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UNITED STATES OF AMERICA

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Department of Water Resources
Adjudication 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	)	
	)	Subcase No. 34-04164
	)	
Case No. 39576	)	
	)	MOTION TO DISMISS OBJECTION
	)	
	)	
	)	

Descriptive Summary

This is the United States' MOTION TO DISMISS the Objection of Randy Pehrson as party, pro se, to the above-referenced subcase claim for failure to prosecute under I.R.C.P. Rule 41(b).

Discussion

I. Background

Randy Pehrson is an Objector to the United States' claim for a water right which is the subject matter of subcase 34-04164.

The other Objectors to this subcase are Mrs. Merle Hone, Mr. Reed Asay, *pro se*, and Six Flags, Inc. The United States and Mr. Asay have signed and submitted a Standard Form 5 resolving the dispute between these two parties. The United States has also resolved its dispute with Six Flags, Inc. and Mrs. Merle Hone, but has not submitted an SF5 pending action by Mr. Pehrson.

The United States has no remaining disputes with IDWR, a non-party to this subcase.

The Special Master ordered attendance at a Status Conference for this subcase for December 13, 1995. **See, Notice Setting Status Conference, October 30, 1995.** This Status Conference was held telephonically. Mr. Pehrson did not request inclusion on the telephone call as required by the Court, did not request inclusion from the United States, nor did he attend the conference at the Twin Falls Courthouse.

The Special Master ordered attendance at the Scheduling Conference for this subcase for February 14, 1996. **See, Order Setting Subcase For Scheduling Conference, December 19, 1996.** Personal appearance was ordered. Mr. Pehrson did not attend.

On February 12, 1996, two days prior to the Scheduling Conference, counsel for the United States, Mr. Lee Leininger, telephoned the Pehrson residence as a courtesy to Mr. Pehrson to remind him of the conference and to inquire further on the status of Mr. Pehrson's objection to this claim. Mrs. Pehrson informed counsel that Mr. Pehrson was not available. She was informed of the time, place, and date of the conference.

William Ferry, co-counsel for the United States, and Mr. Matt Howard, counsel for the IDWR, attended the Scheduling Conference at Arco with Special Master Bilyeu. Mr. Pehrson was not present.

II. Grounds for Motion for Dismissal for failure of party to prosecute.

The United States motions the court for dismissal of the Objection of Mr. Randy Pehrson, under I.R.C.P. Rule 41(b) for failure to prosecute his objection and comply with the orders and rules of this Court. "When deciding whether to dismiss a case the district court must consider the length of delay caused by the failure to prosecute, the justification, if any, for such delay, and the extent of any resultant prejudice." *Gerstner v. Washington Water Power Co.*, 122 Idaho 673, 677, 837 P.2d 799, 803 (1992).

Mr. Pehrson's failure to prosecute is inexcusable, has delayed resolution of this subcase, and has caused the parties prejudice. He has provided no explanation for his failures. Mr. Pehrson has simply failed to comply with the Court's orders to attend court-ordered conferences. Furthermore, Mr. Pehrson has taken no further action to reveal the nature of his objection or otherwise proceed with the litigation of this subcase.

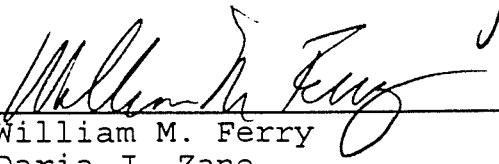
In addition, Mr. Pehrson's failures have resulted in unnecessary expenditures and delay in resolving this subcase. The Court has scheduled and held additional conferences which has

provided Mr. Pehrson notice and afforded Mr. Pehrson due process. Mr. Pehrson has ignored the Court's direction which has resulted in unnecessary efforts by the parties and the Court.

Moreover, Mr. Pehrson's failure to act has prejudiced the United States. The United States could not prepare for further proceedings because Mr. Pehrson has not revealed the nature of his objection. The United States incurred significant costs and time expenditures to attend court-ordered conferences that could not proceed effectively with Mr. Pehrson's absence. Finally, although the United States has reached agreement with all objectors except Mr. Pehrson, the Court has not been able to proceed to enter its final report on this water right claim and move this claim toward partial and final decree.

Therefore, due to the unnecessary efforts of the Court and the parties, the unjustified delay in resolving this matter, and Mr. Pehrson's failure to prosecute, Mr. Pehrson's objection should be dismissed.

Respectfully submitted this 28th day of February, 1996,



William M. Ferry
Daria J. Zane
R. Lee Leininger
Paul F. Holleman
Attorneys, Department of Justice

CERTIFICATE OF MAILING

I certify that on the 28th day of February, 1996, I served a true and correct copy of this MOTION TO DISMISS OBJECTION by the following method:

By facsimile:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
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Twin Falls, Idaho 83303-2707

By First Class mail:

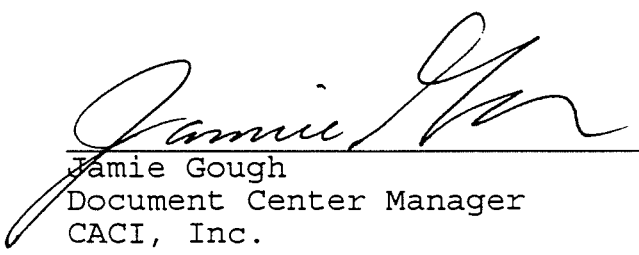
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