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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho
JUL 10 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 Nos. 01-2068 and 01-2068Y
	)	
Case No. 39576	)	ORDER DISMISSING NOTICE OF
	)	CHALLENGE WITH PREJUDICE
	)	
	)	
	)	
	)	

I.

PROCEDURAL BACKGROUND

1. On March 6, 2013, the Special Master filed a *Special Master Report and Recommendation* in the above-captioned subcases. On April 15, 2013, the Special Master filed an *Amended Special Master Report and Recommendation*.
2. On April 29, 2013, the City of Pocatello filed a *Motion to Alter or Amend the Special Master Report and Recommendation*.
3. On June 24, 2013, the Special Master filed an *Order Denying Motion to Alter or Amend*.
4. On July 9, 2013, the City of Pocatello filed a *Notice of Challenge* to the Special Master's *Order Denying Motion to Alter or Amend*.

II.

ANALYSIS

SRBA Administrative Order 1 ("AOI"), § 13.c provides that "[a] *Notice of Challenge* shall be filed within 14 days following the date of the filing of the decision on a *Motion to Alter or Amend*." In this case, the Special Master filed his *Order Denying Motion to Alter or Amend* on June 24, 2013. Therefore, the City of Pocatello was required to file its *Notice of Challenge* on

or before July 8, 2013. The City of Pocatello filed its *Notice of Challenge* on July 9, 2013, one day late.

The effect of an untimely filing of a notice of challenge has long been settled law of the case in the Snake River Basin Adjudication (“SRBA”):

[U]nder *AOI* § 13, the effect of an untimely filing of a notice of challenge is that the challenge is invalid and serves as a waiver of the right to further participate at the trial court level unless the district court were to remand the matter back to the special master or otherwise independently ask for a hearing. Although . . . because the district court has the duty to independently review the special master’s report (irrespective of whether it has been challenged), the court, if it wishes, can utilize the late filing for the purpose of assisting the court in its independent review.

Order Re: Timeliness of Filing a Notice of Challenge and Order Dismissing Challenge, SRBA Subcase No. 63-07035C, p. 6 (Sept. 6, 2000). Therefore, under the law of the case as quoted above, the City of Pocatello’s *Notice of Challenge* is invalid and must be dismissed.

The Court notes that the *Notice of Challenge* in this case was fax filed and that the faxed was technically transmitted on July 8, 2013. However, the City of Pocatello did not transmit the fax until after normal working hours (i.e., after 5:00 p.m.) on July 8, 2013.¹ Therefore the fax was not received by the Clerk of the Court until the morning of July 9, 2013, and was thus filed stamped July 9, 2013. Such action on the part of the Clerk of the Court is consistent with the Idaho Rules of Civil Procedure and *AOI*. Idaho Rule of Civil Procedure 5(e)(2) directs that filings by facsimile “may be made to the court only during the normal working hours of the clerk” The SRBA procedural rules expand upon I.R.C.P. 5(e)(2) and instruct as follows:

FAX filings are only accepted for filing during the normal working hours of the Clerk of the SRBA Court: 8:30 a.m. to 5 p.m., Monday through Friday. Any FAX transmission not completed by 5 p.m. will be file stamped the next business day.

AOI, § 3.h.(1). Therefore, the Court finds that the *Notice of Challenge* was properly file stamped July 9, 2013, as the fax was transmitted to the Clerk of the Court after 5 p.m. on July 8, 2013.

Last, the Court finds that Idaho Rule of Civil Procedure 6(e)(1) is not applicable here. That rule provides as follows:

¹ The notation on the fax itself shows that it was transmitted at 6:45 p.m. on July 8, 2013.

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice of other paper upon the party and the notice or paper is served upon the party by mail, three (3) days shall be added to the prescribed period.

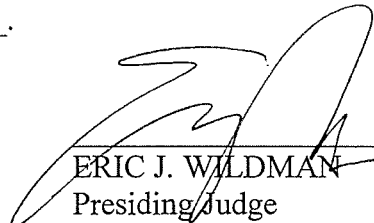
I.R.C.P. 6(e)(1). *AOI*, § 13.c requires a party to file a *Notice of Challenge* 14 days “following the date of the filing of the decision on a *Motion to Alter or Amend*,” not 14 days after the service of the *Motion to Alter or Amend*. As a result, the law of the case in the SRBA has long held that Idaho Rule of Civil Procedure 6(e)(1) does not apply to the filing of *Notices of Challenge*. See e.g., *Order Re: Timeliness of Filing a Notice of Challenge and Order Dismissing Challenge*, SRBA Subcase No. 63-07035C, p. 10 (Sept. 6, 2000) (holding, “*AOI* § 13(c) leaves no room for interpretation. The 14-day window to file a challenge begins the day after the document is file-stamped and ends at the expiration of 14 days . . .”).

III.

ORDER

Based on the forgoing, IT IS HEREBY ORDERED that the City of Pocatello’s *Notice of Challenge* is **dismissed with prejudice**.

DATED: July 10, 2013.


ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER DISMISSING NOTICE OF CHALLENGE WITH PREJUDICE was mailed on July 10, 2013, with sufficient first-class postage to the following:

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