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Department of Water Resources

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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

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 51-04037
Case No. 39576) (WaterOne Enterprises, LLC)
)
) ORDER PARTIALLY GRANTING
) MOTION TO DISMISS; ORDER
) DISMISSING MOTION TO ALTER
) OR AMEND; ORDER VACATING
) TRIAL SETTING; AND ORDER
) DENYING MOTION FOR
) ATTORNEYS FEES AND COSTS

Procedural Background

On May 19, 2003, the Special Master entered a 2nd *Amended Special Master Report* recommending that WaterOne Enterprises LLC ("WaterOne") is entitled to a partial decree adjudicating a water right under claim 51-04037 as agreed to by the parties in a *Standard Form 5*. The *SF-5* was signed by claimant WaterOne (Thomas Scroggins and WaterOne's attorneys, Stoel Rives LLP, by Kevin Beaton) and respondents Janet O'Crowley, Char Scott and the State of Idaho, with IDWR's concurrence.

On June 30, 2003, "WaterOne Enterprises LLC, Matthew Olivas" filed a *Motion to Alter or Amend the Special Master's Recommendation* asking that the remark, "Commercial use is for pool, baths, internal lodge use and 1 trailer," be stricken from the recommendation for the partial decree. On July 11, 2003, WaterOne filed its *Response and Motion for Attorneys Fees and Costs* alleging: "Mr. Olivas has no interest in the water right and has no reason to seek modification of the right."

A hearing on the *Motion to Alter or Amend* filed by "WaterOne Enterprises LLC, Matthew Olivas" and WaterOne's *Motion for Attorneys Fees and Costs* was held on August 14, 2003. The Special Master noted that Owyhee County District Judge James C. Morfitt has

already determined that WaterOne is the fee simple owner of Murphy Hot Springs and by operation of law, its appurtenant water right 51-04037. That done, the only elements remaining to be decided by the SRBA Court were **quantity** and **purposes of use** (those elements related to the above remark). On the record, Mr. Olivas stated that he is not an attorney and failed to specify his standing with WaterOne.

Toward that end, the matter was set for trial, but with the caution that since a corporation owns the water right, anyone wishing to appear at trial and represent WaterOne must be an attorney. The August 15, 2003 *Order Setting Trial* further stated: "In the event no attorney appears to represent WaterOne Enterprises, LLC, for the purpose of litigating the remaining two contested elements, the pending *Motion to Alter or Amend the Special Master's Recommendation* will be dismissed as not properly filed and water right 51-04037 will continue as recommended in the 2nd *Amended Special Master Report and Recommendation*."

A deadline of September 26, 2003, was set for any Idaho attorney, other than Stoel Rives, LLP, to file a notice of appearance to represent WaterOne for the purposes of litigating the contested elements of quantity and purposes of use. To date, no attorney has filed such a notice of appearance.

On September 30, 2003, Teresa A. Hill, of Stoel Rives LLP, filed a *Motion to Dismiss* seeking: 1) dismissal of the *Motion to Alter or Amend*, 2) an order vacating the trial setting, 3) a partial decree of 51-04037 as recommended in the 2nd *Amended Special Master Report and Recommendation* and 4) a ruling on its *Motion for Attorneys Fees and Costs*.

Order

THEREFORE, IT IS ORDERED that:

1. WaterOne's *Motion to Dismiss* is **granted**, in part;
2. The *Motion to Alter or Amend* filed by "WaterOne Enterprises LLC, Matthew Olivas" is **dismissed** as not properly filed;
3. The trial set for November 6, 2003, is **vacated**; and
4. WaterOne's *Motion for Attorneys Fees and Costs* is **denied**.¹

¹ WaterOne's *Motion for Attorneys Fees and Costs* was denied, not because its *Motion* lacks merit, but because a decision by the Special Master on that issue would necessarily implicate issues yet to be determined by Judge Morfitt – i.e., who owns or controls WaterOne. It is expected that Judge Morfitt will take into account developments in the SRBA in his deliberations on whether to award attorney fees and costs in the matters before him.

DATED October 7, 2003.



TERRENCE A. DOLAN

Special Master

Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER was mailed on October 07, 2003, with sufficient first-class postage to the following:

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