, 1875, based on a decree.

Bromley and Andrea L. Courtney appeared for IDWR. No one opposed the *Motion*, beyond IDWR's legal conclusion stated in its *Supplemental Director's Report*.

At the hearing, the Seabergs pointed out that none of their neighbors objected to their "miniscule" claim for .24 cfs to irrigate 8 acres. Hence there is no evidence of any prejudice to other water users, especially because the Seabergs' claim reflects the historical continual beneficial use of the water for approximately 123 years.

Discussion

Clerical mistakes and errors in court proceedings can be corrected under I.R.C.P Rule 60(a):

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on motion of any party and after such notice, if any as the court orders.

The record in this unique subcase supports the Seabergs' claim that a water right for their 8 acre parcel was mistakenly omitted during the Lemhi Adjudication and they are entitled to claim that water right in the SRBA. Their predecessors-in-interest, the Millers, filed a claim for the water right in the Lemhi Adjudication and for some reason, perhaps an error or oversight, a water right for the 8 acres was omitted from District Judge Arnold T. Beebe's December 30, 1982 *Partial Decree Pursuant to Rule 54(b), I.R.C.P.*

There was an early statement that the Millers simply overlooked objecting to the loss of water on this parcel because of their advanced age and ill health, but it is clear they made a good faith effort to correct the omission and relied on those in the Idaho Department of Water Administration office in Salmon to that end. More importantly, though, is that Idaho's water administrators, then and now, agree the omission of a water right for the 8 acre parcel in the Lemhi Adjudication was an error or oversight. IDWR now agrees that, but for its legal conclusion that the claim is barred by the doctrine of *res judicata*³, it would favorably recommend the Seabergs' claim.

³ "A matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment. Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action." *Black's Law Dictionary* 1174 (5th ed., West 1979).
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IDWR was legally correct in recommending the Seabergs' claim be disallowed because it was not **decreed** in the Lemhi Adjudication.⁴ But the fact is that the water right *was* claimed in the Lemhi Adjudication but was not decreed because of a clerical mistake or error – the exact circumstance warranting a correction by the Court under I.R.C.P Rule 60(a). The Seabergs are entitled to claim a water right in the SRBA for their land in subcase 74-14981.

Order

THEREFORE, IT IS ORDERED that:

1. The Seabergs' *Motion for Relief under I.R.C.P., Rule 60(a)* in subcase 74-14981 is **granted**;
2. Objections to the Seabergs' claim in subcase 74-14981 shall be filed with the SRBA Court no later than **Friday, July 31, 2008**; and
3. The February 13, 2008 *Trial Schedule*, is **vacated**.

DATED June 11, 2008.

/s/
TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

⁴ Technically, IDWR recommended the claim be disallowed because it was not **claimed** in the Lemhi River Adjudication when in fact it *was* claimed. But the record shows that the claim was not decreed; therefore, by implication, the claim was barred and estopped and any water right held to have been forfeited.