

Party's Name: Howard Taylor & Sons, Inc.

Attorneys' Names and Address

Jeffrey C. Fereday
 Michael C. Creamer
 GIVENS PURSLEY & HUNTLEY
 277 North 6th Street, Suite 200
 P.O. Box 2720
 Boise, Idaho 83701-2720
 (208) 342-6571
 (208) 343-8920 (facsimile)

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 Nos. 36-00134A and
	)	36-00135B
Case No. 39576	)	
	)	
_____	)	MOTION FOR RECONSIDERATION
		OF ORDER REGARDING TAYLOR'S STATUS

DESCRIPTIVE SUMMARY

This is Taylor's motion requesting that the Special Master reconsider his June 26, 1995 order and grant Taylor full party status in this subcase.

MOTION

Howard Taylor and Sons, Inc., ("Taylor") hereby moves the Special Master to reconsider his June 26, 1995 Order concerning Taylor's status in this case ("June 26 Order") and issue a new order granting Taylor full party status pursuant to Taylor's May 1, 1995 Motion to Participate. Taylor seeks expedited review, and asks that this be set for hearing at the second pre-trial conference to be held July 18, 1995.

ARGUMENT

At the first pre-trial conference in this matter, which was held July 12, 1995

upon Taylor's motion, the Special Master indicated that the meaning of his June 26 Order is that Taylor would be a "litigating amicus," and as such may not be allowed to file motions and may be limited in its ability to call witnesses. The United States indicated that it may withdraw as a party. Due to the Idaho Supreme Court's recent ruling in Basin-Wide Issue No. 3, the status of the State of Idaho, and of the Idaho Department of Water Resources (collectively, "State") is unclear with respect to the State's ability to call witnesses to explain the Director's Report or to respond to the Objectors' factual assertions.¹ The Special Master indicated during the pre-trial conference that the June 26 Order was written and served on the parties before the Special Master had reviewed the Supreme Court's June 23, 1995 decision in Basin-Wide Issue No. 3.

Taylor is a party to the SRBA. His rights may be affected by these consolidated subcases, particularly to the extent that they involve the development of facts, or mixed questions of law and fact, that give rise to legal conclusions or lay the groundwork for arguments as to issues of law, such as the specific issues that Taylor's counsel identified during the pre-trial conference (binding effect of prior decree and the director's authority to establish standards for duty of water and season of use). Taylor previously has provided reasons why, under the circumstances, he could not reasonably have anticipated the need to file objections or participate in any subcase litigation in this test basin.

Furthermore, when he filed his motion to participate, Basin-Wide Issue No. 3

¹On July 12, 1995, counsel for Hagerman Water Right Owners filed a Petition for Rehearing with the Idaho Supreme Court in the Basin-Wide No. 3 matter. Accordingly, the finality, or immediate binding effect, of the court's decision in Basin-Wide Issue No. 3 now may be in question until the court disposes of the Petition. In other words, the State still may be entitled to proceed as a full party.

had not yet been decided, and the State was proceeding as a full party to the subcase. It still is unclear how the State's information regarding its investigations of claims, and its basis for various conclusions about water rights, will be placed before the court, and whether, or to what extent, the State will be permitted to provide information in response to points raised by objections. However, if the State no longer will be permitted to call witnesses in these subcases, Taylor needs to be in a position to file motions, to call witnesses, and otherwise to participate as a full party.

Taylor already has established that his interests are not adequately represented by any other party. It would be unfair to limit Taylor's participation to responding only to motions, arguments, and issues raised by such other parties, or to cross-examination of their witnesses. There currently is no basis for limiting participation in the SRBA once it is established that the party meets the standards required of an intervenor/participator. The "litigating amicus" status imposed on Taylor in this case is inappropriate and unfair.

Taylor respectfully requests that the Special Master reconsider the June 26 Order and allow Taylor to participate as a full party.

Dated this 14th day of July, 1995.

GIVENS PURSLEY & HUNTLEY

By: Jeffrey C. Fereday
Jeffrey C. Fereday
Michael C. Creamer
Attorneys for
Howard Taylor & Sons, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of July, 1995, a true and correct copy of the foregoing document was served via the method noted below:

R. Lee Leininger
The United States Department of Justice
550 West Fort Street, Box 33
Boise, ID 83734

☐ U.S. Mail ☒ Fax ☐ Hand Delivery ☐ Federal Express

Alan G. Lance
Clive J. Strong
A. Lynne Krogh
Nicholas B. Spencer
Cheri Jacobus
Office of the Attorney General
Statehouse
Boise, ID 83720

☐ U.S. Mail ☒ Fax ☐ Hand Delivery ☐ Federal Express

Patrick D. Brown
Hepworth Lezamiz & Hohnhorst
P.O. Box 389
Twin Falls, ID 83303-0389

☐ U.S. Mail ☒ Fax ☐ Hand Delivery ☐ Federal Express

Jeffrey C. Florday