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Department of Water Resources

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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED 7/11

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

Case No. 39576

) Subcases 35-12996, *et al.*¹
) (USDI/BLM)
)
) ORDER SETTING STATUS
) CONFERENCE

A hearing on dispositive motions was set for May 15, 2003, in 13 subcases in Basin 43, beginning with 43-10957; however, no dispositive motions were filed. Instead, on March 14, 2003, claimant the United States of America, Department of Interior, Bureau of Land Management filed the *Affidavit of Steven R. Davis* in the 15 Basin 43 subcases to support a *prima facie* case for water rights established under federal law (PWR 107) pursuant to I.C. § 42-1411A. The USDI/BLM already filed a similar *Affidavit of Deena M. Teel* in subcase 35-12996 on December 9, 2002.

On May 12, 2003, the USDI/BLM and objector the State of Idaho filed a *Joint Motion to Vacate Hearing on Dispositive Motions and to Proceed with Hearing Under I.C. § 42-1411(A)* in 172 subcases in Basins 35, 43 and 47. The *Joint Motion* asked for an evidentiary hearing in the above 16 subcases based on the two *Affidavits* and said: "The BLM is continuing its review of the remaining 157 [156] subcases scheduled for the dispositive hearing and will submit affidavits for these subcases in the near future."

The hearing was held by telephone on May 15, 2003. R. Lee Leininger appeared for the USDI/BLM, along with Fredric W. Price; David J. Barber appeared for the State of Idaho; and Roxanne Brown represented IDWR.

During the hearing, it was first learned that the USDI/BLM had not investigated whether there were pending homestead entries on the land where the 16 PWR 107 claims are located.

¹ The 16 subcases covered by this *Order* are: 35-12996, 43-10957, 43-10997, 43-11005, 43-11052, 43-11054, 43-11056, 43-11058, 43-11069, 43-11071, 43-11158, 43-11160, 43-11166, 43-11172, 43-11268 and 43-11272.

Therefore, because that issue is pending before Special Master Thomas R. Cushman, and the State wanted to argue consistent positions before all three Special Masters, it withdrew its joinder in the *Joint Motion*. The USDI/BLM maintained the issue is not before the Special Master in these subcases and should be disregarded.

In the interests of minimizing duplicate pleadings and proceedings, the Special Master decided that the 16 subcases should be set for a status conference in August, 2003, with the possibility that the issue will be resolved before then. If not, the Special Master will request pleadings and argument in expedited proceedings (30 days or fewer).

THEREFORE, IT IS ORDERED that a status conference shall be held by telephone on **Thursday, August 21, 2003, 10:00 a.m.**

DATED May 15, 2003.



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

EXHIBIT A

Subcase Nos:

35-12996
43-10957
43-10997
43-11005
43-11052
43-11054
43-11056
43-11058
43-11069
43-11071
43-11158
43-11160
43-11166
43-11172
43-11268
43-11272

(Subcase list: PWR107MAY)
5/15/03

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER SETTING STATUS CONFERENCE was mailed on May 15, 2003, with sufficient first-class postage to the following:

STATE OF IDAHO

Represented by:

NATURAL RESOURCES DIV CHIEF

STATE OF IDAHO

ATTORNEY GENERAL'S OFFICE

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BOISE, ID 83711-4449

UNITED STATES OF AMERICA ACTIN

USDI BLM

Represented by:

US DEPARTMENT OF JUSTICE

ENVIRONMENT & NATL' RESOURCES

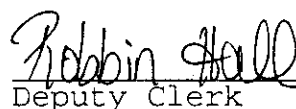
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Deputy Clerk