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DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS IDAHO

In Re SRBA) Subcases 57-10486, 57-10487, 57-
Case No. 39576) 10487A, 57-10487B, and 57-10922
MEMORANDUM DECISION AND
ORDER ON CHALLENGE

Challenge to the Special Master's *Order on Motion to Alter or Amend* in subcases 57-10486, 57-10487, 57-10487A, 57-10487B, and 57-10922

Appearances:

RICHARD L. HARRIS, Caldwell, Idaho, for Challenger Joyce Livestock Company.

DANIEL V. STEENSON, Ringert Clark Chartered, Boise, Idaho, for Respondent Jay Hulet.

I.

JOYCE LIVESTOCK COMPANY'S CHALLENGE

This is a challenge by Joyce Livestock Company (referred to hereinafter as "Joyce") to Special Master Haemmerle's *Order Denying Second Motion to Reconsider*[that certain *Order on Motion to Alter or Amend* (July 24, 1998)] in subcases 57-10486, 57-10487, 57-10487A, 57-10487B, and 57-10922, filed June 9, 1999.

II.

BRIEF PROCEDURAL BACKGROUND

Joyce filed claims to water rights 57-10486, 57-10487, and 57-10922, and Jay Hulet ("Hulet") filed objections thereto. Although water rights 57-10486 and 57-10922 are listed in the caption of Joyce's *Notice of Challenge*, they are not at issue in this challenge.¹ *Challenger's Opening Brief* at 1. As to stockwater right 57-10487, a trial was held before the Special Master on October 6, 1997. Following trial, the Special Master entered *Amended Findings of Fact and Conclusions of Law* on November 10, 1997, finding that stockwater right 57-10487 had been contractually conveyed by Joyce's predecessor to Hulet on March 6, 1967. In addition, the Special Master found that Joyce's predecessor continued to divert water for stockwater use after the 1967 contract, and therefore Joyce had perfected a new water right with a priority date of March 7, 1967. This new right was assigned two new numbers, 57-10487A (for use on Joyce's private land) and 57-10487B (for Joyce's use on public land). Pursuant to these findings, the Special Master issued a *Special Master's Report* on April 22, 1998, which recommended that water rights 57-10487A and 57-10487B be decreed.

Hulet responded by filing a *Motion to Alter or Amend Special Master's Recommendation* on May 28, 1998, and this motion was heard by the Special Master on June 24, 1998. The Special Master found in favor of Hulet, and issued an *Order on Motion to Alter or Amend* on July 24, 1998. Subsequently, the Special Master issued an

¹ As to water rights 57-10486 and 57-10922, they were subject to *Motions to Alter or Amend* filed by Hulet on May 28, 1998. These motions were heard by the Special Master on June 24, 1998. The Special Master issued an *Order Granting Motions to Alter or Amend* on July 16, 1998. Subsequently, Joyce filed a *Motion to Reconsider* regarding 57-10486. However, it appears that at the hearing held on January 22, 1999, the parties agreed that 57-10486 and 57-10922 should not be reconsidered. *Court Minutes*, Jan 22, 1999. Additionally, Joyce states in its opening brief that water rights 57-10486 and 57-10922 "are not at issue in this challenge." *Challenger's Opening Brief* at 1. Therefore, regarding water right 57-10486, this Court has issued an *Order of Partial Decree* (Sept. 6, 1999) which reflects the Special Master's July 16, 1998 Order. With respect to water right 57-10922, this water right cannot be decreed at this time because there is currently pending an objection thereto filed by Jay Hulet on September 3, 1999 regarding the "irrigation season" component of Basin-Wide Issue 5-57. *See Order of Consolidation / Separation of Issues (Realignment and Redesignation of Issues) of Basin-Wide Issues 5, 5A and 5B, AOI §11* (Aug. 31, 1999).

Amended Special Master's Report on July 29, 1998, which recommended that water rights 57-10487A and 57-10487B be disallowed.

Following the issuance of this Special Master's report, some procedural peculiarities occurred. First, and in contravention of both AO1 and I.R.C.P. 11(a)(2)(B), Joyce filed a *Motion to Reconsider Order Granting Motions to Alter or Amend* on July 31, 1998, requesting that the Special Master reconsider his July 24 Order. This motion to reconsider was ultimately heard on January 22, 1999, and according to the court minutes the Special Master issued a ruling from the bench denying the motion. The Special Master's denial of this motion was also reiterated in an *Order Denying First Motion to Reconsider* dated June 3, 1999. For reasons not clear to this Court, there is no transcript available of the hearing (apparently the tape recording device failed). Next, and again in contravention of both AO1 and I.R.C.P. 11(a)(2)(B), Joyce filed a *Second Motion to Reconsider* on February 5, 1999. On June 9, 1999 the Special Master issued an *Order Denying Second Motion to Reconsider*. Joyce then filed a *Notice of Challenge* on June 22, 1999.

