

RECEIVED

DEC 01 2010

DEPARTMENT OF
WATER RESOURCES

Randall C. Budge (ISB# 1949)
Candice M. McHugh (ISB# 5908)
Thomas J. Budge (ISB #7465)
RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED
101 South Capitol Boulevard
Suite 208
Boise, Idaho 83702
Telephone - (208) 395-0011
Facsimile - (208) 433-0167

Attorneys for the Ground Water Districts.

**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

Case No. 39576

**Subcase Nos. 00-92002GP, 02-200, 02-
201, 02-223 and 02-224**

**MOTION REQUESTING SPECIAL
MASTER'S RECOMMENDATION TO
PRESIDING JUDGE**

The Aberdeen American Falls Ground Water District, Bingham Ground Water District, Bonneville Jefferson Ground Water District, Jefferson Clark Groundwater District, Madison Ground Water District, Magic Valley Ground Water District, and North Snake Ground Water District, (the "Ground Water Districts"), by and through their counsel of record, hereby move this court for a recommendation to the presiding Judge.

At the November 1, 2010, Scheduling Conference in the above referenced subcases an issue arose on the need for and the content of a supplemental order of reference to the Special Master. After discussion on the record, it was decided that a motion from the parties would be a proper way to resolve the issues and provide for an orderly manner in which to handle these subcases. A proposed joint motion was drafted by counsel for the Ground Water Districts and sent to the parties for review and comment. The only party who responded was the United States

Bureau of Reclamation with no objection; the Department of Water Resources also responded with no objection. In an effort to keep these matters moving forward, the Ground Water Districts are filing this *Motion for Requesting Special Master's Recommendation to Presiding Judge*.

The background and bases for this motion are as follows:

Subcase No. 00-92002GP, includes two issues: 1) an objection was filed by Idaho Power Company relating to the language in proposed General Provision No. 4, this objection was resolved by Order dated November 20, 2009; and 2) an objection was filed by the Ground Water Districts for an additional general provision relating to the comprehensive plan as contemplated by the Swan Falls Settlement for water rights above Murphy Gage. Subcase nos. 02-200, 02-201, 02-223 and 02-224 are also at issue and involve the same or substantially the same parties as those involved in 00-92002GP.

Ground Water Districts' Request for Additional General Provision

At the May 7, 2010, settlement conference the parties determined that the most efficient way to proceed in the above listed subcases is to combine the Ground Water Districts' objection relating to the Swan Falls Settlement with pending subcase 00-91013, commonly referred to as "91-13" which is pending before the presiding Judge. Draft stipulations to this effect were circulated but never finalized. However, it is the understanding from counsel of the Ground Water Districts as presented on the record on November 1, 2010, that the parties are in agreement that the Ground Water Districts' request for an additional general provision regarding administration of water rights in conformance with the Swan Falls Settlement and 1986 State Water Plan, should be decided by the presiding judge as part of 91-13 and proceed accordingly under the schedule set forth in that matter. By this motion, the Ground Water Districts are requesting a recommendation to this effect from the Special Master to the Presiding Judge. A

proposed Special Master's Recommendation is attached hereto as **Attachment A**. This would also be consistent with the District Court's November 9, 2010, *Second Scheduling Order* in 91-13 that acknowledges that the Ground Water Districts' request for a general provision is an issue that relates to matters in 91-13. A proposed order combining 00-92002GP with 91-13 is attached hereto as **Attachment B** which should be included as part of the Special Master's Recommendation to Presiding Judge.

Subcase No. 02-200

The issues in Subcase No. 02-200 relate to the minimum flow at Milner Dam and should remain with Special Master Dolan. It is possible that issues in these subcases would extend beyond basin 02, as such, the Special Master should have the authority to consider all the issues. Therefore, an order of reference allowing Special Master Dolan to consider all issues relating to the Milner minimum flows as they may be presented in Subcase No. 02-200 is requested by this motion. A proposed Supplemental Order of Reference is attached hereto as **Attachment B** which should be included as part of the Special Master's Recommendation to Presiding Judge.

Subcase Nos. 02-201, 02-223 and 02-224

Lastly, Subcase Nos. 02-201, 02-223 and 02-224 are water rights held by the Idaho Water Resource Board and related to the minimum stream flows at Murphy Gage. It is possible that issues in these subcases would extend beyond basin 02, as such, the Special Master should have the authority to consider all the issues; as such the parties request a Supplemental Order of Reference to this effect, a copy of which is attached hereto as **Attachment B** which should be included in the Special Master's Recommendation to the Presiding Judge. The Ground Water Districts request that subcase nos. 02-201, 02-223 and 02-224 remain with Special Master Dolan. The Ground Water Districts further request that a final resolution of these subcases occur after the issues in 91-13 are resolved in order to allow the inclusion of any remarks that may arise

from the outcome of 91-13. Any motions for summary judgment and discovery relating to these three subcases, however, should not be precluded.

