

RECEIVED

APR 07 2011

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
APR - 6 2011	
By _____	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

Case 39576

)
) Subcase Nos. 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
)
) ORDER AMENDING AUGUST 23, 2010,
) MEMORANDUM DECISION AND
) ORDER ON MOTIONS
) FOR SUMMARY JUDGMENT

On August 23, 2010, this Special Master issued the *Memorandum Decision and Order on Motions for Summary Judgment* ("Summary Judgment Decision") in these Subcases. Section VI(A)(3)(ii) of that document addressed aspects of Idaho Code Section 42-226. On December 27, 2010, Edwards Family, LLC filed a *Motion to Alter or Amend* ("Motion") concerning the Special Master's concurrence in Section VI(A)(3)(ii) of the *Summary Judgment Decision* with the reasoning in the *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*"). Specifically, the Edwards Family, LLC's *Motion* requested certain revisions to Section VI(A)(3)(ii) of the *Summary Judgment Decision* to adopt the *Minidoka Decision* by reference, rather than to concur with the reasoning in the

Minidoka Decision. Edwards Family, LLC asserted *inter alia* that since *Minidoka County Case No. 2009-000647* is pending appeal to the Idaho Supreme Court, the *Mindoka Decision* may be modified in whole or in part and that to the extent that it applies, it should apply, as modified, to these Subcases as well.

No response briefs were filed to the Edwards Family, LLC's *Motion*. Dana Hofstetter as counsel for Edwards Family, LLC, Andrew Waldera as counsel for Quail Hollow, LLC, and Charles Honsinger as counsel for The Terteling Company, Inc., T-7, LLC and Rose and Mary Ryan, appeared at the hearing on the *Motion* held on March 1, 2011. Initially, the matter of Edwards Family, LLC potentially withdrawing the *Motion* with regard to Subcase No. 63-14 in order to preserve the Edwards Family, LLC's right to file a Motion to Alter or Amend in Subcase No. 63-14 with respect to the Special Master's Report and Recommendation issued in that Subcase on February 7, 2011 was raised. However, instead, counsel for Terteling Company, Inc., T-7, LLC and Rose and Mary Ryan, stipulated on the record at the hearing that Edwards Family, LLC may file another Motion to Alter or Alter or Amend in Subcase No. 63-14. At hearing, all three counsel appearing for the parties provided argument and/or comments on the *Motion*. Ms. Hofstetter also indicated that the portion of the new proposed language reading "it applies as a matter of comity," should be omitted.

Based on the *Motion* and counsels' argument/comments at hearing, the *Summary Judgment Decision* should be modified, as requested.

NOW THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

The following two (2) sentences in the *Summary Judgment Decision* are hereby revised as follows:

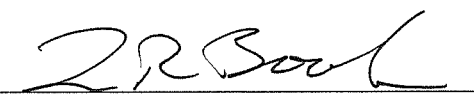
1. The following sentence on the bottom of page 18 of the *Summary Judgment Decision*: “This Special Master has carefully reviewed the reasoning set forth in the Memorandum Decision cited above and concurs therewith.”

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

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.”

Shall 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.”

DATED this 6 day of ~~March~~
April, 2011.



Theodore R. Booth
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER AMENDING AUGUST 23, 2010 MEMORANDUM DECISION AND ORDER ON MOTIONS FOR SUMMARY JUDGMENT was mailed on April 05, 2011, with sufficient first-class postage to the following:

BLUEGRASS LLC & DAVID
HENDRICKSON
4705 N 36TH ST
BOISE, ID 83703
Phone: 208-344-7807

QUAIL HOLLOW LLC
Represented by:
ANDREW J WALDERA
101 S CAPITOL BLVD 10TH FLOOR
PO BOX 829
BOISE, ID 83701-0829
Phone: 208-345-2000

ESTATE OF STEVE TERTELING
MARY RYAN
ROSE RYAN
T-7 LLC
TERTELING TRUST NO 7
THE TERTELING CO INC
Represented by:
CHARLES L. HONSINGER
455 S THIRD ST
PO BOX 2773
BOISE, ID 83701-2773
Phone: 208-342-4591

EDWARDS FAMILY LLC
Represented by:
DANA L. HOFSTETTER
608 WEST FRANKLIN STREET
BOISE, ID 83702
Phone: 208-424-7800

EDWARDS FAMILY LLC
Represented by:
DEBRA K. ELLERS
PO BOX 1030
MCCALL, ID 83638
Phone: 208-315-2827

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

KENNETH T HAM
MICHELLE L HAM
1315 FALLING LEAF DR
FRIENDSWOOD, TX 72546

DAVID NIZNIK
DIANE PECK-NIZNIK
3911 WHITEHEAD
BOISE, ID 83703
Phone: 208-402-9889

BLUEGRASS LLC
4705 N 36TH
BOISE, ID 83703
Phone: 208-344-6397

BLUEGRASS LLC
RAY ELDRIDGE
4705 N 36TH ST
BOISE, ID 83703