While Joyce's improper July 31, 1998 motion to reconsider was pending before the Special Master, and pursuant to the *Amended Special Master's Report* of July 29, 1998, Judge Hurlbutt issued an *Order of Partial Decree* on December 31, 1998 which decreed water rights 57-10487A and 57-10487B as disallowed. This *Partial Decree* contained an I.R.C.P. 54(b) certificate, and notice was properly sent to all the parties to these subcases. No timely appeal to this *Partial Decree* was taken. Despite the fact that this Court (Judge Hurlbutt) had issued a *Partial Decree*, Joyce, Hulet, and the Special Master continued with the proceedings regarding Joyce's first and second motions to reconsider.

This Court heard oral arguments on both the procedural as well as substantive issues raised in this challenge on September 21, 1999. At oral argument on challenge, this Court made it clear to counsel that in light of the existing procedural issues, by allowing oral argument on the substantive issues this Court was not agreeing that it had jurisdiction to entertain the substantive issues. For the reasons explained below, this Court is prohibited from deciding the substantive issues raised by Joyce in its challenge.

III.

MATTER DEEMED FULLY SUBMITTED FOR DECISION

This Court having heard oral arguments on the challenge on September 21, 1999, with no party seeking additional briefing and the Court having requested none, the matter is deemed fully submitted for decision on the next business day, or September 22, 1999

IV.

DECISION

As stated above, an *Order of Partial Decree* disallowing water rights 57-10487A and 57-10487B was signed by Judge Hurlbutt and issued by this Court on December 31, 1998. Furthermore, a Rule 54(b) Certificate is printed on the face of the *Partial Decree*, directing that "the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules."² Again, no party took an appeal from this *Partial Decree*, the time for appeal has long since expired, and the *Partial Decree* is final. Because a *Partial Decree* has already been issued in these subcases, this challenge by Joyce must be considered either an appeal of the *Partial Decree* or a collateral attack on the *Partial Decree*. In either case, this Court is prevented from deciding the substantive issues presented in this challenge. If Joyce's challenge constitutes an appeal, this Court is without subject matter jurisdiction to decide it. Administrative Order 1 (15)(a) (Oct 16, 1997) ("procedure for appealing partial decrees"); I.R.C.P. 54(b); Idaho Const. Art. 5, § 9; I.C. §§ 1-204,705 (defining respective jurisdictions of district and supreme court); *First Security Bank v. Neibar*, 98 Idaho 598, 604, 570 P.2d 276, 282 (1977) (once appeal is filed, district court loses subject matter jurisdiction until case is remanded); I.A.R. 21 (failure to comply with time limits is jurisdictional). If Joyce's challenge constitutes a collateral attack on the *Partial Decree*, the rules of *res judicata* apply and this Court is without authority to address the substantive issues raised in Joyce's challenge. See *Gilbert v. Nampa School District*, No.

² Rule 14 of the Idaho Appellate Rules require an appeal to be taken within 42 days from the date of the judgment.

131, 104 Idaho 137, 657 P.2d 1 (1983)(*res judicata* applies when existing final judgment has been rendered on merits of the case).

Because these water rights have already been decreed as disallowed, the post-judgment proceedings before the Special Master regarding Joyce's motions to reconsider are without effect. It is arguable that this Court should not have issued its *Order of Partial Decree* in these subcases while Joyce's improper motion to reconsider was pending before the Special Master. However, if the Court erred in taking this action, the error was harmless and did not affect Joyce's substantive rights for the following reasons.

First, the motions made by Joyce asking the Special Master to reconsider his *Order on Motion to Alter or Amend* are not proper under the procedural rules governing the SRBA. In the SRBA, actions upon a special master's report are governed by Administrative Order 1 (Oct. 16, 1997) ("AO1") and by I.R.C.P. 53. Under AO1(13)(a), any party to the adjudication may file a motion to alter or amend within 21 days from the date a special master's recommendation appears on the docket sheet. In these subcases, such a motion was filed by Hulet on May 28, 1998. AO1(13)(b) then states that the motion will be decided by the special master with or without hearing. In these subcases, the Special Master heard Hulet's motions on June 24, 1998, issued an order granting the motions on July 24, 1998, and subsequently issued an amended master's report on July 29, 1998. AO1(13)(b) continues on to state that "[n]o second *Motion to Alter or Amend* may be filed on the decision granting or denying a *Motion to Alter or Amend*." (bold added). In other words, motions which ask a special master to alter or amend a recommendation can only be directed towards an initial recommendation, not towards any subsequent recommendations which may arise out of a first round of motions to alter or amend. If a party who was involved in a first round of motions to alter or amend is dissatisfied with the results thereof, the proper course of action is to object to the special master's recommendation by filing a *Notice of Challenge* with the district court within 14 days following the date of the filing of the decision on a motion to alter or amend AO1(13)(c); I.R.C.P. 53(e)(2). Although Joyce styled its motions as "motions to reconsider," in reality they were secondary motions to alter or amend, which are clearly prohibited under AO1(13)(b). Joyce's motions to reconsider were directed to the Special

Master and specifically requested the Special Master to reconsider his *Order* granting Hulet's *Motion to Alter or Amend*. Because Joyce's motions to reconsider (a.k.a. motions to alter or amend) were not allowed under the procedural rules, they were properly denied by the Special Master, and it is of no import that they were not denied before this Court issued its *Order of Partial Decree*.

It should also be noted that upon the issuance of the July 24, 1998 *Order on Motion to Alter of Amend* and the appurtenant *Amended Special Master's Report*, the Special Master's jurisdiction over these subcases ended. By operation of AO1, I.R.C.P. 53, and the *Order of Reference* of these subcases to the Special Master, the Special Master's responsibilities in these subcases ended at that time, and the Special Master was without authority to hear or otherwise entertain Joyce's motions for reconsideration.

Additionally, Joyce's *Notice of Challenge* was not timely. Joyce filed its *Notice of Challenge* on June 22, 1999, nearly a full year after the 14 day time limit specified in AO1(13)(c) and I.R.C.P. 53(e)(2). Furthermore, because Joyce's motions to reconsider were not proper under the procedural rules governing the SRBA, such motions did not toll the time for filing a *Notice of Challenge*.

Furthermore, Joyce's motions to reconsider were not proper under I.R.C.P. 11(a)(2)(B), which states that:

A motion for reconsideration of any interlocutory orders of the trial court may be made at any time before the entry of final judgment but not later than fourteen (14) days after the entry of the final judgment. A motion for reconsideration of any order of the trial court made after entry of final judgment may be filed within fourteen (14) days from the entry of such order; **provided, there shall be no motion for reconsideration of an order of the trial court entered on any motion filed under Rules 50(a), 52(b), 55(c), 59(a), 59(e), 59.1, 60(a), or 60(b).**

I.R.C.P. 11(a)(2)(B) (emphasis added). A *Motion to Alter or Amend a Special Master's Recommendation* made pursuant to AO1(13) is most properly treated as a motion under I.R.C.P. 52(b), and is also somewhat analogous to a motion under I.R.C.P. 59(e) (assuming that a special master's report and recommendation is akin to a "judgment"). See *Memorandum Decision and Order on Challenge*, subcases 36-00061, 36-00062 and 36-00063 (Sept. 27, 1999). In either event, a motion which asks a special master to

reconsider a ruling made on a *Motion to Alter or Amend* is prohibited by I.R.C.P.

11(a)(2)(B).

The second reason why the issuance of the *Partial Decree* (while Joyce had a motion to reconsider pending) did not affect Joyce's substantive rights is simply because Joyce was given proper notice of the issuance of the *Partial Decree* (which contained an I.R.C.P. 54(b) certificate). As such, Joyce had ample opportunity to protest the issuance of the *Partial Decree* and to bring to this Court's attention the fact that Joyce still had a motion (albeit improper) pending before the Special Master -- Joyce could have done this, for example, by filing a timely motion under I.R.C.P. 59(e) or I.R.C.P. 60(b), but neither was done. In addition, Joyce did not attempt to appeal the issuance of the *Partial Decree* to the Idaho Supreme Court.

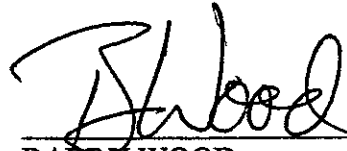
For all these reasons, Joyce's challenge is overruled.

VII. CONCLUSION

In these subcases, Joyce's counsel pursued a course of action that was not proper under the procedural rules governing the SRBA. A careful reading of the AO1 would have illuminated the correct path. Even more disturbing is the unwavering adherence by Joyce's counsel to this course of action despite the issuance of the *Partial Decree*. Joyce took no action and the time limits for post-judgment motions or appeal have long since expired. As such, this Court is without jurisdiction to entertain the substantive issues raised by Joyce.

IT IS SO ORDERED:

DATED: October 6, 1999

A handwritten signature in black ink, appearing to read "B. Wood", written over a horizontal line.

BARRY WOOD
Administrative District Judge and
Presiding Judge of the
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the MEMORANDUM DECISION AND ORDER ON CHALLENGE was mailed on October 06, 1999, with sufficient first-class postage to the following:

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