

RECEIVED
MAR 23 2012
DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
MAR 22 2012	
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

Case No. 39576

) Subcase Nos. 02-103 and 02-10300
)
) ORDER GRANTING PERMISSIVE
) REVIEW; A01 9.e.
)
) SCHEDULING ORDER AND NOTICE
) OF HEARING ON PERMISSIVE
) REVIEW
)
)
)

I.

PROCEDURAL BACKGROUND

1. This matter comes before the Court pursuant to a *Special Master Report and Recommendation Re: Permissive Review* ("Report and Recommendation") issued in the above-captioned matter.

2. On January 13, 2012, the Special Master issued an *Order on Motions for Summary Judgment* in the above-captioned subcases, wherein he determined as a matter of law that the Cottonwood Mutual Canal Co. ("Cottonwood") is the lawful owner of that amended portion of license no. 02-2099 that irrigates 400 acres located in Elmore County, Idaho. The parties have referred to these 400 acres as the "Section 14 Lands."

3. On January 26, 2012, Black Mesa Farms, LLC, who asserts a competing ownership claim to that amended portion of license no. 02-2099 that irrigates the Section 14 Lands, filed a timely *Motion for Permissive Review* before the Special Master. The *Motion* requests review by this Court of the Special Master's *Order on Motions for Summary Judgment*.

4. A *Notice of Opposition to Motion for Permissive Review* was subsequently filed by Cottonwood. In its *Notice*, Cottonwood argues that the Special Master should resolve all

issues related to the subject water rights, and issue his report and recommendations so that any and all issues can be raised by the parties before this Court by way of Challenge. Black Mesa filed its *Response* to Cottonwood's *Notice of Opposition* on that same date.

5. In his *Report and Recommendation*, the Special Master recommends that this Court grant permissive review on the limited issue of the competing ownership claims to that amended portion of license no. 02-2209 that irrigates the Section 14 Lands.

II. DISCUSSION

SRBA Administrative Order 1, Rules of Procedure ("AOI"), 9.e. sets forth the standard for granting 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.

The decision to grant or deny a request for permissive review rests in the sound discretion of the trial court.

The Court has reviewed the files in the above-captioned matter and finds that immediate consideration by this Court of the subject issue on permissive review will advance the orderly resolution of the litigation in this matter. Resolving the competing ownership claims to that amended portion of license no. 02-2099 that irrigates the Section 14 Lands is a threshold issue in this matter to which there are substantial grounds for difference of opinion. Further, the issue of ownership is potentially a determinative issue with respect other issues raised by the parties in these subcases. Resolution of the ownership issue may negate the need to litigate certain of the issues remaining unresolved before the Special Master. Therefore, in order to facilitate an orderly and expedient resolution of these subcases, the Court finds permissive review to be appropriate. Any decision made on permissive review is binding on subsequent proceedings

before the Special Master, if any, and will be applied in any subsequent notice of Challenge proceedings.

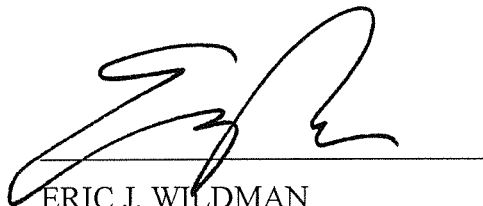
III. ORDER

THEREFORE, based on the foregoing, THE FOLLOWING ARE HEREBY ORDERED:

1. Permissive review of the above-captioned matter is **GRANTED** limited to the issue of ownership of that amended portion of license no. 02-2209 that irrigates the Section 14 Lands.
2. Briefing Schedule: On permissive review, the parties shall abide by the following briefing schedule:
 - a. Black Mesa's Opening Brief Due: 4/4/2012
 - b. Cottonwood's Responsive Brief Due: 4/16/2012
 - c. Black Mesa's Optional Rebuttal Brief Due: 4/23/2012
3. Oral Argument: Notice is hereby given that oral argument on permissive will be held on **April 25, 2012, at 1:30 p.m. (Mountain Time)** at the Snake River Basin Adjudication District Court, 253 3rd Avenue North, Twin Falls, Idaho. Telephone participation will be available by dialing 1-215-446-0193 and entering 406128# when prompted. **However, no cell phones or speaker phones will be permitted as they interfere with our sound system making the proceeding difficult to accurately record.** Video teleconferencing ("VTC") will also be available by appearing at the Idaho Department of Water Resources, Idaho Water Center, 322 E. Front St., Conference Rm. B, Boise, Idaho.

IT IS SO ORDERED.

Dated March 22, 2012.


ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING PERMISSIVE REVIEW; A01 9.E. / SCHEDULING ORDER AND NOTICE OF HEARING ON PERMISSIVE REVIEW was mailed on March 22, 2012, with sufficient first-class postage to the following:

COTTONWOOD MUTUAL CANAL CO

Represented by:
CHARLES L. HONSINGER
455 S THIRD ST
PO BOX 2773
BOISE, ID 83701-2773
Phone: 208-342-4591

BLACK MESA FARMS LLC

Represented by:
MICHAEL C CREAMER
601 W BANNOCK ST
PO BOX 2720
BOISE, ID 83701-2720
Phone: 208-388-1200

BRENDA BRYANT

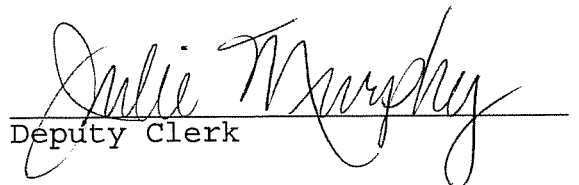
DON J BRYANT
PO BOX 215
GLENN'S FERRY, ID 83623
Phone: 208-366-7433

CHRISTINE W WOOTAN

WESLEY R WOOTAN
PO BOX 636
GLENN'S FERRY, ID 83623
Phone: 208-366-2575

DIRECTOR OF IDWR

PO BOX 83720
BOISE, ID 83720-0098

A handwritten signature in cursive script, appearing to read "Julie Murphy", is written over a horizontal line. The signature is fluid and stylized, with the first name "Julie" and last name "Murphy" clearly distinguishable.