



U.S. Department of Justice

Environment and Natural Resources Division

90-6-2-63C

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RECEIVED

MAY 29 2003

May 28, 2003

Department of Water Resources

via facsimile

Special Master Thomas R. Cushman
Snake River Basin Adjudication
DISTRICT COURT
253 Third Ave., North
Twin Falls, Idaho 83303-2707

Re: SRBA Case No. 39576
Subcase No. 65-11412 and 65-11412A

Dear Master Cushman:

Pursuant to the Court's Order dated May 1, 2003, the parties to the above referenced subcases have on this date filed a **Settlement Agreement and Emmett Irrigation District's Motion to Withdraw Its Claim and Objection in Subcase 65-11412A and to Withdraw Its Objection in Subcase 65-11412** with the SRBA Court. The parties have also submitted the signed SF-5 for Subcase 65-11412 to IDWR, attention Garrick Baxter, for agency concurrence with the settlement terms.

Sincerely,

David W. Gehlert
Trial Attorney

cc: Scott Campbell

2. The hydro-pumps are the subject of various contracts between the parties. The most recent contract is entitled "Supplemental Contract Between the United States of America and the Emmett Irrigation District," number 14-06-100-827 and dated October 4, 1955. The 1955 Contract supplements and supercedes the parties original contract of November 18, 1921 as well as the supplemental contracts of November 6, 1923; June 17, 1931; June 30, 1932; and August 2, 1932.

3. Through these contracts the United States agreed to operate and maintain the hydro-pumps and related facilities so as to make available, among other things, to the District the operation of the hydro-pumps, contingent upon the District's obligation to pay to the United States for its share of operating and maintenance costs for the facilities, among other duties and obligations. (See paragraph 11 of 1955 Contract.)

4. Therefore, in order to clarify the rights and obligations of the United States, the parties have determined that it is in their best interests to settle and resolve the objections of the Emmett Irrigation District to the above captioned subcases amicably, without the further risk, expense and uncertainty of litigation.

AGREEMENT

Based upon the aforementioned recitals, the parties agree as follows:

1. The United States agrees to include in the decree for Subcase 65-1142, in "Other Provisions Necessary For Definition or Administration of This Water Right," a remark that states:

This water right is used by the United States to deliver water to the Emmett Irrigation District's North Side Canal, pursuant to the parties' 1955 contract # 14-06-100-827 and the parties negotiated Settlement Agreement of May 19, 2003.

2. Provided the District continues to comply with the conditions of its contracts and so long as the United States remains contractually obligated to deliver water to the North Side Canal, the United States shall not change the elements of the above captioned water right or otherwise modify, sell, rent, assign, abandon, or forfeit the rights so as to affect delivery of water from the hydro-pumps without making alternative arrangements for the delivery of the District's water supply to the North Side Canal, and such change shall not occur *unless* the United States and the District have agreed in writing to such new arrangement for delivery of the District's water supply to the North Side Canal. This obligation will not apply to any part of the District's water rights that have been sold, alienated or are distributed through a different point of diversion.

3. Nothing in this Agreement shall preclude the parties from amending or supplementing the 1955 Contract by mutual consent.

4. In exchange for this Agreement, the Emmett Irrigation District agrees to withdraw its objections to the above captioned subcases. It is the parties' intent that the water right addressed in subcase 65-11412A shall be disallowed.

5. This agreement shall be enforceable by either party in any court of competent jurisdiction.

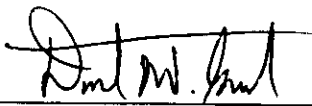
6. This agreement was reached through good faith negotiations for the purpose of resolving legal disputes, including pending litigation, and the Parties agree that no offers and/or compromise made in the course thereof shall be construed as admissions against interest. This stipulation does not create a precedent for settlement of any other disputes or objections in the SRBA or in any other case or controversy. This stipulation shall not be construed as representing

a position of the United States or the District, factual or legal, for any case or controversy other than those subcases addressed in this Agreement. This Agreement shall not be used in any manner by, for or against the United States, the District, or any other person or entity in the Snake River Basin Adjudication or in any other case or controversy other than those subcases and controversies addressed in this Agreement.

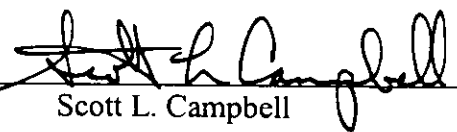
7. The parties agree to bear their own costs and attorneys' fees in this matter.

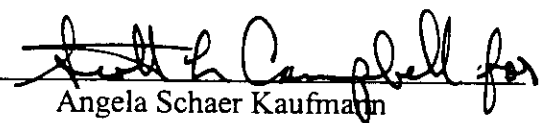
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

UNITED STATES OF AMERICA

By 
David W. Gehlert

EMMETT IRRIGATION DISTRICT

By 
Scott L. Campbell

By 
Angela Schaer Kaufmann

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th Day of May, 2003, I caused a true and correct copy of the foregoing **SETTLEMENT AGREEMENT IN SUBCASE NOS. 65-11412 AND 65-11412A** to be served by the method indicated below, and addressed to the following:

Scott L. Campbell
Moffatt, Thomas, Barrett, Rock,
& Fields, Chartered
101 S. Capitol Blvd., 10th Floor
P.O. Box 829
Boise, ID 83701

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☐ Hand Delivered
☒ Overnight Mail
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