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DISTRICT COURT - SR3A
TWIN FALLS CO, IDAHO
FILED *jm*

Case No. 39576

**ORDER RESCINDING ORDER OF
REFERENCE
and
ORDER STAYING
LITIGATION PENDING CHALLENGE
IN SUBCASE 25-13635 *et al.*
and
ORDER SETTING STATUS
CONFERENCE**

FOR WATER RIGHTS: See Exhibit A

I. Order Rescinding Order of Reference

A. 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 subcases.

B. 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.

II. Order Granting Stay of Litigation

On July 28, 2004, the United States filed a *Motion to Alter or Amend and to Stay Litigation* in the above-captioned subcases. The Special Master filed a *Special Master's Report and Recommendation* in the above subcases on June 18, 22 and 23, 2004. In the *Report*, the Special Master denied the United States, Department of Interior, Bureau of Land Management's claims to water based upon the federal reservation of Public Water Reserve (PWR) No. 107. As grounds for the current motion before the Special Master, the United States incorporated its

Amended Motion to Alter or Amend filed in subcases 25-13635, 25-13637, 25-13653, 65-19960, 65-19962 on May 2, 2003.

The Special Master previously ruled that a pending homestead application defeated a reservation under PWR 107 in subcases 25-13635 *et al.* The Special Master denied the United State's *Motion to Alter or Amend* in subcases 25-13635, *et al.*, on May 24, 2004. The United States has filed a *Challenge Notice* in subcases 25-13635, *et al.*, and that case is currently before this Court to resolve the legal issue of the effect of a pending homestead application on PWR 107.

The United States has asserted, and this Court agrees, that the legal issue in question in the above-captioned subcases is identical to that in subcases 25-13635, *et al.* A pending decision by the Court in subcases 25-13635, *et al.*, will be applicable to and dispositive of the above subcases.

THEREFORE IT IS ORDERED the *Motion for Stay* be granted pending the Court's decision in subcases 25-13635, *et al.* IT IS FURTHER ORDERED that the *Order of Reference* be rescinded. IT IS FURTHER ORDERED that a status conference be set in the above subcases for 1:30 p.m. on November 16, 2004 at the Snake River Basin Adjudication Courthouse, 253 3rd Ave. N. Twin Falls Idaho. Telephone participation will be available by calling 1-918-583-3445 and entering 406128 when prompted.

DATED: August 2, 2004.



JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

EXHIBIT A (LIST 2410263ET)

Subcase Nos:

24-10263
55-12439
55-12893
67-12382
67-12431
67-12433
67-12435
67-12492
67-12738
67-12874
67-12876
67-12892
69-10529
69-10556
69-10570
69-10572
79-11652
79-11656
79-11661
79-11666
79-11668
79-11716
79-11718
79-11720

(Subcase list: 2410263ET)
8/02/04

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER RESCINDING ORDER OF REFERENCE AND ORDER STAYING LITIGATION AND ORDER SETTING STATUS CONFERENCE was mailed on August 02, 2004, with sufficient first-class postage to the following:

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ORDER

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