

**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 01-1J, et al.</b>
	)	<b>(see list of 51 subcases attached)</b>
<b>Case No. 39576</b>	)	<b>ORDER DENYING MOTION TO</b>
	)	<b>PARTICIPATE AND SETTING</b>
<hr/>	)	<b>STATUS CONFERENCE</b>

**Findings of Fact**

**Motion to Participate**

On March 30, 2007, the Idaho Ground Water Appropriators, Inc., (“IGWA”) filed its *Motion to Participate and Memorandum in Support* in the above 51 subcases. The *Motion* noted that IGWA is an Idaho non-profit corporation representing “ground water districts, an irrigation district, various municipal water providers, and commercial and industrial entities, and individuals within the State of Idaho . . . [holding] water rights authorizing ground water diversions for irrigation of approximately 855,000 acres and for other authorized beneficial uses.”<sup>1</sup>

IGWA sought participation because:

[Objections filed in the 51 subcases] allege that the source of water from various wells within the place of use should be considered recovered surface water in part and ground water in part . . . and the issues involved in these subcases may result in a clarification of the definition of what constitutes ground water in the state of Idaho and whether or not recovered water is recognized in the state. These issues would directly affect IGWA’s members and whether or not certain ground water users are subject to curtailment, affect mitigation plans and interests and conjunctive administration of the ESPA generally by IDWR.

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<sup>1</sup> IGWA wrote a letter to the SRBA Court on August 22, 2007, with a list of IGWA’s members. Copies of the letter were either mailed or faxed to the other parties the same date.

## Response

On May 23, 2007, American Falls Reservoir District #2, A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Company, Twin Falls Canal Company and Minidoka Irrigation District (collectively “Surface Water Coalition”) filed their *Response to Idaho Ground Water Appropriators, Inc.’s Motion to Participate*. They argued that IGWA has no ownership interest because it merely represents members who own ground water rights:

Since it is not asserting ownership to any water rights and no person or entity is asserting ownership on its behalf, IGWA is not a party and, hence, is prohibited from filing a motion to participate. . . . [T]he SRBA is not an open forum for organizations without water right claims to be heard.

## Hearings

Hearings on IGWA’s *Motion to Participate* was held on May 31 and August 23, 2007.<sup>2</sup> Counsel and others attending one or both hearings included: Candice M. McHugh and Randall C. Budge appeared for IGWA; Paul L. Arrington, Travis L. Thompson and W. Kent Fletcher appeared for the Surface Water Coalition; Jerry R. Rigby appeared for the Blackfoot Irrigation Company and other claimants in the 51 subcases; Larry A. Brown appeared for the United States of America, Department of Interior, Bureau of Land Management<sup>3</sup> and Bureau of Reclamation, along with E. Gail McGarry; and Garrick Baxter and Chris M. Bromley appeared for IDWR, along with Andrea Courtney.

## Conclusions of Law

The basic reasons why IGWA sought to participate in these subcases are because 1) it “represents” a wide range of water right holders and 2) issues to be determined in the subcases “directly affect “IGWA’s members.” No one disputed those facts. But an equally apparent fact is that IGWA is not a “party to the adjudication.”

The SRBA *Rules of Procedure*, 10, k, provides: “Any party to the adjudication . . . may seek leave to participate in a subcase by filing a timely *Motion to Participate*

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<sup>2</sup> The hearing on the *Motion* was reconvened on August 23, 2007, because of an error with the first *Order Setting Hearing*.

<sup>3</sup> The USDI / BLM filed an *Objection* in subcase 01-1J on August 22, 2007, objecting to place of use. The *Objection* was filed in response to IDWR’s *Amended Director’s Report, Subcase No. 01-00001J*, filed August 3, 2007.

[emphasis added].” The clear language of the **Rules** limits participation in subcases to “parties to the adjudication” and IGWA fails to meet that threshold requirement.

The definition of “party to the adjudication” in the SRBA **Rules of Procedure**, 2, p, equates the term to “any claimant” as defined in I.C. §§ 42-1401A(1) and (6). There, “any claimant” means “any person asserting ownership of rights to the use of water within the state of Idaho or on whose behalf ownership of rights to the use of water is asserted.” I.C. § 42-1401A(1). The term “party” leads only in a circle because it means “any person who is a claimant or any person who is served or joined.” I.C. § 42-1401A(6).

Reference to I.R.C.P. 24(a) and (b) (intervention of right and permissive intervention) leads to a dead end for IGWA because: 1) there is no statute conferring an unconditional right to intervene in the SRBA, except for I.C. §§ 42-1401A(1) and (6); and 2) merely claiming an interest or defense with a common question of law or fact with parties to the adjudication is **not** the equivalent of claiming a water right. IGWA has not asserted ownership of rights to the use of water nor has such ownership been asserted on its behalf – it **represents** water right holders. Hence, IGWA is not and cannot be a party to the adjudication and is not entitled to intervene of right or by permissive intervention in the above subcases.

### Order

THEREFORE, IT IS ORDERED that:

1. IGWA’s *Motion to Participate* in subcases 01-1J, *et al.*, is **denied**; and
2. A status conference concerning the above 51 subcases will be held on **Thursday, October 4, 2007, 10:00 a.m.** Parties may participate by telephone by dialing 1-225-383-1099 and entering participant code 654400.

DATED August 28, 2007.

/s/Terrence A. Dolan  
TERRENCE A. DOLAN  
Special Master  
Snake River Basin Adjudication