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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

Case No. 39576

) Subcase 43-10812
) (Harris Ag)
)
) ORDER GRANTING MOTION
) TO FILE LATE OBJECTION

FINDINGS OF FACT

Claim and Director's Report

C. McGee Harris & Sons filed a *Notice of Claim to a Water Right* under 43-10812 on June 14, 1989, claiming 8.38 cfs from groundwater to irrigate 1,500 acres in Cassia County from April 1 to October 31 with a priority date of April 1, 1963, based on beneficial use. The Director of the Idaho Department of Water Resources filed his *Director's Reports for Irrigation and Other, Reporting Area 7, IDWR Basin 43, Part I* on September 28, 2001. The Director recommended the claim as filed, but to Harris Ag, Box 1024, 2655 East, 1400 South, Malta, Idaho, 83342.

Motion to File Late Objection

On April 24, 2003, Hal T. Anderson filed a *Motion to File Late Objection* seeking to object to name and address, quantity, points of diversion and place of use. The reasons alleged in support of the *Motion* were: "A portion of the water that was recommended pursuant to this water right is appurtenant to lands owned by objector [Hal T. Anderson], and has historically been applied to beneficial use on those lands." Attached to the *Motion* were a *Memorandum in Support* and the *Affidavits of Charles L. Honsinger and Hal T. Anderson*.

Hearing

A hearing on the *Motion to File Late Objection* was held by telephone on May 8, 2003. Randall C. Budge appeared for claimant Harris Ag; Charles L. Honsinger appeared for Hal T. Anderson; and Candice M. McHugh appeared for IDWR.

DISCUSSION

In the SRBA, in order to be granted leave to file a late objection, a prospective party must: (1) file a timely motion, (2) show good cause to file a late objection and (3) allege facts which constitute a meritorious position.¹ The parties in this matter agreed Mr. Anderson met the first two requirements. However, Harris Ag argued that Mr. Anderson failed to allege a meritorious position because a water transfer now disputed by Mr. Anderson (43-04001 and 43-04027) was not opposed in 1975, the State Reclamation Engineer (IDWR) approved the transfer on April 2, 1975, and no one appealed that decision.

Mr. Anderson argued that he has alleged facts which, if proven, would constitute a meritorious position. He alleged there was an error in the transfer proceedings and 3.96 cfs of the transferred groundwater (5 cfs) should not have been transferred nor recommended in the *Director's Reports* as part of claim 43-10812.

Mr. Anderson offered *Sagewillow, Inc. v. Idaho Department of Water Resources*, 2003 WL 1847728 (Idaho, April 10, 2003) as an example where a decision by IDWR (a finding of forfeiture) was reversed because it incorrectly applied the law (resumption-of-use defense). In that same case, IDWR also voided a transfer it had approved 2 years earlier. Mr. Anderson argued certain language in *Sagewillow* concerning res judicata, collateral estoppel, equitable estoppel and/or quasi estoppel opens the door for him to raise issues now that were not litigated in the earlier administrative proceedings.

CONCLUSIONS OF LAW

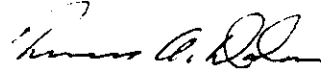
The Special Master is aware that in *Sagewillow*, the plaintiff filed a timely appeal of the administrative proceeding. In the present matter, Mr. Anderson seeks to re-open IDWR transfer proceedings concluded 28 years ago. However, in the interests of developing a complete record and allowing counsel free rein to argue their cases in good faith, the *Motion to File Late Objection* will be granted.

¹ For a more complete discussion of Idaho case law and SRBA customary practice concerning motions to file late objections, see subcase 36-02080, Special Master Dolan's *Order Denying Motion for Leave to File Late Objection*, dated August 21, 1995, at 8-11.

ORDER

THEREFORE, IT IS ORDERED that the Mr. Anderson's *Motion to File Late Objection* is **granted**.

DATED May 9, 2003.



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

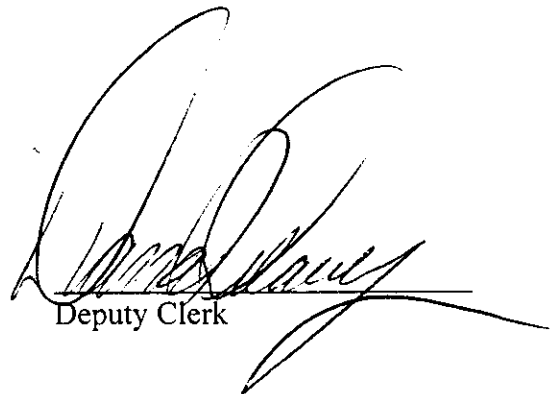
CERTIFICATE OF MAILING

I certify that a true and correct copy of the **ORDER GRANTING MOTION TO FILE LATE OBJECTION** was mailed on May 9, 2003, with sufficient first-class postage to the following:

Director of IDWR
PO Box 83720
Boise, ID 83720-0098

Charles L. Honsinger
PO Box 2773
Boise, ID 83701-2773

Randall C Budge
PO Box 1391
Pocatello, ID 83204-1391



Deputy Clerk