

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

<b>In Re SRBA</b>	)	<b>Subcases 36-02080, 36-15127 (36-15127A</b>
	)	<b>and 36-15127B), 36-15192, 36-15193</b>
<b>Case No. 39576</b>	)	<b>(36-15193A and 36-15193B), 36-15194</b>
	)	<b>(36-15194A and 36-15194B), 36-15195</b>
	)	<b>(36-15195A and 36-15195B) and 36-15196</b>
	)	<b>(36-15196A and 36-15196B)</b>
	)	<b>(USDI/BOR)</b>
	)	<b>ORDER DENYING MOTION TO ALTER OR</b>
	)	<b>AMEND</b>

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**BACKGROUND**

**Report and Recommendation**

On October 8, 2002, the Special Master entered a *Special Master Report and Recommendation* recommending that 5 of the above claims (36-15127, 36-15193, 36-15194, 36-15195 and 36-15196) not be adjudicated because those claims were split into parts “A” and “B.”<sup>1</sup> The remaining 12 claims (36-02080, 36-15127A, 36-15127B, 36-15192, 36-15193A, 36-15193B, 36-15194A, 36-15194B, 36-15195A, 36-15195B, 36-15196A and 36-15196B) were recommended for partial decrees in the name of the United States of America, Department of Interior, Bureau of Reclamation (BOR).

**Motion to Alter or Amend**

On October 16, 2002, the A&B Irrigation District filed a *Motion to Alter or Amend* alleging 3 grounds for relief. First, A&B alleged the *Report and Recommendation* failed to identify drain and recaptured waste water as the source in the “B” claims. Second, there should

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<sup>1</sup> IDWR recommended each of the 5 claims be split into parts “A” (beneficial use) and “B” (enlargements under I.C. § 42-1426). Only the “B” claims are at issue in this matter.

be no subordination of the “B” claims to other water rights when the drain and recaptured waste water is used.<sup>2</sup> And third, the *Report and Recommendation* “does not properly take into account the fact that the “B” claims were initially made in reliance upon Idaho Code §42-1516 [1416], which Code was enacted in 1985 and repealed in 1994, thereby setting forth an incorrect priority date.”

### Hearing

A hearing on A&B’s *Motion to Alter or Amend* was held on November 14, 2002, at the SRBA Courthouse in Twin Falls, Idaho. Jason D. Walker appeared for claimant / objector A&B; Kathleen M. Carr appeared by telephone for claimant BOR; John M. Marshall appeared by telephone for respondents Magic Valley Ground Water District, *et al.*; David J. Barber appeared by telephone for the State of Idaho; and Nicholas B. Spencer appeared by telephone for IDWR.

The BOR submitted no pleadings in the matter. Instead, it suggested that if the *Motion* is granted, the source element for the “B” claims should be changed from “groundwater” to “groundwater waste, seepage and return flow.” The matter was taken under advisement at the close of argument.

## DISCUSSION

### Stipulation

On July 29, 2002, the parties and IDWR filed a *Stipulation to Resolve Objection* in each of the “B” enlargement claims. Those *Stipulations* essentially allowed the parties and the SRBA Court to proceed with the *Report and Recommendation* while preserving the parties’ right to challenge and appeal the matter:

The parties and IDWR agree that the Special Master may enter a recommendation of this water right as described on the attached water right description. However, by so agreeing the parties do not waive their rights, and instead expressly reserve such rights, to challenge and appeal, in accordance with the procedures set forth in Administrative Order 1 of the SRBA Court and with the Idaho Appellate Rules, the Special Master’s Order Granting Respondents’ Motion for Partial Summary

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<sup>2</sup> Each of A&B’s enlargement claims (36-15127B, 36-15193B, 36-15194B, 36-15195B and 36-15196B) were recommended to the BOR with the following remark:

This water right is subordinate to all water rights with a priority date earlier than April 12, 1994, that are not decreed as enlargements pursuant to section 42-1426, Idaho Code. As between water rights decreed as enlargements pursuant to section 42-1426, Idaho Code, the earlier priority right is the superior right.

Judgment, entered March 26, 2001. To the extent that such Order may be overturned in whole or in part upon further review, the Special Master's recommendation shall be revised to the full extent necessary to bring it into conformance with any such final judicial determination.

### **No New Evidence**

At the hearing, it was clear that despite able argument by its counsel, A&B presented no evidence or case law not already fully considered by the Special Master before entry of the *Report and Recommendation*. Stated another way, A&B argued its case the same as before merely intending to preserve its right to challenge the decision before the Presiding Judge. "Failure of any party in the adjudication to pursue or participate in a *Motion to Alter or Amend the Special Master's Recommendation* shall constitute a waiver of the right to challenge it before the Presiding Judge." *SRBA Administrative Order 1, Rules of Procedure*, paragraph 13, a, at 20. In light of this circumstance and to avoid repetition, the reader is urged to review the *Report and Recommendation* for a full discussion of the issues. There is no sound reason for the Special Master to alter or amend the *Report and Recommendation*.

### **ORDER**

THEREFORE, IT IS ORDERED that A&B Irrigation District's *Motion to Alter or Amend* is **denied**.<sup>3</sup>

DATED November 20, 2002.

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TERRENCE A. DOLAN  
Special Master  
Snake River Basin Adjudication

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<sup>3</sup> For further reference on similar issues in other subcases, on September 11, 1998, the Special Master entered an *Order on Motions for Summary Judgment* in subcases 36-10033, *et al.*, holding that "the Director of IDWR had the lawful authority and duty to recommend inclusion of subordination language in the claimants' (Large, Moller, G.L. Dean & Sons, *et al.*) enlargement claims."