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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
FEB 16 2011	
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 01-4, et al.
	)	(see list of 37 subcases attached)
	)	
Case No. 39576	)	RECOMMENDATION TO GRANT MOTION
	)	FOR PERMISSIVE REVIEW OF
	)	INTERLOCUTORY DETERMINATIONS

Findings of Fact

On December 11, 2009, the Special Master entered an *Order on Motions for Summary Judgment* in the above 37 subcases. After hearing oral argument on 9 separate motions for summary judgment filed in 11 different groups of subcases on two key issues (source and priority date) resulting from the 1968 *Supplemental Eagle Decree*, the Special Master ordered the following:

1. The source of water for all rights listed in the *Supplemental Eagle Decree* is the Snake River not limited by classification as flood or high flow;
2. The priority dates decreed in the *Eagle Decree* are valid;
3. Flood water rights are not subordinated to junior hydraulically connected water rights;
4. The season of use for flood water rights should be IDWR's standard season of use; and
5. Remarks that *may* be added to the flood water rights are that the waters a) are supplemental, b) to be used for production of agricultural crops and associated domestic uses upon certain described lands, and c) are non-transferrable [emphasis added].

Order, at 19.

On February 11, 2011, the Idaho Ground Water Appropriators, Inc., filed their *Motion Requesting Special Master's Report and Partial Recommendation on Issues Decided in Order on*

Motions for Summary Judgment dated December 11, 2009. The *Motion* was filed in 38 subcases, including one (01-23A) already decreed.

The purpose of their *Motion* is to seek review by the Presiding Judge of those issues actually decided by the Special Master. The Ground Water Appropriators wrote they do not anticipate “the granting of this motion will delay the resolution of the subcases, but rather, will provide for a more orderly process.”

A hearing on the *Motion* was held by telephone on February 14, 2011. The following counsel appeared:

- 1) Surface Water Coalition:
 - C. Thomas Arkoosh** (American Falls Reservoir District #2)
 - Travis L. Thompson** (A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Co. and Twin Falls Canal Co.)
 - W. Kent Fletcher** (Minidoka Irrigation District)
 - Roger D. Ling** (A&B Irrigation District, Burley Irrigation District and Falls Irrigation District)
- 2) City of Pocatello – **Sarah A. Klahn**
- 3) Ground Water Districts – **Candice M. McHugh**
- 4) Mud Lake Water Users – **Luke H. Marchant**
- 5) State of Idaho – **Michael C. Orr**
- 6) United States:
 - David W. Gehlert**
 - David L. Negri**
 - Matt J. Howard**
- 7) IDWR – **Chris M. Bromley**

No one opposed the Ground Water Appropriators’ *Motion* so long as the issues do not have to be addressed a second time later and the matter can be heard expeditiously without motions to alter or amend this *Recommendation*. The parties agreed such motions will not be filed.

The general agreement was that, depending the outcome of permissive review, most of the subcases will be resolved except five subcases – 01-4, 01-10 and 01-209 (TFCC), 01-6 (AFRD #2) and 01-2040 (USDI/BOR). The parties reserved two separate weeks early next year to try those subcases before the Special Master on other issues not yet decided.

SRBA Administrative Order 1, Rules of Procedure, 9, e (AO-1), states:

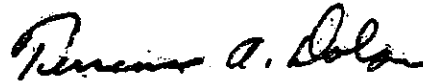
Permissive Review – A Special Master or any party to the subcase may seek permissive review by the Presiding Judge of the Special Master’s interlocutory determination which involves a controlling question of law as to which there are

substantial grounds for difference of opinion and on which immediate consideration of the determination may advance the orderly resolution of the litigation following the procedures set forth in I.A.R. 12. The Special Master shall review the motion and responses and recommend, with findings, whether it should be granted or denied. The motion and the Special Master's recommendation shall be forwarded to the Presiding Judge for determination.

Recommendation

THEREFORE, IT IS RECOMMENDED that the Ground Water Appropriators' *Motion*, in the nature of a motion for permissive review of an interlocutory determinations involving controlling questions of law, be **granted**.

DATED February 1⁶, 2011.



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

Subcase Nos:

01-00004
01-00005
01-00006
01-00007
01-00008
01-00009
01-00010
01-00013
01-00014
01-00016
01-00017
01-00209
01-00210
01-00211A
01-00211B
01-00212
01-00213
01-00214A
01-00214B
01-00219
01-02040
01-02050
01-02060
01-02060A
01-02061
01-04060
01-10034
01-10189
01-10225
01-10237
01-10238
01-10239
01-10240
01-10241
01-10482
01-10483

CERTIFICATE OF MAILING

I certify that a true and correct copy of the RECOMMENDATION TO GRANT MOTION FOR PERMISSIVE REVIEW OF INTERLOCUTORY DETERMINATION was mailed on February 16, 2011, with sufficient first-class postage to the following:

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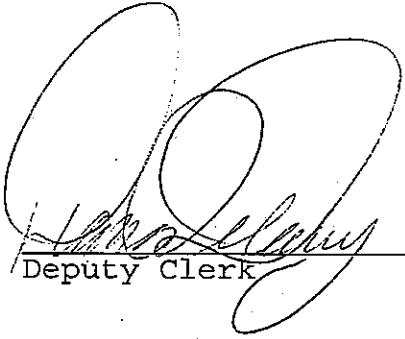
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