CONCLUSION

In summary, the Ground Water Districts request that their request for a general provision regarding administration of water rights in conformance with the Swan Falls Settlement and 1986 State Water Plan general provision be considered with 91-13 and that subcase nos. 02-200, 02-201, 02-223 and 02-224 remain with the Special Master and submit the Special Master's Recommendation to Presiding Judge which is attached as Exhibit A.

Submitted this 30th day of November, 2010

RACINE OLSON NYE BUDGE &
BAILEY, CHTD.

By: 
Candice M. McHugh
Attorneys for Ground Water Districts

CERTIFICATE OF SERVICE

I certify that on 30th day of November, 2010, I emailed and mailed the original and copies of the foregoing to the following persons:



Clerk of SRBA Court *original via fax*
253 3rd Ave North
Twin Falls ID 83303-2707
Phone 208-736-3011
Fax: 208-736-2121

IDWR Repository
PO Box 83720
Boise ID 83720-0098

US Department of Justice
Environment & Natural Resources
550 W Fort St MSC 033
Boise ID 83724

Natural Resources Division Chief
State of Idaho
Attorney's General Office
PO Box 44449
Boise ID 83711-4449

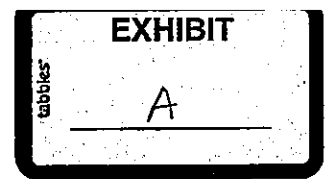
James C. Tucker
Senior Attorney
Idaho Power Company
1221 West Idaho Street
Boise, ID 83702-5627

Adam T. DeVoe
BROWNSTEIN HYATT FARBER
SCHRECK, LLP
410 Seventeenth Street, Suite 2200
Denver, CO 80202

Josephine P Beeman
409 W Jefferson St
Boise, ID 83702

Dana Hofstetter
Hofstetter Law Office
608 West Franklin St
Boise, ID 83702

David W. Gehlert
Trial Attorney, Natural Resources Section
Env. & Natural Resources Div.
US Dept. of Justice
999 18th Street
South Terrace – Suite 370
Denver, CO 80202



Randall C. Budge (ISB# 1949)
Candice M. McHugh (ISB# 5908)
Thomas J. Budge (ISB #7465)
RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED
101 South Capitol Boulevard
Suite 208
Boise, Idaho 83702
Telephone - (208) 395-0011
Facsimile - (208) 433-0167

Attorneys for the Ground Water Districts.

**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

Case No. 39576

**Subcase Nos. 00-92002GP, 02-200, 02-
201, 02-223 and 02-224**

**SPECIAL MASTER'S
RECOMMENDATION TO
PRESIDING JUDGE**

The SPECIAL MASTER, having considered the filings in the above-listed subcases and the Ground Water Districts' *Motion Requesting Special Master's Recommendation to Presiding Judge* ("Motion") recommends the following to the presiding judge:

1. The Ground Water Districts request for an additional general provision in Basin 02 states:

For the purposes of administering all water rights above the Murphy Gage, a general provision is required to implement the comprehensive management plan established by the Swan Falls Settlement as reflected in the 1986 State Water Plan adopted by the Idaho Water Resource Board ("IWRB") and approved by the legislature.

The above general provision deals specifically with the Swan Falls Settlement which is the subject matter of 00-091013 ("91-13"). The Ground Water Districts' Motion requests their request for a general provision to administer water rights in conformance with the Swan Falls

Settlement and the 1986 State Water Plan be combined with 91-13 which is pending before the presiding judge. Based on the Motion, the Special Master recommends that the Ground Water Districts' request for their request for a general provision be heard with the issues in 91-13 and proceed accordingly. An Order Combining 00-92002GP with 91-13 is attached hereto.

2. The Motion also requests that the Special Master continue to preside over matters involving the minimum flow at Milner dam and Subcase No. 2-200. It is possible that issues in this subcase would extend beyond basin 02, as such the order of reference should refer all matters to the Special Master relating to Milner issues that are involved in Subcase 2-200, even to the extent that these issues extend beyond basin 02. Based on the foregoing the Special Master requests a Supplemental Order of Reference to this effect, a copy of which is attached hereto.

