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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

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
JAN 27 2012	
By _____	Clerk
_____	Deputy Clerk

In Re SRBA	)	ORDER ON MOTION FOR
	)	RECONSIDERATION / MOTION IN
	)	LIMINE
Case No. 39576	)	
	)	
	)	WATER RIGHTS: 34-2459, 34-2460,
	)	34-2461, 34-2462, and 34-10925
_____	)	

I. PROCEDURAL HISTORY

The current claimant of these water rights is Telford Lands, LLC. Telford moved for reconsideration of a previous *Order Denying Motion for Summary Judgment* (March 28, 2011). In that *Order*, the Court denied a *Motion for Summary Judgment* filed by Telford's predecessor. Telford argued that the *Motion* to reconsider was based on a *Supplemental Director's Report* filed after the *Order Denying Motion for Summary Judgment*. Telford also asked the Court to limit the issues at trial. Specifically, Telford asserted that evidence relating to groundwater pumping levels should not be admitted. Telford said the SRBA court cannot establish groundwater levels which relate to administration. Therefore, Telford argued evidence of the nature and magnitude of pumping from the Island Wells should not be admitted at trial.

II. STANDARD OF REVIEW

A. Summary Judgment

Summary judgment is appropriate under I.R.C.P. 56(c) only when the pleadings, depositions, admissions, and affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

B. Relevance

The Idaho Rules of Evidence define relevant evidence as that which has any tendency to make the existence of a fact that is of consequence more or less probable than without the evidence. I.R.E. 401. The determination of the relevance of evidence is generally a legal

question. *State v. Raudebaugh*, 124 Idaho 758, 864 P.2d 596 (1993). However, the decision of whether to exclude relevant evidence because its probative value is outweighed by its potential for prejudice rests in the discretion of the trial court. *State v. Cannady*, 137 Idaho 67, 44 P.3d 1122 (2002)

Professor Craig Lewis noted that I.R.E 401 requires “only minimal relevance” because a party’s case is built from pieces of evidence which may be added to other evidence to prove a point. *Idaho Trial Handbook* 2nd ed. §13.1 at 219. Thus the party opposing admission of relevant evidence has the burden of justifying its exclusion. *Id.*

C. Facts

These water rights were claimed by Willard Bell in the late 1980s. Willard Bell was the predecessor in interest to Telford. In October 1990, Mr. Bell filed *Amended Claims* for his entity, Crater Farms, Inc. The *Amended Claims* included two attached maps. The first map showed the place of use for three points of diversion referred to as the Airport Wells. The second map showed points of diversion called the Island Wells.

The legal descriptions for the Island Wells were not included on the face of the amended claims. Consequently, the *Director’s Reports* did not include the Island Wells as points of diversion for water rights 34-2459, 34-2460, 34-2461, 34-2462, and 34-10925. No objections were filed, and *Partial Decrees* were issued in 1997. The *Partial Decrees* only included points of diversion at the Airport Wells. The *Motion to Set Aside Partial Decrees* and subsequent *Amended Claims* asserted that the Island Wells are valid points of diversion based on an accomplished transfer. Telford asserted that the Island Wells were historically used as alternative points of diversion when the Airport Wells did not produce sufficient water.

The Court allowed reopening of the *Partial Decrees*. IDWR examined the *Amended Claims* and the facts related to the Island Wells. IDWR issued *Amended Director’s Reports* in December 2009. The *Amended Director’s Reports* recommended adding points of diversion at the Island Wells. The *Amended Director’s Reports* included a condition to protect existing water rights from injury:

Pursuant to a call, in times of scarcity, the diversion of water under this right from the two wells in T05N R26E S34 SENWSW and T04N R25E S3 NESENW has a priority date of May 18, 1982.

After the *Amended Director's Reports* were issued, *Objections* were filed by the Objectors, Doug Schureman, Tyler Felton, Jim Huelsman, and Darrell McDonald and Norman Sowards on quantity, volume, point of diversion, and place of use elements. Isom filed a *Motion for Summary Judgment* arguing that no genuine issues of material fact remain on the volume and acreage elements. It was undisputed that genuine issues of material fact remain as to the points of diversion. The court denied the *Motion for Summary Judgment* holding that genuine issues of material fact remained on the volume and acreage elements.

III. ANALYSIS

Telford argued that the *Supplemental Director's Reports* for 34-2459, 34-2460, 34-2461, 34-2462, and 34-10925 support reconsideration of the *Motion for Summary Judgment*. In the alternative, the motion asked to limit the issues or evidence at trial. Telford argued that the SRBA Court does not have jurisdiction to determine a reasonable ground water pumping level. Telford argued that analysis of future injury would require the court to determine a reasonable pumping level, and that the court should not make such a determination. This Special Master **declines** to grant the *Motion for Reconsideration*. In addition, this Special Master **declines** to make a pre-trial limitation on evidence of pumping.

