

**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: 36-15168
)	
Case No. 39576)	ORDER DENYING MOTION FOR
)	SUMMARY JUDGMENT
_____)	

I.

APPEARANCES

Patrick D. Brown, P.C. Law Offices, 109 South Adams Street, Jerome, Idaho 83338, for the Claimants/Objectors, Hagerman Water Users Association (Hagerman).

Dana L. Hofstetter, BEEMAN & HOFSTETTER, P.C., 608 West Franklin Street, P.O. Box 1427, Boise, Idaho 83701, for the Respondents/Objectors, North Snake Ground Water District (NSGWD) and Sand Springs Ranch & Company (Sand Spring).

Also Present, though not appearing: Nicholas Spencer, Attorney for IDWR.

II.

PROCEDURAL BACKGROUND

This matter is before the Special Master on a *Motion for Summary Judgment* filed by NSGWD and Sand Spring. This subcase involves a claim for water in Basin 36 filed by Hagerman. The original claim was for a quantity of 36.20 cfs. The *Director's Report* recommended 7.43 cfs and the Claimants objected; IDWR responded. Subsequent to the legislative change which removed IDWR as a party to the SRBA, Sand Spring entered this subcase as a Respondent. Subsequent to its formation, NSGWD was allowed to join with Sand Spring as a Respondent by the Presiding Judge. On remand to Special Master Haemmerle, a ***Trial Scheduling Order*** was issued and miscellaneous matters concerning discovery and that ***Order*** were

brought before the Special Master. On September 16, 1999, this Special Master was assigned to this subcase, necessitating the vacation of the original trial schedule. During a scheduling hearing on October 13, 1999, the claimants requested that an *Amended Director's Report* be prepared to comport with IDWR's current policy concerning "sprinkler vs. gravity irrigation." An *Amended Director's Report* was issued on December 8, 1999. The Director recommended the quantity element at 13.27 cfs. Sand Spring and NSGWD each filed an objection to the *Amended Director's Report*. On April 21, 2000, Sand Spring and NSGWD jointly filed the instant motion.

III.

STANDARD OF REVIEW

A motion for summary judgement can not be granted if the pleadings, depositions, and admissions on file, together with affidavits, if any, show that there is a genuine issue as to any material fact. I.R.C.P. 56(c); *Olsen v. JA Freeman, Co.*, 117 Idaho 706, 791 P.2d 1285 (1990). All controverted facts are liberally construed in favor of the nonmoving party. *Tush Enterprises v. Coffin*, 113 Idaho 37, 740 P.2d 1022 (1987). The burden at all times is upon the moving party to prove the absence of a genuine issue of material fact. *Petricevich v. Salmon River Canal Company*, 92 Idaho 865, 452 P.2d 362 (1969). All doubts are to be resolved against the moving party, and the motion must be denied if the evidence is such that conflicting inferences may be drawn therefrom and if reasonable people might reach different conclusions. *Doe v. Durtschi*, 110 Idaho 466, 716 P.2d 1238 (1986).

The SRBA is an improper forum to facially challenge the internal policies and procedures of IDWR. "IDWR would necessarily have to be a party to the subcase in order to defend the policy at issue. Idaho Code § 42-1401B(3) expressly states that the Director can not be a party to the SRBA." ***Memorandum Decision and Order on Challenge (Gisler)*** (Subcase 36-00077D), June 30, 2000.

IV.

DECISION

The question of what is "beneficial" is a question of fact. The *Director's Report*, even to the extent that its *prima facie* effect is rebutted, remains as evidence of facts to be considered by

the trier of fact. As Judge Wood has ruled, “a dispute over IDWR’s policy or methodology employed for recommending a water right needs to be raised in an objection . . . to overcome the *prima facie* presumption in the *Director’s Report* . . . where IDWR’s results are being disputed. . . . At [trial] . . . the [objector] would then have the opportunity to put on evidence of the perceived problems with IDWR’s methodology.” *Id. Gisler* at 22.

Contrary to the position taken by Sand Spring and NSGWD, the “policy” or methodology used by IDWR are not matter of law but of fact to be raised at trial. Therefore, IT IS ORDERED that the *Motion for Summary Judgment* is **denied**.

Dated this 20th day of July, 2000.

THOMAS R. CUSHMAN
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of ORDER DENYING MOTION FOR SUMMARY JUDGMENT was mailed on July 21, 2000, with sufficient first-class postage prepaid to the following:

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