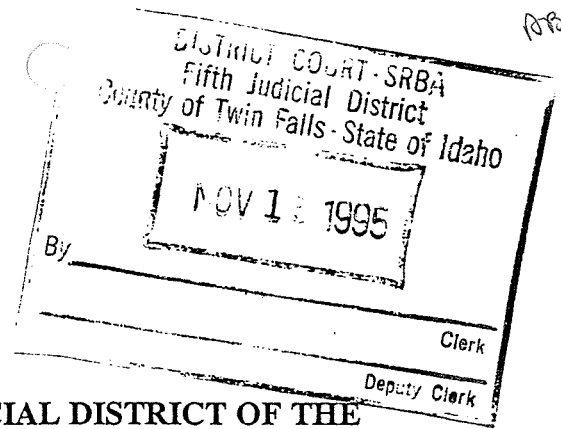


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Department of Water Resources
Appropriation Bureau



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.: 36-00021B (36-00021),
) 36-00048A, 36-00049, 36-00051A,
) 36-10283A and 36-15168

) PROTECTIVE ORDER
)

On November 15, 1995, counsel for Faulkner Land & Livestock (Faulkner), May Farms, Ltd. (May) and Sand Springs Ranch Partnership (Sand Springs) filed their *Amended Motion for Protective Order/Motion to Shorten Time/Request for Expedited Hearing* (Faulkner Motion). The purpose of the Faulkner Motion was to prevent counsel for claimants in the above subcases¹ (Claimants) from conducting depositions of Faulkner, May and Sand Springs scheduled for November 16, 1995.

On November 15, 1995, counsel for the Claimants filed their *Motion and Memorandum for Protection Order and Request for Expedited Hearing* (Claimants' Motion). The purpose of the Claimants' Motion was to prevent or postpone depositions of the Claimants by counsel for Faulkner, May and Sand Springs scheduled for November 20 and 21, 1995.

An expedited hearing was held before the Special Master on November 15, 1995, at the SRBA Courthouse in Twin Falls, Idaho. Charles A. Daw appeared by telephone on behalf of Faulkner, May and Sand Springs. Patrick D. Brown appeared in person on behalf of the Claimants. Jeffrey C. Fereday appeared by telephone on behalf of Cranney Bros., who has filed

¹

Harry R. Gisler (36-00021B); Dan and Irma McFadden (36-00048A and 36-00049); Walten and Marjorie Mildren (36-00051A); Ya-Ta-Hay Investments, Inc. (36-10283A); and Hagerman Water Users Association (36-15168).

its own pending *Motion to File Late Response* in subcase nos. 36-00048A and 36-00049. Following argument, the matter was taken under advisement.

By way of background, on August 18, 1995, Faulkner, May and Sand Springs each filed motions to file late responses to the Claimants' objections. Those motions are set for hearing on November 22, 1995.

DISCUSSION

It is apparent from the pleadings and argument that for various logistical reasons, the depositions scheduled for November 16, 1995, cannot proceed. Neither can the depositions be postponed until the following day. Hence, that leaves only two work days available for any depositions before the November 22 hearing -- November 20 and 21, 1995. Counsel for Claimants offered to postpone the November 22 hearing, but counsel for Faulkner, May and Sand Springs refused. That leaves the court with no option but to decide both motions for protective order at this time.

It is clear that Claimants are entitled to depose Faulkner, May and Sand Springs who seek to participate in the Claimants' subcases. On the other hand, Faulkner, May and Sand Springs cannot now claim a reciprocal right because they are not parties to the subcases. In the event their pending motions to file late responses are granted, Faulkner, May and Sand Springs will then have the right to depose the Claimants like any other party to the subcases. Faulkner, May and Sand Springs elected to file their motions to file late responses before seeking discovery, so it is unclear what they hope to gain by noticing depositions just before the November 22 hearing.

It is possible that discovery may be appropriate when sought by a non-party before becoming a party to a subcase, but not in this instance. If Faulkner, May and Sand Springs were allowed to proceed with their discovery as set, the practical effect would be to deny the Claimants their discovery. Therefore, the only remedy available to the court is to order cancellation of depositions noticed by Faulkner, May and Sand Springs on November 20 and 21, 1995, and allow the Claimants to conduct their discovery on those dates.

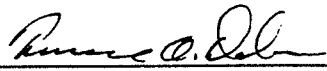
This order is not a perfect resolution because, in the end, discovery will likely be prolonged, duplicative and burdensome to all movants. The court regrets that so far discovery in these subcases has not been conducted in a more orderly and efficient manner.

THEREFORE, IT IS ORDERED THAT:

1. The Faulkner Motion is **denied**, in part, and **granted**, in part. The depositions of Faulkner, May and Sand Springs by counsel for the Claimants scheduled for November 16, 1995, are canceled. Counsel for Claimants may reschedule the depositions of Faulkner, May and Sand Springs for November 20 and 21, 1995. However, counsel is advised that November 21, 1995, is the date set for Judge Hurlbutt's monthly Status Conference and, in deference to the importance of these conferences, settings on those dates are discouraged.

2. The Claimants' Motion is **granted**. The depositions of the Claimants by counsel for Faulkner, May and Sand Springs scheduled for November 20 and 21, 1995, are canceled.

DATED November 15, 1995.



TERRENCE A. DOLAN
Special Master Reporting Area 3
Snake River Basin Adjudication

CERTIFICATE OF MAILING

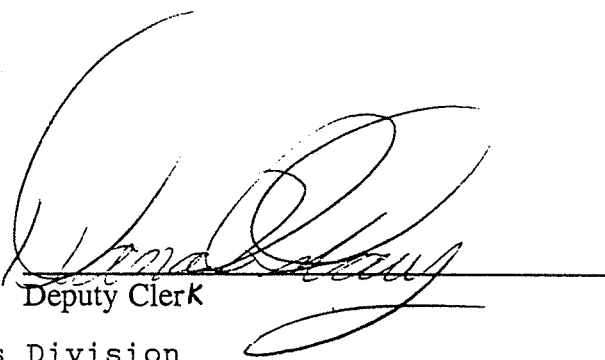
I certify that a true and correct copy of the **PROTECTIVE ORDER** was mailed on November 16, 1995, with sufficient first-class postage to the following:

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(Courtesy copies faxed 11/15/95)



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