A. Summary Judgment Ruling Unchanged by *Supplemental Director's Report*

The filing of the *Supplemental Director's Reports* does not change the analysis on summary judgment. Previously, the Objectors argued that if an accomplished transfer added the Island Wells, it would injure existing users in violation of I.C. §42-1425. Objectors requested a remand on the injury question. Previously, this court explained that merely asking for remand was not enough to create genuine issues of material fact. IDWR added language in the *Amended Director's Report* which attempted to protect existing water rights: "Pursuant to a call in times of scarcity, the diversion of water under this right from the two wells in T05N R26E S34 SENWSW and T04N R25E S3 NESENW has a priority date of May 18, 1982."

IDWR's proposal of the protective language does not end the inquiry. "Although the proposed language could offer protection to existing water rights, there are genuine issues of material fact as to whether the language is sufficient to protect against the injury alleged by the Objectors." ***Order Denying Motion for Summary Judgment.*** Telford argued that the language protected against injury as a matter of law, and therefore asked for a summary judgment ruling. The court disagreed and held that genuine issues of material fact existed as to injury.

Telford posed the question of whether the conclusion contained in the *Supplemental Director's Reports* changed the analysis on summary judgment. Telford seeks reconsideration because the court did not have the *Supplemental Director's Report* at the time of the ***Order Denying Motion for Summary Judgment***.

The filing of the *Supplemental Director's Report* does not alter the analysis. Although IDWR addressed both its recommendation on the accomplished transfer and the question of injury in the *Amended Director's Report*, IDWR gave more detail in the *Supplemental Director's Report* (July 25, 2011). In preparation for the *Supplemental Director's Report*, IDWR also reviewed additional material submitted by the parties. IDWR concluded that it was unable to determine any injury that was asserted which could not be mitigated by advancing the priority dates of these rights when Telford pumps from the Island Wells. *Id.* at 3. IDWR reviewed material including technical analyses, documents regarding the nature and timing of pumping from the Island Wells. IDWR reviewed information about the impact of the pumping on the pumping levels of the Objectors' wells. IDWR concluded that its advancement of priority dates mitigates any injury from the Island Wells. *Id.* at 4. Thus IDWR declined to change its recommendation of these rights.

The question now is whether IDWR's conclusions in the *Supplemental Director's Report* tips the balance in favor of summary judgment. This Special Master concludes that the analysis on summary judgment does not change. First, IDWR's conclusions in the *Supplemental Directors Report* did not change. IDWR reviewed additional information and came to the same conclusion. Nevertheless, if genuine issues of material fact remain, the court has an obligation to hear and evaluate the evidence.

The *Supplemental Director's Report* is *prima facie* evidence of the elements of those water rights. Nevertheless, there are genuine issues of material fact which remain. Issues regarding an accomplished transfer of the points of diversion remain. Issues of injury relating to the accomplished transfer remain. Issues regarding elements which may be impacted remain. The *Motion to Reconsider* is **denied**.

B. Evidence Regarding Pumping

Telford asked the court to rule that evidence of pumping levels near the Island Wells is inadmissible. Telford explained that the SRBA Court does not establish "reasonable pumping levels" or aquifer levels when determining the elements of water rights. Reasonable pumping

levels are usually addressed during administrative proceedings such as a call. *Supplemental Director's Report* at 4. The Objectors argued that they do not intend to establish "reasonable pumping levels" at trial. The Objectors intend to offer evidence of injury to their rights. Objectors say the injury analysis may be demonstrated by showing depletions to the aquifer. Objectors urged the court not to rule out evidence relating to pumping if it is related to injury.

This Court will not be determining "reasonable pumping levels," but the elements of the water rights. It is expected that an assertion of accomplished transfer will be made. That will raise a question of injury. Each piece of evidence will need to connect to those elements or issues in order to be relevant under the rules. Parties will be required to establish relevance as evidence is offered. Evidence offered solely to establish a "reasonable pumping level" may well be inadmissible. However, evidence offered to show injury will likely be relevant. The determination of relevance will depend on the context in which it is offered. Those evidentiary rulings should be made in context at the trial. Consequently, the court **declines to issue an order in limine on the evidence.**

Dated January 27, 2012.


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER ON MOTION FOR RECONSIDERATION/ MOTION IN LIMINE was mailed on January 27, 2012, with sufficient first-class postage to the following:

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