

2004 JUL -8 PM 4: 43

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

**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

) **ORDER RESCINDING ORDER OF**
) **REFERENCE**

) **and**
) **ORDER SETTING STATUS**
) **CONFERENCE**

) **FOR WATER RIGHTS: 78-11046, 78-**
) **10970**
)

I.

Procedural Background.

The above-captioned water rights were claimed by the United States, Department of Interior, Bureau of Land Management (United States) as a dual-based stockwater rights, meaning the rights were claimed as federal reserved water rights pursuant to Public Water Reserve (PWR) 107 and alternatively as state-law based rights. The state-based claims were not recommended by the Idaho Department of Water Resources.

Objections were filed by the United States, stating the rights should be recommended, and Responses were filed by Scott Bedke, Karl Bedke, Bruce Bedke, Joe Tugaw, Jared Bedke, Gary Poulton, Flying Triangle, inc., Willis Deveny, inc, Luther Gardner, Michael Poulton, Pickett Ranch and Sheep, Jerry Hoagland, Joyce Livestock, Western Stock Growers, Eugene Mathews, Shoulders 3 Ranches, Inc. and A L Cattle, all represented by Norman Semanko. Responses were filed by the State of Idaho (Idaho). On June 11, 1999, a *Stipulation to Resolve Objections* was filed under Consolidated Subcase 23-10859, 24-10221, 25-13659, 27-11604, 65-19685 listing conditions to resolve Idaho's priority-date responses. On April 23, 2004, a status conference was held before Special Master Cushman. At the status conference, Mr. Semanko stated that, pursuant to stipulation, the responses of his clients were withdrawn in some subcases, but it is

unclear from the record whether they were withdrawn from the above-captioned subcases.

Standard Form 5/Stipulated Elements of a Water Right forms signed by the United States with IDWR concurrence as to the state-based water right were filed on June 30, 2004. The *SF5* forms include language that the claims are still dual-based. No trial has been held pursuant to I.C. 42-1411A(12), in order to grant a federal-reserved water right.

II.

Order of Reference.

Special Master Thomas R. Cushman retired on June 30, 2004. Therefore, the Court finds it appropriate to rescind the Order of Reference to Thomas R. Cushman in the above subcase. The Court, with Judge John M. Melanson presiding, will proceed in the above subcases in the same fashion as specified in *Administrative Order 1* for proceedings by Special Masters. If the Court finds it necessary, the above subcase may be referred to another Special Master at a later date.

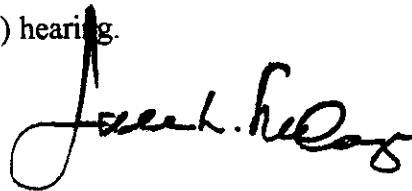
III.

Status Conference.

It appears from the proceedings below that the State of Idaho's responses to the state-based right have been resolved. However, it is unclear from the record whether the Responses filed by Mr. Semanko's clients have been withdrawn.

Therefore, IT IS ORDERED, that that the *Order of Reference* to Special Master Cushman be rescinded and a Status Conference be set for 1:30 p.m. on August 17, 2004 at the Washington County Courthouse, 256 E. Court, Weiser, Idaho. Telephone participation will be available by calling 1-918-583-3445 and entering 406128 when prompted. The purpose of the Status Conference will be: (1) to determine which Responses are still outstanding; (2) to set a deadline for affidavits to be filed in connection with a 42-1411A(12) hearing; (3) to discuss the contents of those affidavits; and (4) to set a date for a 42-1411A(12) hearing.

DATED: July 8, 2004



JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

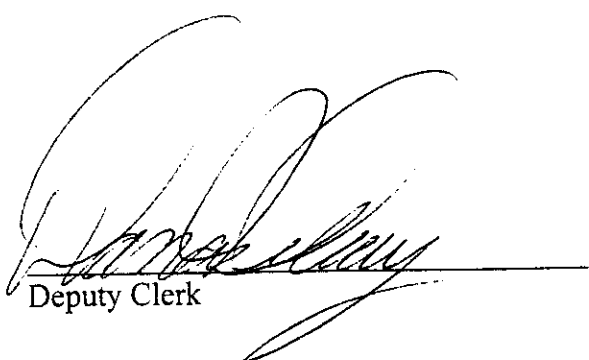
I hereby certify that true and correct copies of the *Order Rescinding Order of Reference* and *Order Setting Status Conference* were mailed on July 8, 2004, by first-class mail to the following:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief Natural Resources Division
Office of the Attorney General
PO Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment & Natural Resources Div.
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Luther Gardner
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Eugene Mathews
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Deputy Clerk