

Respondents' Names:

May Farms, Ltd.,
Sand Springs Ranch Partnership,
and Faulkner Land and Livestock Company

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Department of Water Resources

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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. 36-00021, 36-00048A, 36-00049,
	)	36-00051A, 36-10283A and 36-15168
	)	
Case No. 39576	)	CONSOLIDATED RESPONSE
	)	MEMORANDUM IN OPPOSITION TO
	)	MOTION FOR PERMISSIVE REVIEW OF
	)	MASTER'S ORDERS
_____	)	

DESCRIPTIVE SUMMARY

This Memorandum is May Farms, Ltd.'s, Sand Springs Ranch Partnership's and Faulkner Land and Livestock Company's (collectively the "Ground Water Users") response to issues raised in the Claimants' Consolidated Motion for Permissive Review of the Master's Orders and Brief in Support.

MEMORANDUM

The claimants, Hagerman Water Users Association, Dan and Irma McFadden, Walten E. Mildren, Harry R. Gisler and YA-TA-HAY Inventments, Inc. (Collectively the "Claimants") seek permissive review "on the grounds that proceedings before masters will be expedited and

more efficient if this court now determines whether masters must follow the Idaho Rules of Procedure and Idaho Rules of Evidence.” This stated basis for permissive review is most unusual as no one has asserted that the Rules of Civil Procedure and Rules of Evidence do not apply nor did the Special Master issue his decision on this basis. Thus, this matter does not appear to be contested or appropriately appealed.

Although couched in terms of the applicability of the Rules of Civil Procedure and Rules of Evidence, it appears the Claimants really take issue with the special master’s decision not to strike the affidavits of Tom Ambrose, Ralph May and Mike Faulkner. However, these matters do not satisfy the criteria for permissive review. The basic criteria for permissive appeal of an interlocutory order is whether the order “involves a controlling question of law as to which there is substantial grounds for difference of opinion and in which an immediate appeal from the order or decree may materially advance the orderly resolution of the litigation.” Budell v. Todd, 105 Idaho 2, 3, 665 P.2d 701, 702 (1983). Permissive interlocutory appeals should be granted only in the “exceptional case” and only a limited number of these applications typically are granted. *Id.* at 4, 665 P.2d at 703.

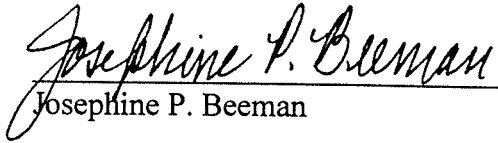
The three challenged affidavits do not involve a “controlling question of law.” The affidavits relate factual information also found elsewhere in the court’s record. While objecting to the Claimants’ motions to strike, the Ground Water Users also noted at hearing and in their reply memorandum that sufficient other evidence exists on the record to allow the filing of the late responses. See Consolidated Reply Memorandum in Support of Motions to File Late Responses at 6-7 (copy of excerpt attached hereto as Exhibit A which is incorporated herein as if set forth in full). The Affidavit of Josephine P. Beeman (not subject to a motion to strike) submitted the Idaho Department of Water Resources’ (“IDWR”) files for these subcases, including the IDWR field investigation report on which the Director’s recommendations are based. The three challenged affidavits simply reiterate information submitted as part of the IDWR files. The Ground Water Users’ deposition transcripts which were submitted to the court by affidavits of Patrick D. Brown, also confirm that the Ground Water Users sought leave to file late responses because of the removal of IDWR as a party.

In summary, the Ground Water Users oppose the Claimants' Motion for Permissive Review on the grounds that no one has asserted that the Idaho Rules of Procedure and Rules of Evidence are inapplicable and the contested affidavits are not the only evidentiary support for the Special Master's decision.

CONCLUSION

For the foregoing reasons, May Farms, Ltd., Faulkner Land and Livestock Company and Sand Springs Ranch Partnership respectfully request that the court deny the Claimants' Motion for Permissive Review.

RESPECTFULLY SUBMITTED this 12th day of January, 1996.



Josephine P. Beeman

CERTIFICATE OF SERVICE

I certify that on the 12th day of January, 1996, I caused a true and correct copy of the foregoing document to be served on the following person(s) in the manner designated:

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Josephine P. Beeman

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