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RECEIVED

APR 07 2017

DEPARTMENT OF
WATER RESOURCES

**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	)	NOTICE OF CHALLENGE
	)	
	)	
	)	
	)	

COMES NOW, the Claimant/Objector, Jeffrey Shippy and Cedar Creek Ranch, LLC ("Shippy"), by and through their attorneys of record, Barker Rosholt & Simpson LLP, and hereby submits this *Notice of Challenge* in conformance with Administrative Order #1 ("AO1") 13(c). Shippy challenges Special Master Bilyeu's October 6, 2016 *Special Master's Report and Recommendation; Findings of Fact and Conclusions of Law* and the March 23, 2017 *Order on Motion to Alter or Amend* because the findings and conclusions are not supported by the record or by Idaho law.

INTRODUCTION

Shippy is the owner of the property which is the place of use for water right number 91-7094. A specific condition of the water right license is that that water right was appurtenant to the land owned by Shippy. *See* License Condition No. 2. This is an

unusual condition in that most licenses do not add a separate condition requiring the right to be appurtenant to the land. Application for the permit was made by an unincorporated association, St. Maries Wild Rice Growers, and the permit and the license were both issued in the name of the association with the special appurtenance condition. At the time of the application, the right was owned by Jeffrey Shippy's parents. The undisputed evidence at trial was that the right was intended to be appurtenant to, and remain with the land. Hence, the special condition on the license.

The two claimants for this water right number 91-7094 are Shippy and Douglas and Darcy McInturff ("McInturff"). The Department investigated these claims and determined that it could not make a determination as to the ownership of the property, and so the Director recommended that the right be decreed in the name of both McInturff and Shippy. McInturff's claim to this right rested on McInturff's claim to have bought equipment and water rights from a Mr. Bruner. However, it is undisputed that the record fails to show a chain of title from St. Maries Wild Rice Growers to Mr. Bruner or Mr. McInturff. On the other hand, the deeds from Shippy's parents to Shippy transferred the land with all appurtenances, including water rights.

The Director examined the record and determined he could not make a recommendation as to the owner of the water rights as between Shippy and McInturff, and so recommended that the right be issued in both parties' names, essentially deferring to the Court. Both parties appealed and after a trial hearing before the Special Master, the Special Master ruled that water right 91-7094 belonged to McInturff and not to Shippy. A timely *Motion to Alter or Amend* was filed, which was denied by the Special Master in which she deferred to the Department. This *Notice of Challenge* follows.

ISSUES ON APPEAL

Shippy raises the following issues in this *Notice of Challenge*:

1. Whether the Special Master erred in determining that title to the water right passed from the St. Maries Wild Rice Growers Association to a corporation, St. Maries Wild Rice Growers, Inc., without any written assignment or other documentation of such a transfer?
2. Whether the Special Master erred in determining that the water right passed from St. Maries Wild Rice Growers, Inc. by operation of the corporate dissolution statute. I.C. § 30-1-1405?
3. Whether the Special Master erred in determining on *Motion for Reconsideration* that a simple notice of change of ownership, submitted by Mr. McInturff, was sufficient to transfer title of the water right to himself when the notice of change of ownership failed to provide any documentation of the chain of title purportedly transferring ownership to Mr. McInturff?
4. Whether the Special Master erred in holding in the *Motion for Reconsideration* that the same notice of change of ownership submitted by Mr. McInturff was effective to bind Shippy or his parents when neither was given notice and neither was given an opportunity to participate in any administrative notice of change of ownership process?
5. Whether the Special Master erred in concluding that the administrative change of ownership by the Department was sufficient to transfer title of the water right to Mr. McInturff when the Director made a determination that the Department itself could not determine who was the owner of the water right?

6. Whether the Special Master erred in concluding that title to the water right did not pass to Shippy by operation of law with the deeds that transferred title to the property to which the water right was specifically made appurtenant, particularly when those deeds were made to Shippy prior to McInturff's attempt to have a name change on the water right?

7. Whether Special Master erred in failing to consider the undisputed evidence at trial that the appropriators intended the water right to remain appurtenant to the land?

8. Whether the Special Master erred in failing to recognize that the application for the water right was made under false pretenses in that it asserted there was a long-term agreement for use of the land when it is undisputed that there was no such agreement?

9. Whether the Special Master erred in failing to conclude that McInturff had waived his objections to the *Motion to Alter or Amend* by his failure to appear and failure to respond to the Court's Orders?

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TRANSCRIPT

Shippy requests a copy of the transcript of the trial held in Coeur d'Alene on August 3, 2016, together with the Clerk's record of the exhibits introduced into trial. Pursuant to AO1 (13)(d), payment of \$100.00, the estimated costs for the transcript, is submitted along with this motion.

DATED this 6th day of April, 2017.

BARKER ROSHOLT & SIMPSON LLP

A handwritten signature in black ink, appearing to read 'Albert P. Barker', is written over a horizontal line.

Albert P. Barker

Attorneys for Jeffrey C. Shippy

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on the 6th day of April, 2017, I served true and correct copies of the foregoing upon the following by the method indicated:

SRBA District Court
253 3rd Ave. North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☒ Facsimile
☐ Email

Darcy and Douglas McInturff
17786 E. Canary Creek Rd.
Cataldo, ID 83810

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

Director of IDWR
P.O. Box 83720
Boise, ID 83720-0098

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

Sabrina Vasquez
SRBA Court Reporter
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Twin Falls, Idaho 83303-2707

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U.S. Department of Justice
Environmental & Natural Resources Div.
550 West Fort Street MSC 033
Boise, Idaho 83724

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