

BOISE, FRIDAY, SEPTEMBER 18, 2009 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

**IN RE: IDAHO DEPARTMENT OF)
WATER RESOURCES AMENDED FINAL)
ORDER CREATING WATER DISTRICT)
NO. 170)**

THOMPSON CREEK MINING COMPANY,)

Petitioner-Appellant,)

v.)

**IDAHO DEPARTMENT OF WATER)
RESOURCES,)**

Respondent.)

Docket No. 35175

Appeal from the District Court of the Seventh Judicial District of the State of Idaho, Custer County. Hon. Brent J. Moss, District Judge.

Moffatt, Thomas, Barrett, Rock, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General, Boise, for respondents.

This is an action by Thompson Creek Mining Company (Thompson Creek), seeking to have the Idaho Department of Water Resources' decision to create Water District No. 170 (WD170), overturned, or alternatively to have Thompson Creek specifically excluded from the district.

On August 20, 2004, the State of Idaho signed the Wild & Scenic Rivers Agreement (WSRA) and submitted the agreement to the Snake River Basin Adjudication (SRBA) court for approval. Following Thompson Creek's objection to the WSRA, the SRBA court approved the WSRA, with certain qualifications to the enforcement of the WSRA. Pursuant to the WSRA, on May 13, 2005, the State of Idaho submitted a motion for order of interim administration of water rights in basins 71 & 72, which was subsequently granted by the SRBA on September 29, 2005.

On October 7, 2005, following the SRBA's order of interim administration, the director (Director) of the Idaho Department of Water Resources (IDWR) issued a public notice describing the proposed water district, WD170, the reasons for the proposed creation of that district, and the time and place of the public meeting and hearing. The public notice was mailed to each water right holder within proposed WD170's geographic boundaries, and published in two local newspapers of general circulation. At 7:00 pm on November 9, 2005, pursuant to the public notice, the Director of IDWR conducted a public hearing on the proposed creation of WD170. The Director of IDWR issued a final order creating WD170 on March 6, 2006, and Thompson Creek filed a petition for reconsideration on March 17, 2006. In Response the Director of IDWR issued an amended final order creating WD170. On May 5, 2006, Thompson Creek filed a petition for judicial review. On February 22, 2008, Judge Brent J. Moss upheld IDWR's amended final order. On April 2, 2008 Thompson Creek filed a notice of appeal before this Court, and filed an amended notice of appeal on June 3, 2008.

Thompson Creek raises six issues on appeal: (1) did the Director of IDWR violate due process and the Idaho Administrative Procedure Act (IDAPA) by failing to record and provide a transcript of the entire hearing regarding the creation of WD170; (2) did the Director violate due process and IDAPA by acting as a biased decision-maker; (3) did the Director violate due process and IDAPA by representing to the public that he was required to create WD170 pursuant to the WSRA; (4) did the agency record contain substantial evidence supporting the Director's decision; (5) did the inclusion of Thompson Creek in WD170 violate contract principles; and is Thompson Creek entitled to attorney fees on appeal.

BOISE, FRIDAY, SEPTEMBER 18, 2009 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

PAUL RHOADES,)	
)	
Petitioner-Appellant,)	
)	
v.)	Docket No. 35021
)	
STATE OF IDAHO, and TOM)	
BEAUCLAIR, Director, Idaho Department)	
of Correction, and GREG FISHER, Warden,)	
Idaho Maximum Security Institution,)	
)	
Respondent.)	

Appeal from the District Court of the Seventh Judicial District of the State of Idaho, Bonneville County. Hon. Jon J. Shindurling, District Judge.

Nevin, Benjamin, McKay & Bartlett, LLP, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General, Boise, for respondent.

Petitioner Paul Ezra Rhoades appeals the district court's summary dismissal of his Petition for Post-Conviction Relief. He argues that the district court erred in finding that his claims are time-barred under Idaho Code § 19-4902. In 1987, Rhoades entered a conditional plea of guilty for the murder and robbery of Nolan Haddon. In 2005, Rhoades petitioned the district court for post-conviction relief alleging prosecutorial misconduct, actual innocence, ineffective assistance of counsel, and a claim to test biological evidence for DNA. The district court found that these claims were not raised in a timely manner and dismissed the petition under Idaho Code § 19-4906 which allows for summary dispositions of petitions for post-conviction relief.

Three main issues are presented on appeal. First, whether the grounds raised by Rhoades allow for equitable tolling. Second, for grounds that would entitle him to equitable tolling, whether Rhoades has met his burden of showing facts that would entitle him to that equitable tolling. Finally, whether this appeal was frivolous and whether, as a result, the state is entitled to costs and attorney's fees.

BOISE, FRIDAY, SEPTEMBER 18, 2009 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

PATRICK GARDINER and ADA)
GARDINER, husband and wife)
)
 Petitioners-Respondents,)
v.)
)
BOUNDARY COUNTY BOARD OF)
COMMISSIONERS,)
)
 Respondents-Appellant.)
)
And)
)
TUNGSTEN HOLDINGS, INC.)
)
Intervenor-Appellant)

Docket No. 35007

Appeal from the District Court of the First Judicial District of the State of Idaho, Boundary County. Hon. James R. Michaud, District Judge.

Phillip H. Robinson and Louis E. Marshall, Sandpoint, for appellants.

Paul Vogel, Sandpoint, for respondent.

Janet Robnett, Coeur d'Alene, for intervenor-appellant.

Tungsten Holding, Inc. owns a parcel of land in Boundary County, Idaho, which is zoned Agriculture/Forestry under the Boundary County, Idaho Zoning and Subdivision Ordinance. On March 22, 2005, in order to operate a commercial gravel pit, Tungsten filed an application for a Special Use Permit. The Boundary County Planning and Zoning Commission ("Board") held three public hearings and thereafter granted the Special Use Permit on September 6, 2005.

Respondents, Patrick and Ada Gardiner, own real property located 0.25 miles away from the proposed commercial gravel pit, on which they operate a registered Angus cattle ranch. Following the Board's grant of the Permit, Respondents filed a Petition for Judicial Review. Prior to review by the court, the parties agreed to remand the proceedings to the Board for consideration without the participation of Commissioner Dan Dinning, an interested person. Dan Dinning was an interested party because he is the brother of Rick Dinning, the principal owner of the applicant, Tungsten Holding, Inc.

On remand, two additional public hearings were held and the Board ultimately granted the Special Use Permit on September 7, 2006. Following the grant of the Special Use Permit, Respondents again filed a Petition for Judicial Review. On April 4, 2008, the district court overturned the Board's decision, and declared the Special Use Permit void. The Board timely filed this appeal. Tungsten Holding, Inc. was subsequently given leave to intervene in these proceedings.