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DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

FILED _____

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.: 36-00021B (36-00021),
	)	36-00039D, 36-00048A, 36-00049, ✓
Case No. 39576	)	36-00051A, 36-02169, 36-02460B and
	)	36-15168 4260B
	)	
	)	SPECIAL MASTER'S FINDINGS AND
	)	RECOMMENDATION OF DENIAL OF
	)	CLAIMANT'S CONSOLIDATED
	)	MOTION FOR PERMISSIVE REVIEW
	)	OF MASTER'S ORDERS

FINDINGS

On December 26, 1995, Claimants in the above nine subcases¹ filed their *Consolidated Motion for Permissive Review of Master's Orders (Motion)* under *SRBA Administrative Order 1*, Section 11d. In their *Motion*, the Claimants sought permissive review of the Special Master's *Amended Order Denying Motions to Strike Affidavits and Order Granting Motions and Amended Motions to File Late Responses (Order)* dated December 21, 1995. In the *Motion*, the Claimants allege:

that the ruling as contained in the orders involve controlling questions of law as to which there are substantial grounds for difference of opinion and in which an immediate appeal from the orders may materially advance the orderly resolution of litigation in the subcases. *Motion*, p. 2.

¹ Harry R. Gisler (36-00021B); Fred and Susan Walmsley (36-00039D); Dan and Irma McFadden (36-00048A, 36-00049 and 36-02169); Walten and Marjorie Mildren (36-00051A); Robert H. Brailsford (36-04260B); Ya-Ta-Hay Investments, Inc. (36-10283A); and Hagerman Water Users Association (36-15168).

The Claimants allege that the two controlling questions of law are whether the Special Master erred: (1) by not applying the Idaho Rules of Civil Procedure and Idaho Rules of Evidence; and (2) by improperly construing and applying the Presiding Judge's July 28, 1995 Order.²

On January 17, 1996, May Farms, Ltd., Sand Springs Ranch Partnership and Faulkner Land and Livestock Company (collectively, May Farms) lodged their *Consolidated Response Memorandum in Opposition to Motion for Permissive Review of Master's Orders*.³ May Farms argued that the *Motion* should be denied because there is no disagreement that the Idaho Rules of Civil Procedure and Idaho Rules of Evidence apply in proceedings before the SRBA Court. Further, the challenged affidavits did not involve a "controlling question of law" because they were not the only evidentiary support for the Special Master's decision.

On January 26, 1996, Cranney Bros. filed its *Consolidated Response to Motion for Permissive Review*.⁴ Cranney Bros. likewise argued that the *Motion* should be denied because everyone agreed the Idaho Rules of Civil Procedure and Idaho Rules of Evidence apply. The Special Master had discretion in applying the rules to promote economy and justice "to secure the just, speedy and inexpensive determination of every action and proceeding." The decision not to strike the affidavits as requested by the Claimants was an appropriate exercise of that discretion. Cranney Bros. also argued that granting of the *Motion* would not expedite resolution of the subcases.

² The full title of the Order is *Order Granting in Part, and Denying in Part, Joint Motions for Amendment of Administrative Order 1*.

³ May Farms, Ltd., Sand Springs Ranch Partnership and Faulkner Land and Livestock Company were allowed to file late responses in six of the above nine subcases: 36-00021B, 36-00048A, 36-00049, 36-00051A 36-10283A and 36-15168. However, their participation was "limited to litigation of those elements in the Director's Report to which the Claimants have objected and to which IDWR has responded. They may not enlarge or add to existing issues."

⁴ Cranney Bros. was allowed to file late responses in five of the above nine subcases: 36-00039D, 36-00048A, 36-00049, 36-02169 and 36-04260B. Its participation was limited the same as May Farms, Ltd., and the others.

DISCUSSION

There has been no showing that the Claimants' *Motion* presents a controlling question of law or that immediate consideration of the determination may advance the orderly resolution of the subcases. On the contrary, the *Motion* is merely argumentative and has delayed the proceedings.

As pointed out by May Farms and Cranney Bros., there is no disagreement that the Idaho Rules of Civil Procedure and Idaho Rules of Evidence apply to all proceedings in the SRBA. To suggest that the Special Master's *Order* was entered without regard to such rules merely argues the end result. The rules were followed in reaching the conclusions that the affidavits should not be stricken and the late responses should be allowed.

The affidavits were flawed in certain respects as pointed out by the Claimants. However, the affidavits were considered in the context of motions to file late pleadings pursuant to the Presiding Judge's Order intended to provide "special consideration" to some parties. The affidavits were not considered in a motion for summary judgment or trial. The burden on those tendering the affidavits was not to prove their case, but to plead sufficient facts to support their motions.

In the end, the *Order* was entered in the context of "test" subcases where the Claimants and those who sought to file late pleadings engaged in particularly contentious motion practices. For those reasons, the Special Master was required to tailor just solutions to unique problems in the interest of efficient administration of the law.

THEREFORE, IT IS RECOMMENDED that the *Claimants' Consolidated Motion for Permissive Review of Master's Orders* be denied.

DATED February 28, 1996.



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

CERTIFICATE OF MAILING

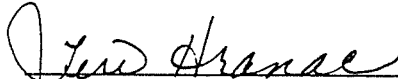
I certify that a true and correct copy of the SPECIAL MASTER'S FINDINGS AND RECOMMENDATION OF DENIAL OF CLAIMANT'S CONSOLIDATED MOTION FOR PERMISSIVE REVIEW OF MASTER'S ORDERS was mailed on February 28, 1996, with sufficient first-class postage to the following:

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, ID 83711-4449

Jeffrey C. Fereday
Givens, Pursley & Huntley
P.O. Box 2720
Boise, ID 83701-02720

Josephine Beeman
Dillion Bosch Daw Bock
242 North 8th Street, Suite 200
Boise, ID 83702

Patrick D. Brown
Hepworth, Lezamiz & Hohnhorst
P.O. Box 389
Twin Falls, ID 83303-0390


Deputy Clerk