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DEPARTMENT OF
WATER RESOURCES

Attorneys for Jeffrey C. Shippy

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF AND FOR IDAHO, IN THE COUNTY OF TWIN FALLS**

In Re CSRBA	)	SUBCASE NO. 91-7094
	)	
Case No. 49576	)	REPLY MEMORANDUM IN
	)	SUPPORT OF MOTION TO ALTER
	)	OR AMEND
	)	
	)	

This subcase involves a proceeding where two claimants asserted ownership of a water right to grow wild rice. The land where the water right is put to use belongs to Jeffrey Shippy ("Shippy"). Mr. Shippy claims the water right is a result of transfer of title through a series of deeds, which under Idaho law, transfer all appurtenances including the water rights used on that land.

The other claimants to that water right are Douglas and Darcy McInturff ("McInturff"). McInturff claimed ownership of the water right based upon the fact that a permit was issued to a non-incorporated entity called St. Maries Wild Rice Growers.

In the Director's recommendation, he could not determine whether McInturff or Shippy owned the water right and so suggested joint ownership of the water right. After a trial hearing, the Special Master recommended that the partial decree be issued to

REPLY MEMORANDUM IN SUPPORT OF MOTION TO ALTER OR
AMEND

McInturff and not to Shippy, the owner of the property where the water is put to beneficial use. In the Motion to Alter or Amend, Shippy demonstrated the following undisputed facts.

St. Maries Wild Rice Growers was an unincorporated association. It filed an application for a permit to use water right 91-7094 on water owned by Aaron and Jeanne Robinson, Shippy's parents. The application asserted that there was a long-term lease but there was no evidence to support that claim. Rather, testimony was clear that this was a year-to-year agreement. One of the original members of the association testified that he believed that the right was intended to stay with the landowner. No contrary testimony was presented. St. Maries Wild Rice Growers, Inc. was incorporated in 1984, but permit 91-7094 was never assigned to that Corporation. The Corporation administratively dissolved in 1988. In contrast, prior to dissolution, the Association assigned a different permit to the Corporation, 92-7090, but did not assign 91-7094. Thus, McInturff has not shown that the Association ever transferred any interest in the permit from the Association to the Company. McInturff did seek, years later, to assert a change of ownership to his name but he failed to provide any documentation of transfer from the Association to the Corporation or to any of the individual members. There is no evidence that the Corporation, when it dissolved, ever transferred title to anyone, even if it had title to transfer.

This property interest in the permit had to be transferred in writing under Idaho law. It was not.

On the other hand, the deeds show title to the land with its appurtenances was passed to Mr. Shippy in a series of gift deeds over time. *Joyce Livestock Co. v. United States*, 144 Idaho 1, 13-14 (2007).

The Motion to Alter or Amend was filed and served on McInturff in November 2016. The CSRBA Court provided docket notice of the Motion to Alter or Amend. Thereafter, the Court issued a Scheduling Order and scheduled a hearing for the Motion to Alter or Amend. McInturff's opposition or response brief was due on January 18, 2017. McInturff failed to file an opposition or respond to this Motion. The fact that McInturff is proceeding *pro se* is no excuse for his refusal to respond to the Order of the Court requiring responses by January 18th. *See Sammis v. Magnetek, Inc.*, 130 Idaho 342, 346, 941 P.2d 314, 318 (1997) (pro se litigants are not accorded any special consideration simply because they choose to represent themselves, and they are not excused from adhering to procedural rules.) McInturff has not provided any facts, basis, analysis, objection or opposition to the motion, and therefore the Motion to Alter or Amend should be granted. Accordingly, the Court should grant the Motion to Alter or Amend and if McInturff attempts to appear at the hearing, should preclude him from offering any evidence or any argument in opposition to the Motion to Alter or Amend as any such argument would have deprived Shippy of the opportunity to reply set forth in the Court's Scheduling Order.

DATED this 25th day of January, 2017.

BARKER ROSHOLT & SIMPSON LLP



Albert P. Barker

Attorneys for Jeffrey C. Shippy

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of January, 2017, I served true and correct copies of the foregoing upon the following by the method indicated:

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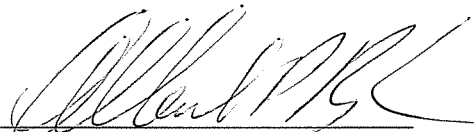
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