

RECEIVED
AUG 02 2004
DEPARTMENT OF
WATER RESOURCES

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division

R. LEE LEININGER
Trial Attorney
United States Department of Justice
Environment & Natural Resources Division
General Litigation Section
999 18th St. Suite 945
Denver, CO 80202
(303) 312-7322

**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	)	Subcase Nos.: 24-10263, et al. ^{1/}
	)	
Case No. 39576	)	MOTION TO ALTER OR
	)	AMEND AND TO STAY LITIGATION
_____	)	

Descriptive Summary

This is the United States' motion to alter or amend the Special Master's recommendation for the above referenced subcases, and to stay further litigation.

Motion

This motion respectfully asks that the Court alter or amend the Special Master's recommendations contained in the *Special Master's Report[s]* issued June 18, 22 and 23, 2004 in the

^{1/} See list of subcases subject to this motion in Attachment A.

above referenced subcases.^{2/} The Special Master denied the United States' claims to water based upon the federal reservation Public Water Reserve No. 107. The Special Master previously ruled that a pending homestead application defeated a reservation under PWR 107. *See Order Denying Amended Motion to Alter or Amend*, re: subcases 25-13635, 25-13637, 25-13653, 65-19960, and 65-19962, dated May 24, 2004. The Special Master cites that decision in denying the United States' PWR 107 claims for most of the subcases at issue here.^{3/} As grounds for this motion to alter or amend, the United States incorporates the previously submitted *Amended Motion to Alter or Amend the Special Master's Report and Recommendation*, re: subcases 25-13635, 25-13637, 25-13653, 65-19960, and 65-19962, filed May 2, 2003, wherein the United States argued in support of its PWR 107 claims.

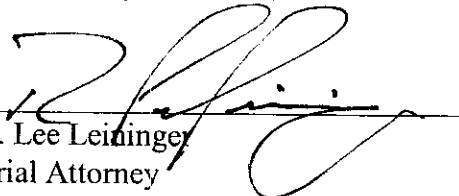
The United States also respectfully requests that all further litigation in these subcases be stayed. The issue of the effect of a homestead entry on a PWR 107 reservation is now before the Court on the United States' *Challenge Notice* in subcases 25-13635, et al. A decision by the district court on this legal issue will be applicable to the Special Master's decision in these subcases. Judicial efficiency will be served by staying this matter until the Court rules on the matter of law.

^{2/} These subcases were assigned to Special Master Cushman. To date, the Order of Reference has not been rescinded.

^{3/} The Special Master did not specifically reference his *Order Denying Amended Motion to Alter or Amend*, re: subcases 25-13635, et al., in denying the federal reserved basis of the claims in subcase 55-12439 and the eight subcases in basin 79. He did, however, refer to "pending homestead application[s]" in the Findings of Fact and Conclusions of Law and, presumptively, the existence of a homestead entry at the time of the signing of PWR 107 is the reason for the denial.

DATED this 28th day of July, 2004.

Respectfully submitted,


R. Lee Leininger
Trial Attorney
United States Department of Justice

CERTIFICATE OF SERVICE

I certify that on this 28 th day of July, 2004, I served a true and correct copy of fore-going Motion to Alter or Amend and to Stay Litigation upon the following individuals by serving as indicated, postage pre-paid, addressed as follows:

via Facsimile:

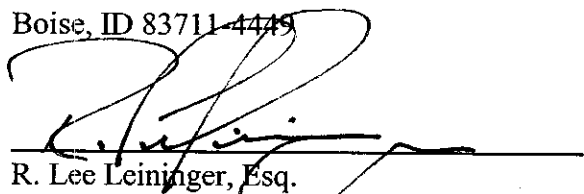
Diana R. Delaney, Chief Deputy Clerk
(Original)
Snake River Basin Adjudication
DISTRICT COURT
253 Third Ave., North
Twin Falls, ID 83301

via First-Class Mail:

U.S. Department of Justice
Environment and Natural Resources
550 W. Fort Street, MSC 033
Boise, ID 83724

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

David Barber, Esq.
Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 4449
Boise, ID 83711-4449


R. Lee Leininger, Esq.

Attachment 1

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