3. Finally, there are objections pending in Subcase Nos. 2-201, 2-223, and 2-224. At this time, it does not appear that these water rights need to be consolidated or combined with 91-13. However, the Motion requests that these water rights not be resolved until after resolution of the issues in 91-13. As such, Special Master should continue to preside over these three subcases. It is possible that issues in these subcases would extend beyond basin 02, as such, the Special Master requests a Supplemental Order of Reference to this effect, a copy of which is attached hereto.

DATED this ____ day of _____, 2010.

By: _____
Special Master Terrance Dolan

Randall C. Budge (ISB# 1949)
Candice M. McHugh (ISB# 5908)
Thomas J. Budge (ISB #7465)
RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED
101 South Capitol Boulevard
Suite 208
Boise, Idaho 83702
Telephone - (208) 395-0011
Facsimile - (208) 433-0167

Attorneys for the Ground Water Districts.

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

Case No. 39576

Subcase Nos. 91-13, 00-92002GP, 02-200,
02-201, 02-223 and 02-224

ORDER COMBINING 00-92002GP
ISSUE RELATING TO SWAN FALLS
SETTLEMENT WITH 91-13
AND SUPPLEMENTAL ORDER OF
REFERENCE APPOINTING
TERRANCE A. DOLAN

Objections and responses were filed to the general provision recommendations for Basin 02, including the request for an additional general provision and a recommendation for general provision No. 4 regarding flows at Milner Dam. The issues were then designated as subcase 00-92002GP.

The Ground Water Districts requested an additional general provision in Basin 02 as follows:

For the purposes of administering all water rights above the Murphy Gage, a general provision is required to implement the comprehensive management plan established by the Swan Falls Settlement as reflected in the 1986 State Water Plan adopted by the Idaho Water Resource Board ("IWRB") and approved by the legislature.

The above general provision deals specifically with the Swan Falls Settlement which is the subject matter of 91-13.

The Ground Water Districts filed a *Request for Special Master's Recommendation to Presiding Judge* ("Motion") setting forth their desire to have the presiding judge consider the issues relating to the Ground Water Districts' proposal for a general provision with matters pending subcase 00-910013 ("91-13"). The Special Master submitted his Special Master's Recommendation to Presiding Judge as requested in the Motion. Having considered the filings in the above-listed subcases and the *Special Master's Recommendation to Presiding Judge* and good cause appearing therefore, the following is hereby ORDERED:

The Ground Water Districts' proposal for a general provision shall be combined with 91-13 and proceed accordingly.

Issues regarding the flows at Milner Dam remain with the Special Master as well as issues involved in subcase nos. 2-201, 2-223 and 2-224. Consideration of issues relating to the flows at Milner Dam and subcase nos. 2-200, 2-201, 2-223 and 2-224 may require the Special Master to consider issues outside Basin 02, accordingly, this *Supplemental Order of Reference* confers the authority to Special Master Dolan to preside over matters if any outside of Basin 02 that may arise out of the consideration of subcase nos. 2-200, 2-201, 2-223 and 2-224.

SO ORDERED this ____ day of _____, 2010.

Judge Eric Wildman

CERTIFICATE OF SERVICE

I certify that on ____ day of _____, 2010, I emailed and mailed the original and copies of the foregoing to the following persons:

IDWR Repository
PO Box 83720
Boise ID 83720-0098

Randall C. Budge
Candice M. McHugh
Thomas J. Budge
RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED
101 South Capitol Boulevard, Suite 208
Boise, Idaho 83702

US Department of Justice
Environment & Natural Resources
550 W Fort St MSC 033
Boise ID 83724

Natural Resources Division Chief
State of Idaho
Attorney's General Office
PO Box 44449
Boise ID 83711-4449

James C. Tucker
Senior Attorney
Idaho Power Company
1221 West Idaho Street
Boise, ID 83702-5627

Adam T. DeVoe
BROWNSTEIN HYATT FARBER
SCHRECK, LLP
410 Seventeenth Street, Suite 2200
Denver, CO 80202

Josephine P Beeman
409 W Jefferson St
Boise, ID 83702

Dana Hofstetter
Hofstetter Law Office
608 West Franklin St
Boise, ID 83702

David W. Gehlert
Trial Attorney, Natural Resources Section
Env. & Natural Resources Div.
US Dept. of Justice
999 18th Street
South Terrace – Suite 370
Denver, CO 80202

N:\MT\SRBA\92-2GP\Exhibit B.doc