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APR 16 2009

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
APR 14 2009	
By _____	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 01-23B, 01-297, 35-2543 and 35-4246
	)	(Aberdeen-Springfield Canal Co.)
Case No. 39576	)	
_____	)	ORDER DENYING MOTIONS

Aberdeen-Springfield

On March 26, 2009, claimant the Aberdeen-Springfield Canal Company filed three documents in the above four subcases. It filed a *Motion for Order Compelling Discovery* seeking an order compelling discovery against most of the "surface water coalition"¹ and their answers to interrogatories and requests for production of documents. Aberdeen-Springfield's discovery was requested March 5, 2009, one day before the discovery cut-off of March 6, 2009.² Next, it filed a *Motion to Clarify and/or Modify Trial Scheduling Order* suggesting that it understood the discovery cut-off established a deadline to submit, not complete, discovery. Finally, Aberdeen-Springfield filed its *Motion for Summary Judgment* in the four subcases.

Surface Water Coalition

¹ The surface water coalition consists of the Twin Falls and North Side Canal Companies, the A&B, Burley, Milner and Minidoka Irrigation Companies and the American Falls Reservoir District #2.

² See the agreed upon September 2, 2008 *Trial Schedule Order*: "March 6, 2009 – Discovery cut-off; discovery shall be complete."

The Minidoka Irrigation District, a member of the surface water coalition, filed a *Notice of Objection to Discovery* in the four subcases on March 25, 2009, because it argued the discovery violates the *Trial Schedule Order*. On March 27, 2009, all seven members of the surface water coalition filed their *Joint Notice of Objection to Discovery* in the four subcases arguing the same. Then, the same date, the surface water coalition filed its *Joint Motion for Summary Judgment* but only in subcase 01-23B.³

Hearing

A hearing on Aberdeen-Springfield's *Motion for Order Compelling Discovery* and *Motion to Clarify and/or Modify Trial Scheduling Order* was held by telephone on April 9, 2009. Randall C. Budge appeared for Aberdeen-Springfield, along with Steve Hauser; W. Kent Fletcher appeared for the surface water coalition; David J. Barber appeared for the State of Idaho; David W. Gehlert appeared for the United States of America, Department of Interior, Bureau of Reclamation; and Andrea L. Courtney appeared for IDWR.

Discussion

It is evident that both of Aberdeen-Springfield's *Motions* lack merit because the discovery it propounded one day before the deadline to complete discovery was not feasible. The surface water coalition obviously could not comply and depositions set after the deadline were clearly not in compliance. For those reasons, the *Motions* must be denied and the subcases will proceed in accordance with the September 2, 2008 *Trial Schedule Order*.

But there is a concern with what will be the purpose of the summary judgment hearing and what will be asked of the Court. As noted before, Aberdeen-Springfield filed its *Motion for Summary Judgment* in all four subcases while the surface water coalition filed in only subcase 01-23B. The parties at the April 9th hearing were uncertain whether a summary disposition in 01-23B will resolve the remaining three subcases or whether any decision may be no more than partial resolution. In that event, there will likely be further proceedings, including the trial set to begin June 8, 2009, 10:00 a.m. It is expected that the parties, including the State, will submit additional filings to clarify the posture of the four subcases well in advance of the summary judgment hearing.

³ A hearing on the *Motions for Summary Judgments* in all four subcases is set for Thursday, April 30, 2009, 1:30 p.m.

Order

THEREFORE, IT IS ORDERED that the Aberdeen-Springfield *Motions* are **denied**.

DATED April 14, 2009.

A handwritten signature in black ink, appearing to read "Terrence A. Dolan". The signature is fluid and cursive, with the first name being more prominent.

TERRENCE A. DOLAN

Special Master

Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER DENYING MOTIONS was mailed on April 14, 2009, with sufficient first-class postage to the following:

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UNITED STATES OF AMERICA

USDI BLM

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