

**RINGERT
CLARK**
CHARTERED
LAWYERS

September 23, 2005

Transmitted by Facsimile

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Re: Subcase Nos. 65-5033C, 65-3681 and 65-22621 Motions to Alter/Amend

Dear Counsel:

I am writing to you pursuant to Special Master Booth's Order Granting Joint Motion to Reschedule and Amended Scheduling Order in the above-referenced subcases. As you know, we have a mandatory settlement conference in these subcases scheduled for 10:00 a.m. at IDWR's offices on Friday, September 30, 2005. According to that Order, I am to circulate a draft stipulated statement of facts. This correspondence constitutes a proposed stipulated statement of facts.

My view of the facts that must be stipulated to is shaped by the two Motions to Alter or Amend that have been filed: one by the State of Idaho, and the second by Ellis. Each of these Motions to Alter or Amend raises a discrete issue(s) that I believe can be addressed by a very simple stipulation adopting the Findings of Fact made by Special Master Cushman without adopting his Conclusions of Law.

1. Ellis' Motion to Alter or Amend

The Ellis' Motion to Alter or Amend alleges that a Finding of Fact in the Special Master's Recommendation "is erroneous and contrary to evidence as is confirmed and borne out

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by IDWR correspondence dated April 15, 1997 and March 15, 2000." The Finding of Fact that Ellis alleges to be erroneous is the following:

"The Ringels irrigated approximately 35 acres with water diverted from Chipps Creek from approximately 1981 to the present."

To the extent that Ellis is arguing that the Finding of Fact must be changed because water was not used on the property in 1997 and/or 2000, I would argue that evidence of non-use of the water right after November 18, 1988 (the date that Ira Peterson filed his notice of claim to water right no. 65-05033) is irrelevant. The fact is that, as already decided on a motion for summary judgment *in this case*, the Forfeiture Tolling Rule is established, binding precedent on the Special Master, and prevents the Court from considering any evidence of forfeiture of a water right after an SRBA notice of claim is filed for that water right. It is my sincere hope that Ellis will abandon this issue given the precedents both in the SRBA and in this case. I would be happy to provide the decisions that address the Forfeiture Tolling Rule if necessary. I also would be happy to discuss the Forfeiture Tolling Rule and the cases addressing it with any party to assist in their understanding.

Given my understanding of the Forfeiture Tolling Rule (and my hopes that other counsel will agree with me that it is binding precedent in this case), I don't believe that any change to the Special Master's existing Findings of Fact are necessary to decide this issue - in fact, I believe it is a non-issue.

2. State of Idaho's Motion to Alter or Amend

The State's Motion to Alter or Amend is based upon two purported errors: first, the State alleges that the Special Master converted part of a natural flow water right into a storage water right without analysis or basis; second, the State argues that the accomplished transfer recommended by the Special Master occurred when Ringel did not have an ownership interest in the water right sufficient to permit the change.

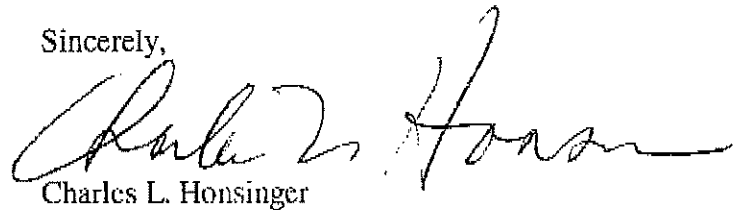
As to the first ground for the State's Motion, at this point, Ringel will agree that the right was not converted into a storage right, and thus no facts are necessary to help the Special Master decide that issue. As to the second ground, the Special Master's Recommendation contains sufficient factual findings for the issue to be heard, and no additional factual grounds need be specified.

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It is my hope that we can agree that the Findings of Fact made by Special Master Cushman are a sufficient factual basis for the issues that need to be decided in this case prior to the Settlement Conference scheduled for next Friday. Beyond that, it is my hope that we can agree to a complete settlement before that time, thereby obviating the need for such a conference.

I'd ask that each of you please consider this proposal carefully and contact me with your reaction. Thank you for your attention to this matter.

Sincerely,


Charles L. Honsinger

cc: Clients (by facsimile)



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FAX COVER LETTER

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Time:

Date: September 23, 2005

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SENDER: Charles L. Honsinger

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ADDITIONAL INFORMATION: