

2005 SEP 15 PM 3 39

Permissive Review – A Special Master or any party to the Subcase may seek permissive review by the Presiding Judge of the Special Master’s interlocutory determination which involves a controlling question of law as to which there are substantial grounds for difference of opinion and on which immediate consideration of the determination may advance the orderly resolution of the litigation following the procedure set forth in I.A.R. 12.

AOI, 9(e)

The *Motion for Permissive Review* filed by Brett Casperson appears to seek a review of the *Order on Motion to Enforce Settlement*. (May 26, 2005) and *Order on Motion to Reconsider* (July 12, 2005). The *Orders* held that Brett and Nathan Casperson (“the Caspersons”) ¹ and the Carrol and Ione Willmore Estate were bound to a settlement agreement entitled *Portneuf River Settlement Agreement Basin 29: Portneuf River*. The *Orders* resolved a *Motion to Enforce Settlement Agreement* brought by Portneuf Marsh Valley Canal Company, Marsh Valley Development, Inc., McCammon Ditch Company, Portneuf Irrigating Company, and Lava Irrigation Company to enforce a settlement reached at a mandatory settlement conference for which the Caspersons and the Willmore Estate failed to attend. The Special Master ruled on the *Motion to Enforce Settlement Agreement* by applying the law of the case from *Order on Order to Show Cause Hearing Enforcing Settlement Agreement; and Order Staying Discovery and Trial Schedule on Basin-Wide Issue 5-34*, (Subcase No. 91-00005-34) (March 15, 2001). That prior order of the SRBA Court was the legal basis for the Special Master’s ruling in the *Order on Motion to Enforce Settlement* and *Order on Motion to Reconsider*. These two orders are the interlocutory ruling on which Mr. Casperson seeks permissive review.

In reviewing a *Motion for Permissive Review*, however, the standard of review looks to an “interlocutory determination which involves a controlling question of law as to which there are substantial grounds for difference of opinion.” **AOI, 9(e)** As the SRBA court recently noted, the Court must only review the question of law which the Court has been requested by either the Special Master or parties to review. “Any factual findings, if they exist, would not be ripe for review on a permissive review.” *Order on Permissive Review* and *Order of Recommitment* (subcase number 45-12475 *et. seq.*) (August 3, 2005) In reviewing an interlocutory order, the SRBA Court has limited facts on which to base a decision since the Special Master’s Report and

¹ Brett and Nathan Casperson were claimants of 29-13407. A Notice of Completed Administrative Proceeding later changed the claimants of 29-13407 to Brett and Nancy Casperson.

Recommendation has not issued. Additionally, the nature of a permissive review does not permit the SRBA Court to make factual findings. Thus, the SRBA Court could only narrowly review the "controlling question of law" and would not make or review the findings of fact.

III. CONCLUSION

In the case at bar, it seems doubtful that an interim review of the *Order on Motion to Enforce Settlement* and the *Order on Motion to Reconsider* would advance this case. First, the SRBA Court has recently issued a decision on the "controlling question of law" regarding enforcing settlements. *Order on Order to Show Cause Hearing Enforcing Settlement Agreement; and Order Staying Discovery and Trial Schedule on Basin-Wide Issue 5-34*, (Subcase No. 91-00005-34) (March 15, 2001). It is possible that the SRBA Court would apply the facts in a different way than this Special Master has, but the SRBA Court would be in a better position to do so on review after a *Special Master's Report and Recommendation* has issued.

It does not, therefore, appear that the present *Order on Motion to Enforce Settlement* and the *Order on Motion to Reconsider* meet the criteria for permissive review under *AOI*. The *Special Master's Report and Recommendation* has not issued. The legal question of what standard to apply to *Motions to Enforce Settlements* has already been established by the SRBA Court. Therefore, presenting the issue on an interlocutory basis to the District Court would not advance the orderly resolution of this litigation. To the contrary, that procedure would seem to add another layer which would add expense and time for the parties. Although this subcase is related to other subcases which are subject to the same Settlement Agreement, the better course of orderly resolution of this subcase is proceeding with a *Special Master's Report and Recommendation* and allowing motions to alter or amend and challenges, if any, to proceed in the normal course.

THEREFORE, IT IS RECOMMENDED that this subcase not be taken up on an interlocutory basis, but proceed through the challenge process in the regular course. Nothing in this ruling prevents any party from filing a motion to alter or amend or a challenge to the *Special Master's Report and Recommendation*.

DATED: September 15, 2005.


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

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