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DEPARTMENT OF
WATER RESOURCES

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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 DISMISSING RESPONSES**

) **and**

) **ORDER SETTING HEARING**

) **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 the State of Idaho, 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 Semanko stated that, pursuant to stipulation, the responses of his clients were withdrawn in some

subcases, but it is unclear from the record whether they were withdrawn from the above-captioned subcases.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. The Court rescinded the *Order of Reference to Special Master Cushman* on July 8, 2004. The Court will proceed in the above subcases in the same fashion as specified in *Administrative Order 1* for proceedings by Special Masters. The Court held a hearing on August 17, 2004, to affirm that Mr. Semanko's clients' responses were properly withdrawn in the above subcases. Mr. Travis Thompson appeared in Mr. Semanko's place, and stated that the responses should be withdrawn and dismissed.

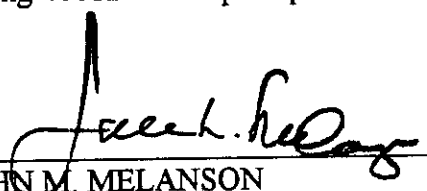
Affidavits were filed by the claimant on August 16, 2004. Because these rights are still dual-based, a hearing pursuant to I.C. 42-1411A(12) is necessary for the Claimant to present a *prima facie* case for the existence of a federal-reserve water right.

II.

Order Dismissing Responses and Setting Hearing

Therefore, IT IS ORDERED, that the responses filed by Mr. Semanko's clients in the above subcases be **dismissed with prejudice**. IT IS FURTHER ORDERED that a hearing pursuant to I.C. 42-1411A(12) be set in the above subcases for **1:30 p.m. 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.

DATED: August 19, 2004


JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

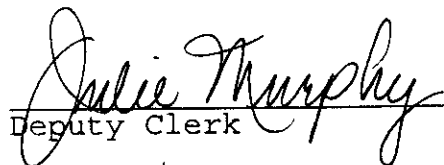
CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER DISMISSING RESPONSES AND ORDER SETTING HEARING was mailed on August 19, 2004, with sufficient first-class postage to the following:

USDI BLM

Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

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

A handwritten signature in cursive script, reading "Julie Murphy", is written over a horizontal line. The signature is in dark ink and is positioned to the right of the printed text "Deputy Clerk".