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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
JAN - 4 2013	
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	) Subcase No. 27-11375
	)
Case No. 39576	) ORDER GRANTING MOTION TO STRIKE
	)
	)
	)
	)
_____	)

I.

BACKGROUND

1. On December 13, 2012, the Basin 27 Water Users' Advisory Board filed a document entitled *Response Brief in Opposition to the Parties' Blackfoot River Equitable Adjustment Settlement Agreement Pursuant to the 1990 Fort Hall Indian Water Rights Settlement Agreement Revised October 17, 2012* ("Response Brief") in the above-captioned matter.

2. On December 24, 2012, the Basin 27 Water Users' Advisory Board filed a document entitled *Clarification of Basin 27 Water Users' Settlement Agreement "Concerns"* ("Clarification Brief") in the above-captioned matter.

3. On January 3, 2012, the State of Idaho filed a *Motion to Strike* pursuant to Idaho Rule of Civil Procedure 12(f) requesting that this Court strike the *Response Brief* and *Clarification Brief* from the record.

II.

ORAL ARGUMENT

The State of Idaho did not request oral argument on its *Motion to Strike* and this Court in its discretion, and pursuant to Idaho Rule of Civil Procedure 7(b)(3)(D), finds that no oral argument is necessary.

III.

ANALYSIS

A. The Basin 27 Users' Advisory Board has not properly appeared in the above-captioned proceeding.

On November 10, 2010, the Court entered an *Initial Scheduling Order Setting Forth Procedures on State's Motion for Accounting and United States' and Tribes' Joint Motion to Enforce* in the above-captioned matter. That *Order* directed that parties wishing to participate in the *Motion to Enforce* file a *Notice of Intent to Participate* with the Court on or before January 4, 2011. The Basin 27 Water Users' Advisory Board did not file a *Notice of Intent to Participate* and the time for doing so has long expired. While certain individuals who appear to be members of the Basin 27 Water Users' Advisory Board did timely file *Notices of Intent to Participate* (i.e., Marvin R. Yancey and Mark B. Pratt), the Court finds that those individuals filed their *Notices* on their own personal behalf, and not on behalf of the Basin 27 Water Users' Advisory Board.

Should the Basin 27 Water Users' Advisory Board wish to participate in the above-captioned matter at this stage in the proceedings, it would be required to file a motion to that effect with the Court. And, Idaho law requires that any such motion on behalf of the Board be filed by an attorney licensed to practice law in the State of Idaho. The Idaho Supreme Court has directed that while a person has the right to represent himself or herself *pro se*, that right does not extend to the representation of other persons or entities. *Citibank (South Dakota), N.A. v. Carroll*, 148 Idaho 254, 260, 220 P.3d 1073, 1079 (2009). Therefore, while Marvin R. Yancey and Mark B. Pratt may represent themselves *pro se* in this proceeding, they may not represent the Basin 27 Users' Advisory Board unless they are licensed to practice law.

Since the Basin 27 Users' Advisory Board did not timely file a *Notice of Intent to Participate* in this matter, and has not otherwise properly moved the Court for leave to participate in this matter, the Court in its discretion will grant the State of Idaho's *Motion to Strike* the documents filed by the Basin 27 Users' Advisory Board.

B. Briefing filed in opposition to a proposed settlement agreement is premature at this point.

The State argues that briefing filed in opposition to an anticipated settlement agreement is premature at this point in the proceeding since no proposed settlement agreement has been

submitted to the Court for its review. This Court agrees. On December 19, 2012, the Court entered an *Order Setting Procedure on Proposed Settlement Re: Equitable Adjustment* in this proceeding. It contains a deadline for submitting a proposed settlement by way of a joint motion of January 31, 2013, and directs that any party to the *Motion to Enforce* opposing the joint motion may file a response brief on or before February 14, 2013. Should Marvin R. Yancey, Mark B. Pratt, or any other party that has filed a *Notice of Intent to Participate* wish to file briefing in opposition to a proposed settlement submitted to this Court, they may do so pursuant to the schedule set forth in this Court's December 19, 2012 *Order*.

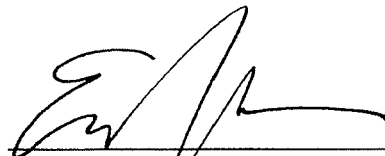
IV.

ORDER

THEREFORE, BASED ON THE FORGOING THE FOLLOWING ARE HEREBY ORDERED:

1. The State of Idaho's *Motion to Strike* is **hereby granted**.
2. The *Response Brief* and *Clarification Brief* filed by the Basin 27 Users' Advisory Board in the above-captioned matter on December 13, 2012, and December 24, 2012, respectively, **are hereby stricken from the record**.

DATED: January 4, 2013.



ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING MOTION TO STRIKE was mailed on January 04, 2013, with sufficient first-class postage to the following:

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ORDER GRANTING MOTION TO STRIKE

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