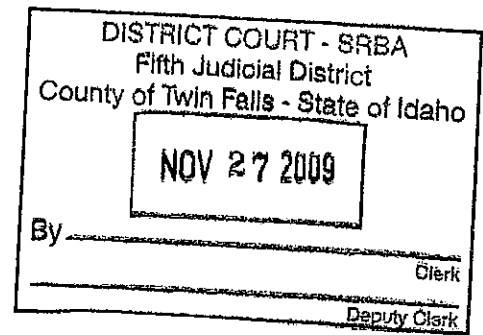


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DEPARTMENT OF
WATER RESOURCES



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 63-32533
)
Case No. 39576) ORDER DENYING CLAIMANT'S
) MOTION TO ALTER OR AMEND
)
_____)

I. APPEARANCES

Paul Arrington, Barker Rosholt & Simpson LLP, for Wilder irrigation District.

Claimants Bill Aten, Joe Aten, Maria Morales, and Matthew Aten, *pro se*.

II. BACKGROUND

On September 14, 2009, this Special Master issued an *Order Granting Motion for Summary Judgment; Special Master's Report; Findings of Fact and Conclusions of Law* for the above-captioned water right. On October 27, 2009, the Claimants Bill Aten, Joe Aten, Maria Morales, and Matthew Aten (hereinafter "Claimants") filed a motion to alter or amend the *Special Master's Recommendation*. On October 27, 2009, the objector filed the *Wilder Irrigation District's Response in Opposition to Motion to Alter or Amend*. Pursuant to *Administrative Order 1* 13(b), this matter is being decided without hearing.

In their motion to alter or amend, the Claimants request a jury trial on the matter. Additionally, the Claimants now wish to provide factual evidence despite the fact that they chose not to participate in the summary judgment proceedings.

III. ANALYSIS

With respect to the Claimants request for a jury trial in this matter, it should be noted that Idaho Code § 42-1412 (5) states: "The district court or special master shall

conduct the trial without a jury on an objection . . . in accordance with the Idaho rules of civil procedure.” Accordingly, jury trials are simply not available for proceedings in the Snake River Basin Adjudication.

As to the claimant’s desire for a trial to be held in this matter for the purpose of allowing them to present evidence, the applicable standard for allowing the introduction of additional evidence after the issuance of a *Special Master’s Report* is governed by Idaho Rule of Civil Procedure 52(b). See *Memorandum Decision and Order on Challenge*, subcases 36-61, 36-62, and 36-63 (September 27, 1999), at p. 27. Under I.R.C.P. 52(b), which is identical to Federal Rule of Civil Procedure 52(b), a court may correct or augment its findings so that an appellate court may have a clear understating of how the trial court arrived at its decision. 9 *Moore’s Federal Practice* 52.60[3] (Matthew Bender 3rd ed.). Under Fed. R. Civ. P. 52(b), there are four recognized grounds for granting a motion thereunder: (1) correction of manifest error; (2) newly discovered evidence; (3) change in law; and (4) supplement or amplify findings. 9 *Moore’s Federal Practice* 52.60[4][a]-[d].

The Claimants, in their motion to alter or amend, have not met the standard for allowing this proceeding to be reopened for the purpose of considering additional evidence. As stated by the Wilder Irrigation District in its *Response*, the Claimants have simply made conclusory assertions that the subject water right is somehow not subject to Idaho law concerning the relationship between a user of waste water and the paramount appropriator of that water. The uncontradicted evidence presented by the Wilder Irrigation District in connection with its motion for summary judgment clearly demonstrates that the source of the Claimant’s water right is wastewater. The Claimants have not shown any manifest error in this finding, nor have they otherwise demonstrated any grounds for altering or amending the previously issued *Special Master’s Report*.

In accordance with the foregoing, the Claimant’s motion to alter or amend is denied.

Dated Nov. 27, 2009



THEODORE R. BOOTH
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER DENYING CLAIMANTS MOTION TO ALTER OR AMEND was mailed on November 27, 2009, with sufficient first-class postage to the following:

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