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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

Case No. 39576

) Subcase: 34-04164
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)
)
)
)

ORDER GRANTING MOTION TO
DISMISS OBJECTION AND
DISMISSING RANDY PEHRSON AS A
PARTY TO SUBCASE

The claimant United States filed a *Motion to Dismiss Objection* in subcase 34-04164 on February 28, 1996. The *Motion* sought to dismiss the Objection of Randy Pehrson under Idaho Rule of Civil Procedure 41(b). A hearing on the *Motion* was held March 21, 1996.

The United States argued the court should dismiss the objection of Mr. Pehrson under Rule 41(b) due to failure to prosecute his objection. The United States argued that Mr. Pehrson failed to attend several court-ordered hearings, specifically a Status Conference held December 13, 1995, a Scheduling Conference held February 14, 1996, and a hearing on the *Motion* held March 21, 1996. All other objectors previously represented they have settled with the United States.

STANDARD

The *Motion to Dismiss Objection* asks the court to dismiss Mr. Pehrson's Objection to the United States' claim under I.R.C.P. 41(b) which provides that:

For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant.

The Idaho Supreme Court established the standard for courts deciding *Motions* under I.R.C.P. 41(b). *Motions* under Rule 41(b) are left to the discretion of the court which then considers several factors.

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)

The *Motion to Dismiss* was unobjected to. Mr. Pehrson did not appear at the hearing and did not submit any briefs or other documents in opposition to the *Motion*. Therefore, the court finds that failure to prosecute this action by missing three court-ordered hearings has delayed the resolution of this case several months.

The court further finds there is no justification for the delay or failure to prosecute. Unfortunately, Mr. Pehrson presented the court with no information regarding why this case was not prosecuted. Despite efforts to allow parties to participate by telephone in two hearings and holding the third hearing in close proximity to Mr. Pehrson's official address, Mr. Pehrson did not participate in the three court-ordered hearings. Mr. Pehrson received notice of all three hearings. No information was submitted to explain whether Mr. Pehrson wanted to go forward with his objection, or to explain why he delayed or failed to prosecute this matter. Therefore, the court concludes there is no justification for the delay or the failure to prosecute this objection.

The court has also considered the prejudice to other parties. The failure to prosecute has required other parties to this subcase to expend considerable time and effort attending hearings which may have otherwise been unnecessary since all other parties had settled. The court finds the claimant's ability to defend its water right claim was prejudiced by the failure to prosecute because the claimant could not readily obtain information about Mr. Pehrson's objection without his participation.

After considering the file and record contained in subcase 34-04164, the *Motion* and briefing submitted in support thereof, and applying the standard articulated by the Idaho Supreme Court for determining motions under I.R.C.P. 41(b), IT IS ORDERED that:

1. The *Motion to Dismiss Objection* is **granted** and this Order shall operate as an adjudication on the merits as to Mr. Pehrson's Objection;

2. Randy Pehrson is **dismissed** as a party to this subcase; and
3. The remaining parties shall submit a fully executed *Standard Form 5* prior to May 10, 1996.

DATED March 22, 1996.


BRIGETTE BILYEU
Special Master, Reporting Area 1
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING MOTION TO DISMISS OBJECTION AND DISMISSING RANDY PEHRSON AS A PARTY TO SUBCASE was mailed on March 22, 1996, with sufficient first-class postage to the following:

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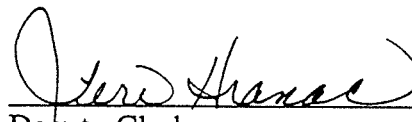
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