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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 01-1J, et al.
	)	(see list of 51 subcases attached)
Case No. 39576	)	
	)	ORDER RECONVENING HEARING
_____	)	ON MOTION TO PARTICIPATE

Motion to Participate

On March 30, 2007, the Idaho Ground Water Appropriators, Inc., ("IGWA") filed its *Motion to Participate and Memorandum in Support* in the above 51 subcases. The *Motion* noted that IGWA is an Idaho non-profit corporation representing "ground water districts, an irrigation district, various municipal water providers, and commercial and industrial entities, and individuals within the State of Idaho . . . [holding] water rights authorizing ground water diversions for irrigation of approximately 855,000 acres and for other authorized beneficial uses."

IGWA sought participation because:

[Objections filed in the 51 subcases] allege that the source of water from various wells within the place of use should be considered recovered surface water in part and ground water in part . . . and the issues involved in these subcases may result in a clarification of the definition of what constitutes ground water in the state of Idaho and whether or not recovered water is recognized in the state. These issues would directly affect IGWA's members and whether or not certain ground water users are subject to curtailment, affect mitigation plans and interests and conjunctive administration of the ESPA generally by IDWR.

Response

On May 23, 2007, American Falls Reservoir District #2, A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Company, Twin Falls Canal Company and Minidoka Irrigation District (collectively "Surface Water

Coalition”) filed their *Response to Idaho Ground Water Appropriators, Inc.’s Motion to Participate*. They argued that IGWA has no ownership interest because it merely represents members who own ground water rights:

Since it is not asserting ownership to any water rights and no person or entity is asserting ownership on its behalf, IGWA is not a party and, hence, is prohibited from filing a motion to participate. . . . [T]he SRBA is not an open forum for organizations without water right claims to be heard.

Hearing

A hearing on IGWA’s *Motion to Participate* was held on May 31, 2007. Candice M. McHugh appeared for IGWA; Paul L. Arrington, Travis L. Thompson and W. Kent Fletcher appeared for the Surface Water Coalition; Jerry R. Rigby appeared for the Blackfoot Irrigation Company and other claimants in the 51 subcases; Garrick Baxter and Andrea Courtney appeared for IDWR; and E. Gail McGarry listened in for the United States of America, Department of Interior, Bureau of Reclamation.

Notice Error

The Court’s April 19, 2007 *Order Setting Hearing* on IGWA’s *Motion to Participate* was entered only in two subcases (01-1J and 01-298) even though the *Motion* was filed in 51 subcases. The reason for the oversight was that the *Motion* was first discussed in previous hearings involving only those two subcases and it was assumed the *Motion* would implicate only those two subcases. The result is that some parties in the remaining 49 subcases may not have received notice of the hearing. Nevertheless, the Special Master heard arguments on the *Motion* in hopes of expediting the matter and possibly remedying the defective notice.

Remedy

During the hearing, the issue of IGWA’s possible participation as a party in the 51 subcases was vigorously contested by the Surface Water Coalition and it was clear that if the *Motion* were granted, extended appeals and likely stays would result. In addition, depending on the ruling on its *Motion*, IGWA reserved the right to amend its *Motion* which would also prolong the matter.

Given the notice error and the implications of a ruling on the *Motion* at this stage, the preferred remedy is to reconvene the hearing on IGWA's *Motion* for a later date to properly notice all parties and provide IGWA sufficient time in which to amend its *Motion* if it so chooses.

THEREFORE, IT IS ORDERED that the hearing on IGWA's *Motion to Participate* will reconvene on **Thursday, August 23, 2007, 1:00 p.m.** Parties may participate by telephone by dialing 1-225-383-1099 and entering participant code 654400.

DATED June 14, 2007.

A handwritten signature in black ink, reading "Terrence A. Dolan". The signature is written in a cursive, flowing style.

TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

ATTACHMENT A

Subcase Nos:

01-00001J 01-10477
01-00002A
01-00047E
01-00048
01-00052A
01-00052B
01-00053A
01-00092A
01-00092B
01-00116BB
01-00131A
01-00132A
01-00133A
01-00141
01-00146A
01-00146B
01-00147
01-00148
01-00157A
01-00157B
01-00158B
01-00193A
01-00193B
01-00232
01-00247
01-00259
01-00260
01-00261
01-00263
01-00264
01-00266
01-00298
01-00304
01-00306
01-00324
01-04061
01-10046
01-10048
01-10049
01-10050
01-10057
01-10060
01-10062
01-10091
01-10092
01-10471
01-10472
01-10474
01-10475
01-10476

(Subcase list: MTNPARTCI)
6/14/07

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER RECONVENING HEARING ON MOTION TO PARTICIPATE was mailed on June 14, 2007, with sufficient first-class postage to the following:

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