

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)

7-18

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	)	
	)	TAYLOR'S PRE-TRIAL MEMORANDUM
_____	)	

DESCRIPTIVE SUMMARY

This is the pretrial memorandum, filed by Howard Taylor and Sons, Inc., ("Taylor") as directed by the Special Master's July 17, 1995 Order Setting Additional Pretrial Conference.

PRE-TRIAL MEMORANDUM

Elements of the water rights at issue. Taylor believes the elements of the Candys' water rights at issue in this case are:

1. **Acres irrigated.** Taylor understands that, of the approximately 50 acres Candy claimed to be irrigated with the water rights at issue in this case, only about 36 acres actually are irrigated.

a. **Question of fact:** To the extent that Candy still contends that an

acreage in excess of the lower number is entitled to be served by this water right, this fact is in issue. Based on the discovery produced to date, Taylor anticipates that this issue can be resolved by stipulation. If the matter is tried, Taylor would have the Special Master recommend that only the acreage actually irrigated be recognized as the place of use for these water rights.

b. Question as to a legal principle: Taylor understands there to be no dispute as to any legal principle on this point.

2. **Diversion rate.** Candy asserts an entitlement to divert some 50 inches of water to irrigate Candy's 36 acres. This exceeds the one-inch-per-acre limit on diversions that the legislature and the Idaho Department of Water Resources ("Department") have deemed necessary for irrigation, absent specific proof that a greater amount is needed and will be placed to beneficial use.

a. Question of fact: To the extent that Candy asserts that a diversion rate exceeding one inch (0.02 cfs) per acre is needed and that water diverted at such a rate is placed to beneficial use for irrigation on the Candy property, this element of the water rights is at issue as a fact question. Taylor would have the Special Master recommend a water right limited to one inch per acre of diversions unless Candy can prove, by a preponderance of the evidence, that a greater amount is necessary.

b. Question as to a legal principle: If Candy asserts, or claims the right to assert in this matter in the future, that the legislature, the Department, or the judiciary lacks authority to establish standards regarding the duty of water expressed in permissible diversion rates or volumes, this would raise a legal principle in which Taylor has an interest. Taylor believes that such standards are

proper and necessary to avoid waste and to promote the goal of optimum use of the resource.

3. Permissible season of use.

Candy asserts an entitlement to divert water for irrigation purposes during a longer period of time than was recommended by the Department.

a. Question of fact: To the extent Candy asserts that diverting water during this longer period is needed, and that it is placed to beneficial use for irrigation on the Candy property, the “season of use” under the Candy rights is at issue and is a fact question.

b. Question as to a legal principle: If Candy asserts, or claims the right to assert in this matter in the future, that the legislature, the Department, or the judiciary lacks authority to establish standards regarding the season of use of water for irrigation, this would raise a legal principle in which Taylor is interested. Taylor believes that such standards are proper and necessary to avoid waste and to promote the goal of optimum use of the resource.

4. Elements varying from those in prior decree.

Taylor understands Candy’s objections in this matter as contending that the prior decree upon which Candy bases its claim bars this court and the Department from reporting or decreeing the elements of the Candy water rights on the basis of current evidence, or that the prior decree prevents the entry of a decree of Candy’s rights in the SRBA in which such elements vary from those specified in the earlier decree.

a. Question of fact: Taylor understands there to be no dispute as to any fact on this point.

b. Question as to a legal principle. Taylor asserts that, as a matter of law, current facts concerning a previously-decreed water right must be considered by the Department and the court as they assemble evidence with which to fashion the present decree, and that the prior decree, like a license, demonstrates a basis for the claimed right and is evidence of it, but it does not bar consideration of current facts, such as the existence of abandonment or forfeiture, the current consumptive use or diversion requirement, or the appropriate season of use for the area in which the claimed right is being exercised. If Candy no longer contends that the prior decree bars this court and the Department from reporting or decreeing the elements of the Candy water rights on the basis of current evidence, this issue is not presented.

5. Other bases for objection no longer are issues in this case.

Based on the discovery produced in this case so far, and the statements by Candy's counsel at the pretrial conference, Taylor understands that Candy no longer is pressing, and this subcase no longer presents, other issues of law raised by Candy's objections.

List of witnesses.

Taylor intends to rely upon the following witnesses:

6. Jeff Peppersack
7. David Shaw
8. Steve Clelland
9. Tim Luke
10. Marci Sterling
11. Helen Thornton

12. Brent Spronk
13. William Taylor

List of exhibits

14. Taylor expects to rely upon the exhibits produced by the Idaho Department of Water Resources and the Candys during discovery.

Dated this 17th 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. Fereday