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Department of Water Resources

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DISTRICT COURT-SRBA
TWIN FALLS CO. IDAHO
FILED EB

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	)	Consolidated Subcase Nos.: 23-10872,
	)	24-10233, 25-13625, 27-11578 & 65-
Case No. 39576	)	19736
	)	
	)	Joint Submission Subcase Nos.: 23-
	)	10894, 24-10331, 24-10339, 24-10263,
	)	24-10373, 51-10873, 65-19738, 65-
	)	19748, 65-19750, 65-19851, 65-19994,
	)	65-20033 & 72-12607
	)	
	)	NOTICE PURSUANT TO I.R.C.P.
	)	7(b)(3);
	)	
	)	RE: COURT DECLINES TO HEAR
	)	MOTIONS

I.
PROCEDURAL BACKGROUND

This matter came before the Court pursuant to the *Motion for Clarification and Stay and Expedited Consideration Thereof* and *Motion for Protective Order and Expedited Consideration Thereof*, filed by the United States in the above-captioned consolidated subcases on May 9, 2002. Although not apparent from the face of the respective motions the *Motion for Protective Order* was intended to be brought before Special Master Cushman and the *Motion for Clarification* was intended to be brought before the SRBA District Court. The Special Master has been apprised of the pending motions.

On December 28, 2001, this Court issued a *Memorandum Decision and Order on Challenge (Scope of PWR 107 Reserved Rights) and Order of Recommitment to Special Master Cushman* (“*Memorandum Decision*”). The *Memorandum Decision* addressed the legal issues raised in the State of Idaho’s objections to the water right claims filed by the United States under PWR 107 and defined the scope and application of PWR 107. Although the challenge before the district court was from a summary judgment, pursuant to I.R.C.P. 54(b), the Court certified the matter as final to avoid delay by allowing an immediate appeal. No appeal was taken and the matter was recommitted to the Special Master for the purpose of factually determining whether the subject water right claims met the criteria for establishing a federal reserved water right under PWR 107 as discussed by the Court in the *Memorandum Decision* and as required by Idaho Code section 42-1411A(12). In addition, no motion for reconsideration was timely filed. I.R.C.P. 11(a)(2)(B). The consolidated subcases are currently pending before the Special Master.

II. NOTICE PURSUANT TO I.R.C.P. 7(b)(3)

THEREFORE, pursuant to I.R.C.P. 7(b)(3), the Court hereby declines to hear oral argument on the *Motion for Clarification* and denies any relief filed by the United States based on the following reasons:

1. The consolidated subcases are currently pending before the Special Master and as such any motions pertaining thereto should be filed with and heard by the Special Master, not the district court. The Special Master has been provided copies of both *Motions*.
2. The motion styled as a “*Motion for Clarification*” is not a basis for a motion recognized under the Idaho Rules of Civil Procedure or *SRBA Administrative Order 1*. The Court would treat such a motion as a motion for reconsideration pursuant to I.R.C.P. 11(a)(2)(B) if filed within the time permitted by the rule.
3. Any discovery matters pertaining to the above-captioned subcases should only appropriately be brought before the Special Master.

This order is based on procedural matters only and should not be construed as a comment by this Court on the substantive legal issue(s) raised in the *Motion for Clarification*.

IT IS SO ORDERED

DATED: MAY 10, 2002

SIGNED: _____

A handwritten signature in black ink, appearing to read "Roger Burdick", written over a horizontal line.

Roger S. Burdick
Administrative District Judge and
Presiding Judge of the Snake River
Basin Adjudication

CERTIFICATE OF MAILING

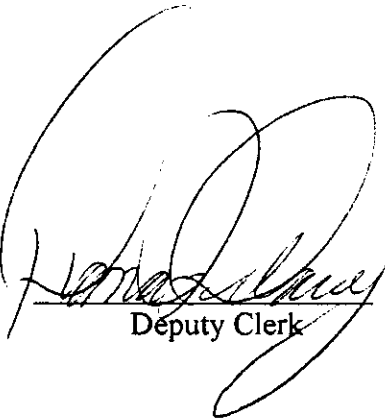
I certify that a true and correct copy of the NOTICE PURSUANT TO I.R.C.P. 7(b)(3); RE: COURT DECLINES TO HEAR MOTIONS, was mailed on May 13, 2002, with sufficient first-class postage to the following:

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