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## In re SRBA, 20 P.3d 693 (Idaho 2001)

M. Elizabeth Lokey

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one days of notice. Wentworth was to give notice through general publication in a newspaper or through personal receipt of written notice. Wentworth failed to provide such notice. DEP also noted that an administrative hearing could lead to rejection of a permit.

The court examined whether Appellees, Wentworth's neighbors, received substantial notice of the dock construction to satisfy due process. The court recognized the neighbors only received notice when Wentworth actually began construction. The court stated that while agency proceedings may be "free-form decisions," agency rules must grant affected parties a clear "point of entry" to challenge agency proceedings. The court held the neighbors did not receive adequate notice and were denied a "clear point of entry" until they had actual notice when construction began.

The court stated due process applied to all parties and the neighbors had a right to challenge the permit upon notice at any time, as a substantially affected party. The court also held Wentworth could not justifiably rely on the finality of a DEP permit grant until he had fully and fairly given notice.

*Christine Ellison*

## IDAHO

***In re SRBA, 20 P.3d 693 (Idaho 2001)*** (holding appellant landowners failed to prove conditions beyond the control of the water right holder caused the abandonment and forfeiture of water).

Between 1973 and 1984, Gerald Storer owned and farmed real property ("Storer property") appurtenant to water rights 34-00600 and 34-00606. In 1976, Storer changed from irrigating the land from Alder Creek, the source of the water, to irrigating by sprinkler. Storer purchased an irrigation system, drilled a well in the northeastern portion of the property, and plowed in all but one of the irrigation ditches on the eastern side of the property. In 1984, Storer transferred the property and the appurtenant rights to the Farmers Home Administration ("FHA"). FHA leased the property for the next ten years to various people. During this time, the property was irrigated for only a few weeks in 1990 through the irrigation ditches located on the property. Yet, due to Alder Creek's lack of water and broken irrigation equipment, the owners irrigated only twenty-five acres.

The 1990 irrigation ended when the watermaster diverted the Alder Creek water above the property onto his land. In 1991 and 1992, the watermaster's son, Shane Rosenkrance, leased the property and used Alder Creek water on his own land rather than on the Storer property.

On May 27, 1992, a director's report recommended the water rights appurtenant to the Storer property be discontinued based on abandonment and/or forfeiture. The United States, through FHA,

filed objections to the report. Prior to any hearings on the objections, the United States sold the property by sealed bid auction in 1995 to John and Maeta McCray *without* the appurtenant water rights.

The McCray's took the United States' place in the subcases and filed a motion for summary judgment arguing the property had been irrigated in both 1985 and 1990. On February 27, 1998, a special master appointed by the SRBA District Court, determined the water rights on the eastern portion of the property had been abandoned when Storer filled in the ditches and installed the sprinkler system. The special master also held the water rights for the entire property had been forfeited due to nonuse, but excluded the twenty-five acres irrigated in 1990. Finally, the special master concluded Shane Rosenkrance's use of Alder Creek water on his own property in 1991 and 1992 did not constitute water rights resumption on the Storer property. The special master gave her report to the SRBA District Court Judge, who adopted the recommendations entirely. The McCrays filed their notice of appeal on September 17, 1999.

The McCray's alleged conditions beyond the control of the water right holder caused the abandonment or forfeiture. Wrongful interference with a water right or failure to use the water because of circumstances over which the water right holder has no control is a defense to forfeiture. According to the McCray's, the 1990 irrigator wanted to irrigate more than the twenty-five acres, but could not because of lack of water and the watermaster's wrongful diversion of the water to his own land. The special master concluded that the watermaster's actions did not wrongly interfere with the water rights because the 1990 irrigator failed to call for the water when he discovered Alder Creek water was no longer flowing to his property. In addition, the special master relied on testimony from the 1990 irrigator that the property was not set up for gravity irrigation, and therefore, could not have been irrigated.

The Idaho Supreme Court applied a substantial and competent evidence standard and affirmed the district court's decision that water rights 34-00600 and 34-00606 were abandoned and forfeited to all but twenty-five acres. The court also rejected the McCray's argument that Shane Rosenkrance resumed the water rights because they failed to prove that any water was put to beneficial use anywhere other than on Rosenkrance's property.

*M. Elizabeth Lokey*

## MISSOURI

**Chance v. Pub. Water Supply Dist.**, 41 S.W.3d 523 (Mo. Ct. App. 2001) (holding detachment of property from Public Water Supply District No. 16 ("District") was proper under applicable Missouri statutes, federal statutes were inapplicable, and detachment would not have a significant adverse effect on the remainder of the District).