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Department of Water Resources

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

FILED _____

2004 MAR 23 PM 3 24

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	)	Subcases: 36-10033, 36-10035, 36-10037, 36-10090,
	)	36-10863A, 36-11643, 36-15152, 36-15264A, 36-15264B,
	)	36-15356A, 36-16123 and 36-16124
	)	
	)	ORDER STAYING FEBRUARY 12, 2004
	)	SCHEDULING ORDER;
	)	
Case No. 39576	)	ORDER CONSOLIDATING SUBCASES FOR
	)	CHALLENGE; and
	)	
	)	ORDER CONDITIONALLY STAYING CHALLENGE
	)	ON CONSOLIDATED SUBCASES

I.

PROCEDURAL BACKGROUND

- A. An *Order Granting Motions to Alter or Amend and Amended Special Master's Report and Recommendation*, was filed in the above-captioned subcases on January 28, 2004.
- B. On February 11, 2004, North Ridge LLC, *et al.* ("North Ridge"), through counsel, filed a *Notice of Challenge* in subcases 36-10090, 36-10863A, 36-15264A and 36-15264B.
- C. On February 12, 2004, Roost Potato Co., Inc., *et al.* ("Roost Potato"), also through counsel, filed a *Notice of Challenge or, in the Alternative, Motion to Alter or Amend the Special Master's Report and Recommendation*. Apparently there was some uncertainty over the scope of the *Special Master's Recommendation*.
- D. On February 12, 2004, this Court entered a *Challenge Scheduling Order* in subcases 36-10090, 36-10863A, 36-15264A and 36-15264B.
- F. On March 4, 2004, the Special Master heard arguments on the *Motions to Alter or Amend* that was filed in the alternative. Also, on March 4, 2004, the Special Master issued an *Order*

Denying Motions to Alter or Amend Amended Special Master's Report and Recommendation
in all of the above-captioned subcases.

G. On March 10, 2004, Roost Potato filed a ***Notice of Challenge*** to the March 4, 2004, ***Special Master's Report and Recommendation***.

H. On March 10, 2004, North Ridge filed a ***Motion to Vacate the Challenge Scheduling Order Dated February 12, 2004, and to Consolidate Subcases 36-10090, 36-10863A, 36-15264A and 36-15264B***. On March 11, 2004, North Ridge filed a ***Renewed Notice Challenge*** on the same subcases.

I. On March 16, 2004, pursuant to notice of hearing previously issued by this Court, a hearing was held on the motions and to clarify the procedural status of the subcases.

II.

THE HEARING HELD MARCH 16, 2004

At the hearing, the parties explained that there was confusion over the scope of the Special Master's January 23, 2004, ***Order on Motions to Alter or Amend***, hence the reason for the various motions and challenges. The parties also explained that all of the 12 above-captioned subcases involve the same common issue and sought to have the subcases consolidated for purposes of proceeding with the Challenge. Lastly, that if the Court consolidated the matter, the parties sought a stay of the consolidated subcase pending the outcome of the subcases involving A & B Irrigation District, subcases 36-02080 *et al.*, which is currently on appeal before the Idaho Supreme Court and which involves the same issue raised in the instant challenge. The Court expressed concern about issuing a stay order if the outcome of the legal issues decided in the A&B appeal would not be dispositive of all remaining issues in the instant subcases.

III.

SINGLE ISSUE ON CHALLENGE

At the hearing, the parties represented that the only remaining issue in this matter involves the priority date as applied to the subordination language that is recommended for enlargement claims brought pursuant to the amnesty statute, I.C. § 42-1426. Specifically, whether a claimant that relied on the enactment of I.C. § 42-1416, the predecessor to I.C. § 42-1426, should be entitled to a priority date for an enlargement claim based on the date of enactment of the former rather than the date of enactment of the latter statute where there was a repeal of I.C. § 42-1416 and a simultaneous enactment of I.C. § 42-1426. The Court

acknowledges that this is one of the issues raised on appeal in the A & B case currently on appeal.

**IV.
ORDERS**

Based on the foregoing, THE FOLLOWING ARE HEREBY ORDERED:

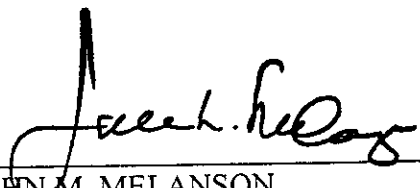
A. **Order Staying February 12, 2004 Challenge Scheduling Order.** IT IS ORDERED that the February 12, 2004 **Challenge Scheduling Order** is stayed pending further order of the Court.

B. **Order Consolidating Subcases.** IT IS FURTHER ORDERED that subcases 36-10033, 36-10035, 36-10037, 36-10090, 36-10863A, 36-11643, 36-16123, 36-16124, 36-15152, 36-15264A, 36-15264B and 36-15356A are consolidated for Challenge. The SRBA Clerk of the Court is instructed to make the appropriate notation to the Register of Action for each of these subcases.

C. **Order Conditionally Staying Challenge in Consolidated Subcases.** IT IS FURTHER ORDERED that the Challenges filed in the consolidated subcases are **CONDITIONALLY STAYED** on the following conditions:

1. The parties have until April 7, 2004, to identify in a written statement filed with the Court any issues involved in the consolidated subcases **other than** the common issue involving the priority date based on the repeal and simultaneous enactment of the amnesty statutes. Any issues not disclosed will be deemed waived following a decision in the A&B case.
2. If more issues are identified in a written statement, the Court will make the determination whether or not to continue the stay. If the Court elects not to stay the matter further, an amended scheduling order will follow. If no issues are disclosed, the Challenge will be stayed pending a ruling from the Idaho Supreme Court in the A & B matter and until further order of the Court. If for whatever reason the Supreme Court avoids deciding the priority date issue, the Court will issue an amended scheduling order, but parties will be limited to arguing that issue alone on Challenge.

DATED March 22, 2004.



JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER CONSOLIDATI
AND STAYING was mailed on March 23, 2004, with sufficient first-clas
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