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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

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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	)	ORDER ON MOTION
	)	TO RECONSIDER
	)	
Case No. 39576	)	
_____	)	SUBCASE NOS.: 29-13406 AND 29-13407

I. SUMMARY

This *Order* confirms the enforcement of a settlement agreement entitled *Portneuf River Settlement Agreement Basin 29: Portneuf River* (hereafter "*Portneuf Settlement Agreement*") entered into on March 23, 2005 and clarifies that the *Portneuf Settlement Agreement* does not apply to 29-13406. This *Order*, therefore, **grants** the *Motion to Reconsider* for 29- 13406 and **denies** the *Motion to Reconsider* for 29-13407.

II. PROCEDURAL BACKGROUND

This Special Master entered an *Order on Motion to Enforce Settlement* (May 26, 2005) holding that the *Portneuf Settlement Agreement* was binding on two non-attending parties, the Caspersons and the Willmore Estate. The Caspersons filed a *Motion to Reconsider*, and a hearing was held on June 22, 2005. A complete procedural history of subcases 29-13406 and 29-13407 is included in the *Order on Motion to Enforce Settlement* dated May 26, 2005. For purposes of the *Order*, a brief procedural background is repeated here. The court issued an *Order Setting Mandatory Settlement Conference* on August 26, 2004. The *Order on Mandatory Settlement* warned that failure to attend the settlement conference could result in sanctions by the court.

The Mandatory Settlement Conference was held on November 10, 2004 and was presided over by District Judge Barry Wood. The Caspersons failed to attend the hearing. At the conclusion of the settlement conference, an agreement was reached by all parties in attendance. After the Mandatory Settlement Conference, the parties held several meetings to draft the final details of the settlement.

The settlement agreement is called the *Portneuf River Settlement Agreement: Basin 29: Portneuf River* and was filed April 22, 2005. All parties signed the *Portneuf Settlement Agreement* except the Caspersons and the Willmore Estate.

Several of the parties that signed the *Settlement Agreement* filed a *Motion to Enforce Settlement Agreement*. The *Motion* asked the court to bind the Caspersons and the Willmore Estate to the terms of the *Portneuf Settlement Agreement*. A hearing on the *Motion* was held May 18, 2005. The *Motion* was **granted**. The Caspersons filed a *Motion to Reconsider* and a hearing was held on June 22, 2005.

III. ANALYSIS

The Caspersons ask the court to reconsider the *Order on Mandatory Settlement* binding them in water rights 29-13406 and 29-13407 to the *Portneuf Settlement Agreement* for three main reasons.

First, Caspersons argue that the *Portneuf Settlement Agreement* is unfair to water users in the lower portions of the Portneuf River. The Caspersons raise issues which may have justified their decision to disagree with the other parties in reaching a settlement agreement had they attended the settlement conference. However, Caspersons did not attend the settlement conference which was court-ordered and mandatory. The issues raised by the Caspersons, although legitimate, should have been raised at the settlement conference when the parties who did attend, their attorneys, the settlement moderator, and the Idaho Department of Water Resources could have discussed those issues. If they had still disagreed at the end of the settlement conference, it is doubtful that the *Portneuf Settlement Agreement* could have been imposed. However, these concerns should have been raised at the settlement conference.

Second, Caspersons argue that they were confused by a letter sent to the parties October 21, 2004 by District Judge Wood. The letter stated in part:

“Dear Counsel and Parties:

Thank you for selecting me to mediate this dispute. As you know, mediation is a non-binding, confidential process that affords all parties the best opportunity to air

grievances in a protected environment and to reach agreement in areas thought to be irreconcilable. I can personally attest to its success incases ranging from a simple tort claim, to a complicated multi-party business controversy, to various kinds and sizes of water disputes. Mediation's non-binding and confidential nature makes it a productive process."

The Caspersons argue that they thought the statement the "mediation" was "non-binding" meant that they did not have to attend. This Special Master disagrees. The letter did not come from the SRBA Court, and did not change the mandatory nature of the settlement conference. Judge Wood's explanation that the settlement conference process was "non-binding" meant that parties who attend can disagree and decline to enter into a settlement agreement. Here, Caspersons would have retained the right to decline the settlement agreement if they had attended the settlement conference. They chose not to attend. This Special Master recognizes that the wording of Judge Wood's letter might have been confusing, but holds that it did not change the mandatory nature of the settlement conference.

The Caspersons and IDWR pointed out that the *Portneuf Settlement Agreement* did not include subcase 29-13406 and did not list the elements of that water right in its attached proposed Partial Decrees. In addition, subcase 29-13406 is subject to an *Amended Claim*, an *Amended Director's Report* and an *Objection* which have not been resolved. The Caspersons correctly argue that the *Order on Motion to Enforce Settlement* should not apply to 29-13406.

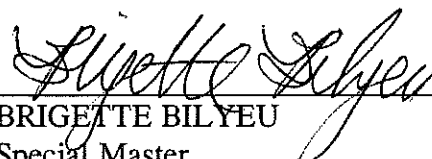
IV. CONCLUSION

Mandatory Settlement Conferences are critical to the SRBA process. As this Special Master noted in the *Order on Motion to Enforce Settlement*, participation in settlement conferences is mandatory, but settlement is not mandatory for parties who participate in good faith. In such situations, the parties retain their ability to go to trial. However, parties who ignore court orders for mandatory settlement conferences may be bound by the agreement reached by the other parties.

This Special Master must follow the precedent of the SRBA District Court which recently enforced a settlement agreement on parties who failed to attend a mandatory settlement conference. In the *Order on Order to Show Cause Hearing Enforcing Settlement Agreement; and Order Staying Discovery and Trial Schedule on Basin -Wide Issue 5-34* (Subcase 91-0005-34) (March 15, 2001) the Court considered a similar set of facts to the facts involved here. As previously discussed more fully in *Order on Motion to Enforce Settlement*, the Court issued an order setting a mandatory settlement conference. The Caspersons were sent notice of the mandatory settlement

conference. The Caspersons failed to attend the mandatory settlement conference. The Caspersons did not notify the court of their inability to attend the settlement conference. The Caspersons did not seek any rescheduling of the mandatory settlement conference. The attending parties reached an agreement after extensive work by the parties, counsel, IDWR, and Judge Wood. Therefore, this Special Master concludes that the Caspersons are bound to the *Portneuf Settlement Agreement* as to 29-13407. The Caspersons, however, correctly noted that 29-13406 was not attached to the *Portneuf Settlement Agreement* and still has issues unresolved as to the *Amended Claim, Director's Report, and Objection*. Therefore, the *Motion to Reconsider* is **granted** as to 29-13406. The Caspersons are not bound to the *Portneuf Settlement Agreement* for 29-13406.

Dated July 12, 2005.


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER ON MOTION TO RECONSIDER was mailed July 13, 2005, with sufficient first-class postage to the following:

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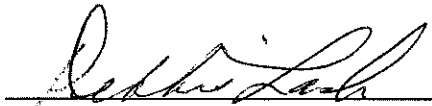
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