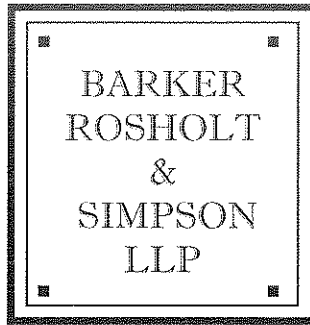


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January 14, 2008

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RECEIVED
JAN 15 2008
DEPARTMENT OF
WATER RESOURCES

Re: Consolidated Subcase 92-23 – Plaintiff's Motion to Amend and For Reconsideration

Dear IDWR,

Enclosed is attachment A to Plaintiff Idaho Power Company's Motion to Amend and for Reconsideration. The Motion was mailed to you on Friday, and Attachment A was inadvertently omitted.

Very truly yours,

BARKER ROSHOLT & SIMPSON LLP

Shelley M. Davis

Enc.

ATTACHMENT A

JAN 04 2008

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
JAN 3 2008	
By <u>[Signature]</u>	Clerk
	Deputy Clerk

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, <i>et al.</i>
	) (see list of 51 subcases attached)
Case No. 39576	)
	) ORDER DENYING IGWA'S MOTION
	) FOR RECONSIDERATION

Background

Order Denying Motion to Participate

On August 28, 2007, the Special Master entered an *Order Denying Motion to Participate* denying the Idaho Ground Water Appropriators participation in the above subcases:

IGWA has not asserted ownership of rights to the use of water nor has such ownership been asserted on its behalf – it **represents** water right holders. Hence, IGWA is not and cannot be a party to the adjudication and is not entitled to intervene of right or by permissive intervention in the above subcases.

Motion for Reconsideration

The IGWA filed its *Motion for Reconsideration of Order Denying IGWA's Motion to Participate* on September 6, 2007, because "(a) IGWA was previously served or joined in the SRBA, and (b) IGWA has standing under Idaho law to represent its members who indisputably qualify as a proper party to the adjudication." It lodged its *Brief in Support* on September 20, 2007, arguing:

Thus, IGWA clearly has standing to participate in the SRBA because it is a private entity that has been joined in the Adjudication on multiple occasions and has been recognized and participated in a multitude of administrative proceedings, SRBA¹ and District Court cases, and the

¹ Subcase 03-10022 (objector) and subcase 92-00021 (objector).

Idaho Supreme Court appeals,² served and joined as a party [footnotes added].

IGWA attached to its *Motion* a copy of its *Amended and Restated Articles of Incorporation* spelling out its primary purpose: “To represent the interests of Idaho’s ground water users and promote the efficient use and economic development of water resources.” It then argued that *Glengary-Gamlin Protective Association, Inc. v. Bonner County Board of Commissioners*, 106 Idaho 84, 87 (Ct. App. 1983), “firmly settled the question of whether an organization has standing to represent its members in Idaho courts.”

The IGWA’s final argument was that “the SRBA District Court should not eliminate associational standing in the SRBA when, as in this case, the protection of common interests among the association’s members practically require collective effort and judicial economy will be served by allowing the organization to represent the collective interests of its members.”

Response to Motion

The “Surface Water Coalition”³ filed its *Response to IGWA’s Motion for Reconsideration of Order Denying IGWA’s Motion to Participate* on November 1, 2007. It argued that “IGWA has failed to make any showing that it has ever been joined in the SRBA, as opposed to merely participating in various distinct subcases in the SRBA without contest from the parties in those subcases.” Further, it argued that despite the *Glengary-Gamlin* test for associational standing, SRBA procedural rules and Idaho statute limit participation in water right proceedings to **claimants** and **those who have been joined**: “The fact that the claims at issue in these proceedings may impact certain water claimants is of no relevance in light of the plain language of [*SRBA Administrative Order 1, Rules of Procedure*] Rule 10(k) and Idaho Code 42-1401A.”

Finally, the Coalition pointed out that “certain of its [IGWA’s] claimant members are already being represented or are already participating in similar subcases in Basins

² *Nez Perce Tribe v. State of Idaho*, 137 Idaho 654 (2002); *Fish and Wildlife Service v. State of Idaho*, 135 Idaho 655 (2001); and *A&B Irrigation Dist. v. Idaho Conservation League*, 131 Idaho 411 (1998).

³ American Falls Reservoir District #2, A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company and Twin Falls Canal Company.

21, 22, and 27.” Besides, “the SRBA Court has already decided that an association does not have standing to participate in a subcase, merely because it represents claimants [citing SRBA Presiding Judge Roger S. Burdick’s July 29, 2002 *Order on Motion to Participate / Intervene*, consolidated subcase no. 75-13316, Wild and Scenic Rivers Claims].”

Hearing

A hearing on IGWA’s *Motion for Reconsideration* was held by telephone on November 8, 2007. Candice M. McHugh appeared for IGWA; Travis L. Thompson and W. Kent Fletcher appeared for various entities collectively called the Surface Water Coalition; R. Lee Leininger appeared for the United States of America, Department of Interior, Bureau of Reclamation and Bureau of Land Management, along with E. Gail McGarry and Fredric W. Price; Gregory W. Moeller appeared for New Lavaside Ditch Company, Ltd., *et al.*; and Garrick L. Baxter appeared for IDWR.

Conclusions

The IGWA has failed to show that the *Order Denying Motion to Participate* is erroneous. The IGWA is not a party to the adjudication or a claimant and hence, may not participate in these subcases. Neither is the IGWA entitled to intervene of right or by permissive intervention because it has not asserted ownership of rights to the use of water nor has such ownership been asserted on its behalf. As noted before, the IGWA merely represents water right holders.

The argument that the IGWA “has been joined in the Adjudication on multiple occasions and has been recognized and participated in a multitude of administrative proceedings, SRBA and District Court cases, and the Idaho Supreme Court appeals” is of no consequence. Here, unlike before, the issue of participation is squarely contested and the plain language of *AO-1* and I.C. § 42-1401A limit participation in SRBA subcases to parties to the adjudication and claimants.

Order

THEREFORE, IT IS ORDERED that the IGWA's *Motion for Reconsideration of Order Denying IGWA's Motion to Participate* in subcases 01-1J, *et al.*, is **denied**.

DATED January 3, 2008



TERRENCE A. DOLAN

Special Master

- Snake River Basin Adjudication