

RECEIVED

DEC 27 2010

DEPARTMENT OF
WATER RESOURCES

Dana L. Hofstetter, ISB #3867
HOFSTETTER LAW OFFICE, LLC
608 West Franklin Street
Boise, Idaho 83702
Telephone (208) 424-7800
Facsimile: (208) 424-8774
Email: Dana@IdahoWaterLaw.com

Attorney for Edwards Family, LLC

**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 39576

)
)
) Subcase No. 63-12, 63-13, 63-14,
) 63-15, 63-16, 63-308, 63-2103A,
) 63-2103B, 63-3603, 63-4037, 63-5067,
) 63-5195, 63-7595, 63-9758, 63-21875,
) 63-27649, 63-27671, 63-30006, 63-30007,
) 63-31050, 63-31051, 63-31052, 63-31053,
) 63-31054, 63-31055, 63-31056, 63-31057,
) 63-31058, 63-31059, 63-31060, 63-31062,
) and 63-32895
)
)
)

MOTION TO ALTER OR AMEND

Edwards Family, LLC, by and through counsel of record, Dana Hofstetter of Hofstetter Law Office, LLC, hereby submits this Motion to Alter or Amend, pursuant to I.R.C.P., Rule 7(b)(1) and SRBA Administrative Order 1. This Motion is supported by the Memorandum below and the record.

MEMORANDUM

Revision of the Summary Judgment Decision will allow for legal consistency with the final outcome in *A & B Irrigation District v. IDWR*, Minidoka County Case No. 2009-000647.

On August 23, 2010, the Special Master issued its *Memorandum Decision and Order on Motions for Summary Judgment* (“*Summary Judgment Decision*”). Section VI(A)(3)(ii) of that document addressed aspects of Idaho Code Section 42-226. The subject Motion to Alter or Amend concerns the Special Master’s concurrence in the reasoning in the recent District Court decision *Memorandum Decision and Order on Petition for Judicial Review, A & B Irrigation District v. IDWR, Minidoka County Case No. 2009-000647* (May 4, 2010) (“*Minidoka Decision*”). There have been subsequent proceedings, including rehearing proceedings, on the *Minidoka Decision* and there may ultimately be an appeal of that decision. Since the *Mindoka Decision* may be modified, it should apply, as modified, to these Subcases as well.

This Motion requests the revision of the following two (2) sentences in the *Summary Judgment Decision* to ensure that the law that shall apply in these Subcases will be consistent with the final outcome of *A & B Irrigation District v. IDWR, Minidoka County Case No. 2009-000647*:

1. The following sentence on the bottom of page 18 of the *Summary Judgment Decision*: “This Special Master has carefully reviewed the reasoning set forth in the Memorandum Decision cited above and concurs therewith.”

Should be revised to read as follows: “To the extent the Memorandum Decision cited above addresses the same issue presented here, it applies as a matter of comity.”

2. The following sentence on page 19 of the *Summary Judgment Decision*: “In accordance with the foregoing, this Special Master grants summary judgment in favor of Terteling as follows: (1) The SGGa water rights at issue herein that pre-date the enactment of the Groundwater Management Act are subject to reasonable pumping levels as they may be set by the Department;³ and (2) The extent to which the thermal and/or artesian values of the SGGa will be protected in the context of the establishment of reasonable pumping levels is a matter left to the discretion of the Department.”

Should be revised to read as follows: “In accordance with the foregoing, this Special Master grants summary judgment as follows: (1) The proceedings in *A & B Irrigation District v. IDWR, Minidoka County Case No. 2009-000647* are addressing the general applicability of the phrase in Idaho Code §42-226 that states, ‘This act shall not affect the rights to the use of groundwater in this state acquired before its enactment.’;[footnote deleted] and (2) The extent to which the thermal and/or artesian values of the SGGa will be protected in the context of the establishment of reasonable pumping levels is a matter left to the discretion of the Department.”

Conclusion

For the foregoing reasons, Edwards respectfully requests revision of the *Summary Judgment Decision*, as identified.

DATED this 24th day of December, 2010.

HOFSTETTER LAW OFFICE, LLC


Dana L. Hofstetter

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of December, 2010, I caused to be served a copy of the foregoing on the following person(s) by the method(s) indicated below:

Andrew Waldera
Moffatt Thomas
P.O. Box 829
Boise, Idaho 83701

■ U.S. Mail ☐ FedEx Overnight ☐ Hand Delivery ☐ Fax

Charles Honsinger
Ringert Law
P.O. Box 2773
Boise, Idaho 83701-2773

■ U.S. Mail ☐ FedEx Overnight ☐ Hand Delivery ☐ Fax

David Niznik
Diane Peck-Niznik
3911 Whitehead
Boise, Idaho 83703

■ U.S. Mail ☐ FedEx Overnight ☐ Hand Delivery ☐ Fax

IDWR Document Depository
P.O. Box 83720
Boise, Idaho 83720-0098

■ U.S. Mail ☐ FedEx Overnight ☐ Hand Delivery ☐ Fax

Bluegrass LLC
4705 N. 36th St.
Boise, Idaho 83703

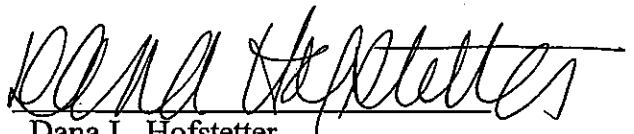
■ U.S. Mail ☐ FedEx Overnight ☐ Hand Delivery ☐ Fax

Ray Eldridge
4705 N. 36th St.
Boise, Idaho 83703

■ U.S. Mail ☐ FedEx Overnight ☐ Hand Delivery ☐ Fax

Kenneth and Michelle Ham
1315 Falling Leaf Drive
Friendswood, Texas 72546

■ U.S. Mail ☐ FedEx Overnight ☐ Hand Delivery ☐ Fax


Dana L. Hofstetter