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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	) Subcases 36-10033, 36-10035, 36-10037,
	) 36-10090, 36-10863A, 36-11643, 36-
Case No. 39576	) 15152, 36-15264A, 36-15264B, 36-
	) 15356A, 36-16123 and 36-16124
	)
	) ORDER DENYING MOTIONS TO
	) ALTER OR AMEND AMENDED
	) SPECIAL MASTER REPORT AND
	) RECOMMENDATION

Background

On January 28, 2004, the Special Master filed an *Order Granting Motions to Alter or Amend & Amended Special Master Report and Recommendation* in the above 12 subcases, plus 2 other subcases (36-14807 and 36-15356) not recommended because they were split.

On February 11, 2004, claimants North Ridge LLC, Owyhee Ranches, Inc., Blaine and Deon Cook and Bruce and Rebecca Hunsaker filed a *Notice of Challenge* in four of the above 12 subcases (36-10090, 36-10863A, 36-15264A and 36-15264B) concerning the Special Master's earlier ruling on IDWR's inclusion of subordination language in its recommendations for all enlargement claims (see the Special Master's *Order on Motions for Summary Judgment*, dated September 11, 1998).

On February 12, 2004, claimants Roost Potato Co., Inc., Vernon and Marilyn Phillips, Jack and Kent Harman, Salmon Falls Land & Livestock Co., Inc., and W.H. and Velva Moller filed their *Notice of Challenge or, in the Alternative, Motion to Alter or Amend the Amended Special Master Report and Recommendation*. Those claimants alleged in relevant part:

This Motion is made in the alternative for the reason that the *Order Granting Motions to Alter or Amend & Amended Special Master Report and Recommendation* does not appear to directly address the Claimants' previous *Motion to Alter or Amend* filed on February 26, 2003 regarding the objection to the inclusion of the subordination language in their *Objections*. To the extent the *Order Granting Motions to Alter or Amend & Amended Special Master Report and Recommendation* dated January 28, 2004 constitutes a new *Special Master's*

Report and Recommendation, the Claimants respectfully request that the *Amended Special Master Report and Recommendation* be altered or amended so as to exclude the subordination language consistent with the Claimants' *Motion to Alter or Amend* filed February 26, 2003 [emphasis added].

Notice of Challenge or, in the Alternative, Motion to Alter or Amend the Amended Special Master Report and Recommendation, at 2.

On February 17, 2004, claimants North Ridge LLC, Owyhee Ranches, Inc., Blaine and Deon Cook and Bruce and Rebecca Hunsaker filed their *Renewed Motion to Alter or Amend the Amended Special Master Report and Recommendation* in subcases 36-10090, 36-10863A, 36-15264A and 36-15264B "so as to exclude the subordination language consistent with Claimants' Motions to Alter or Amend filed February 26 and 27, 2003."

An expedited hearing on the claimants' motions to alter or amend was held by telephone on March 4, 2004. Jason D. Walker appeared for claimants Roost Potato Co., Inc., Vernon and Marilyn Phillips, Jack and Kent Harman, Salmon Falls Land & Livestock Co., Inc., and W.H. and Velva Moller; David F. Shirley appeared for claimants North Ridge LLC, Owyhee Ranches, Inc., Blaine and Deon Cook and Bruce and Rebecca Hunsaker; John M. Marshall appeared for objectors the Magic Valley Ground Water District, *et al.*; and Nicholas B. Spencer appeared for IDWR.

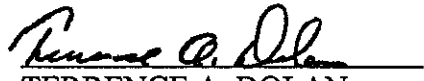
During the expedited hearing, counsel noted that the Special Master failed to explicitly rule on the subordination language issue raised in the claimants' pending motions to alter or amend. The January 28, 2004 *Order Granting Motions to Alter or Amend* arguably addressed only clerical errors and administrative changes since entry of the original January 10, 2003 *Special Master Report and Recommendation*, but failed to address motions to alter or amend concerning the subordination issue.

Counsel and the Special Master agreed that a reasonable solution to clear up any confusion in the above 12 subcases is: 1) for the Special Master to rule on the claimants' pending motions to alter or amend concerning the subordination language issue, and 2) for the claimants to urge Presiding Judge John M. Melanson to vacate his February 12, 2004 *Challenge Scheduling Order* in subcases 36-10090, 36-10863A, 36-15264A and 36-15264B. Those two steps would permit above 12 subcases to proceed together and allow the parties to challenge the present *Order Denying Motions to Alter or Amend Amended Special Master Report and Recommendation* in a more orderly fashion.

Order

THEREFORE, IT IS ORDERED that the *Motion to Alter or Amend the Amended Special Master Report and Recommendation*, filed February 12, 2004, and the *Renewed Motion to Alter or Amend the Amended Special Master Report and Recommendation*, filed February 17, 2004, are **denied**. The claimants have presented no case law or argument that would warrant alteration or amendment of the conclusions of law stated in the Special Master's September 11, 1998 *Order on Motions for Summary Judgment*: "[T]he Director of IDWR had the lawful authority and duty to recommend inclusion of subordination language in the claimants' enlargement claims."

DATED March 4, 2004.


TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER DENYING MOTIONS TO ALTER OR AMEND AMENDED SPECIAL MASTER REPORT AND RECOMMENDATION was mailed on March 04, 2004, with sufficient first-class postage to the following:

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