

Leah Rose, Claimant
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Pro Se

RECEIVED
JUN 08 2007
DEPARTMENT OF
WATER RESOURCES

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 45-00167A
	)	
Case No. 39576	)	
	)	
	)	RESPONSE FOR MOTION TO ALTER
	)	OR AMEND SPECIAL MASTER
	)	REPORT AND
	)	<u>SUPPORTING MEMORANDUM</u>

COMES NOW Leah Rose, *pro se* claimant in Water Right No. 45-00167A,
to file this response to the Motion to Alter or Amend Special Master Report and
Supporting Memorandum.

This Response is filed to request that the Special Master consider facts in
the Motion to Alter or Amend from William A. Poulton, Objector in the case, by and
through his attorney, Michael P. Tribe, that either have no bearing upon this case or are
erroneous.

RESPONSE TO MOTION - 1

In Mr. Tribe's Motion, part II. "Factual and Legal Errors, b." it states: "The claimant did attempt to offer exhibits of what she felt were evidence of irrigation ditches, but were not admitted because of her failure to provide such exhibits in an exhibit list to the objector." May I say in my own defense that I did have the exhibits and exhibit list, but brought them the day of trial. During the telephone conference all parties participated in prior to trial, Special Master Dolan explained that there would not be anything new presented and therefore no surprises. I believed that because the pictures and other evidences of irrigation that I had previously shown to the court were not new, they would not be considered new evidence and so I brought them to court with an exhibit list the day of trial. However, Mr. Tribe, did bring in a new witness, Jacob Mundt, bringing him after the period of time that new evidence would be admissible. The Deposition of Clark Harman on the exhibit list of Mr. Tribe was not used, but contained information that supported the existence of the irrigation structure and explained how Mr. Poulton prevented him from using Willow Creek.

In Mr. Tribe's Motion, part II. "Factual and Legal Errors, d." it is true that Mr. Poulton farms and I teach. He grows hay for his cattle and waters and tends his acreage in addition to his other job and I teach kindergarten children how to read all day. I am a teacher, and I challenge anyone who tells me I am not.

Whether my job title is educational aide or teacher is irrelevant to this case. It just means the taxpayer pays me less for doing the same thing the teacher does in our classroom. The fact remains that I did not have the knowledge of the land as Mr. Poulton did.

In Mr. Tribe's Motion, part II. "Factual and Legal Errors, e," it states, "Even if there were credible evidence that cattle grazed on the property" Mr. Poulton himself admitted that he grazed his cattle on the property in the hearing prior to trial. After Mr. Tribe claimed that Neal Adams was Mr. Poulton's affiant, which he was not, and read a statement by Mr. Adams, I read another statement from Mr. Adams that claimed he did see Mr. Poulton's cattle grazing on the property. Mr. Poulton then admitted he had cattle on the property. I would call that credible evidence. Cattle on property would provide more evidence to irrigation than proof that there was no irrigation, which Mr. Tribe has not provided.

In 2. Errors of Law, I would ask that Mr. Tribe prove how much water was used. How does one prove that "it was not the full amount if any" as in Mr. Tribe's statement? How am I "entitled to a few buckets a year?" How does Mr. Tribe know how many buckets I used? The amount asked, 0.04 cfs, is "only about a cup of water" according to Mr. Poulton—even less than a bucket. Also the statement "there was testimony that the objector and the other downstream users often use all the available water of Willow Creek and that they would be harmed if the claimant was permitted to

divert water from Willow Creek” is questioned by the fact that Cory King, in answer to Special Master Dolan’s question in trial as to how much water flows down Willow Creek, gave evidence of the abundance of water that flows down Willow Creek year round—well beyond the needs of its users.

In part b. of 2 Errors of Law, it states “the conflicting testimony whether Mr. Poulton instigated the move across the road onto his property’ is not credible.” In Mr. Poulton’s testimony in trial, he says that he discussed the matter with the highway district and “we” decided to move the streambed to the current location which was in the best interest of all parties. I did in fact talk to the highway district repeatedly, but the final decision was made without my knowledge and the streambed was moved. In talking to them in the last meeting before the trial, they assured me that I would have access to the water should I get the right because they were concerned whether or not I would get the right and that any action would determine that. The Burley Highway District and I discussed many ways over the years on how the water could be diverted the best way. It is ludicrous to suggest that I would not want the water or would not have any motivation to secure that right. Knowing the large trees lining my property would die without continued access to the Willow Creek stream was sufficient motivation to pursue the water issue in addition to the necessity for that water to irrigate my pasture. There was much discussion on the subject and for Mr. Tribe to suggest I sat idly by

or “sat on my hands for years” and did nothing to try to access the water is completely unfair.

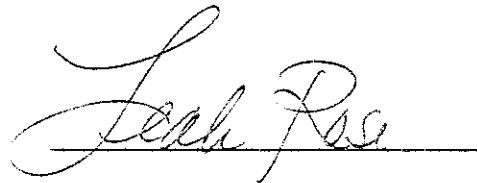
As to the matter of the fact that I am acting *pro se*, I ask that the response given in my Reply Brief to Response Brief of Objector, from June of 2006 be considered:

“ While there is Idaho case law that holds *pro se* litigants to the same legal standard as attorneys, (Suits v. Nix, 141 Idaho 706, 708, 117 p. ed 120, 123 {2005}) and ‘*pro se* litigants are held to the same standards and rules as those represented by an attorney’ (Twin Falls County v. Coates, 139 Idaho 442, 445, 80 p. 3d 1043, 1046 {2003}), there is also authority that a court in examining a *pro se* complaint or pleading should hold it to less stringent standards than those applied to pleadings drafted by attorneys (Graham v. Ault, 466 S.E. 2d 213 {Ga. 1996}). Furthermore, *pro se* complaints are to be construed liberally (Lewis v. Sullivan, 524 N. W. 2d 630 ({Wis. 1994}).) The U.S. Supreme Court has recognized that *pro se* complaint is held to less stringent standard than formal pleadings drafted by lawyers (Haines v. Kerner, 404 U.S. 519, 520-521, {1972}, also, Robinson v. Adams, 847 F. 2d 1315, 1319 {9th Cir. 1987}) Also, ‘a layperson bringing a Title VII action *pro se* is appropriately afforded a liberal construction of the statute’s technical requirements’ citing Rice v. Hamilton AFB Commissary, 720 F. 2d 1082, 1084 {9th Cir. 1983}).) The claim of forfeiture is akin to a state action to take a vested property right and should be accorded the utmost protections of Due Process of the 14th Amendment. Therefore, even though a *pro se* litigant is held to the same legal standard, the

court has discretion to modify the scheduling order or to grant leave to file corrected or additional memoranda, motions and affidavits. The court has power to construe pleadings, affidavits and memoranda in such a way as to ensure that justice is served despite deficiencies in form.”

I ask that the Special Master consider the above and consider that Mr. Poulton may use this and other tactics to continue to keep me from using the water. I ask that you may grant the Water Right 45-00167-A as originally intended in the Special Master’s Report.

DATED this 7th of June, 2007.

A handwritten signature in cursive script, reading "Leah Rose", written over a horizontal line.

Leah Rose, *Pro Se*

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I served a true and correct copy of the document: RESPONSE
FOR MOTION TO ALTER OR AMEND SPECIAL MASTER REPORT AND SUPPORTING
MEMORANDUM on the persons listed below by United States Mail with the correct postage
affixed thereto on this 7th of June, 2007.


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