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DEPARTMENT OF
WATER RESOURCES

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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED *[Signature]*

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 TO SPECIAL MASTER
) THOMAS R. CUSHMAN
) And
) ORDER SETTING STATUS
) CONFERENCE
)
) For water rights: 65-03681, 65-05033C and
) 65-22621
)

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. Motions to Alter or Amend

A. Special Master Thomas R. Cushman entered a *Special Master's Report* on June 30, 2004 in the above subcases.

B. A *Motion to Alter or Amend* was filed by the Claimant in Subcase 65-22621 regarding legal description of the Point of Diversion; specifically, that the Point of Diversion should be T11N R04E Section 7, *SWSE*, rather than T11N R04E Section 7 *SENE*.

- C. A *Motion to Alter or Amend* was filed in Subcase 65-05033C by the State of Idaho, stating that the factual findings of the Special Master were clearly erroneous.
- D. A *Motion to Alter Amend* was filed in the above Subcases by Kyle Ellis, stating that the Special Master's factual finding that "(t)he Ringles irrigated approximately 35 acres with water diverted from Chips Creek from approximately 1981 to the present" was erroneous.

III. Special Master's Findings of Fact Are Incomplete

In addition to the foregoing issues raised in the *Motions to Alter or Amend*, upon reviewing the *Special Master's Report and Recommendation*, the Court finds that the Special Master failed to make important finding of facts and conclusions of law necessary to decide the above subcases.

The Special Master failed to make a findings and conclusions as to: (1) whether the accomplished transfer pursuant to I.C. 42-1425 of Water Right 65-5033C as recommended resulted in an enlargement of the water right, particularly since the water is now being stored in a pond; and (2), whether under the circumstances of the subcase, the accomplished transfer statute applied where no unity of title existed between the places of use and no instrument evidencing conveyance of a water right existed at the time of the alleged transfer.

Because the *Order of Reference* to the Special Master is being rescinded, the Court will not remand the case to the Special Master for further findings. Instead, the Court will hear evidence and argument on the above questions.

IV.

Order Setting Hearing

Therefore, IT IS ORDERED that the *Order of Reference* to Special Master Thomas R. Cushman is rescinded. IT IS FURTHER ORDERED that a hearing be set for **1:30 p.m. on September 21, 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. The purpose

of the hearing will be to set a date to address the *Motions to Alter or Amend* and to set a date for further proceedings before the Presiding Judge to address the issues stated above.

IT IS SO ORDERED.

Dated August 2, 2004


JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER RESCINDING ORDER OF REFERENCE TO SPECIAL MASTER THOMAS R. CUSHMAN AND ORDER SETTING STATUS CONFERENCE was mailed on August 02, 2004, with sufficient first-class postage to the following:

FREDRICK D & GLORIA J RINGEL
FREDRICK D RINGEL
GLORIA J RINGEL

Represented by:
CHARLES L. HONSINGER
PO BOX 2773
BOISE, ID 83701-2773
Phone: 208-342-4591

KYLE F. ELLIS
Represented by:
GALE M. MERRICK
737 N 7TH STREET
BOISE, ID 83702
Phone: 208-342-3563

JAMES E & CAROLYN D KLING
Represented by:
JOSEPHINE P. BEEMAN
409 WEST JEFFERSON STREET
BOISE, ID 83702
Phone: 208-331-0950

JAMES E & CAROLYN D KLING
Represented by:
MATT J. HOWARD
ATTORNEY AT LAW
PO BOX 190012
BOISE, ID 83719
Phone: 208-333-0622

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

LARRY & LYNN BESKOON
10098 ROUND VALLEY ROAD
CASCADE, ID 83611
Phone: 208-382-3508

DERROLL K ELLIS
9988 ROUND VALLEY ROAD
CASCADE, ID 83611
Phone: 208-382-5156

ORDER

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Deputy Clerk

A handwritten signature in cursive script, reading "Julie Murphy", is written over a horizontal line.