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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) Subcases 45-10480 (Smyer), 45-10481
Case No. 39576) (Smyer),
) 45-10502 (Warthen), 45-12906 (Smyers)
) and
) 45-13669 (Warthen)
)
) ORDERS

A hearing on various matters in the above five subcases was held on March 2, 2006. Michael P. Tribe appeared for Kevin Smyer and Norman and Delores Smyer; Shelley M. Davis appeared for Earl Warthen; David L. Negri appeared for the United States of America, Department of Agriculture, Forest Service, along with Steve Spencer; and Chris M. Bromley appeared for IDWR.

The parties argued cross motions for summary judgment which were taken under advisement. Each of the remaining matters and their disposition are reviewed below.

THEREFORE, IT IS ORDERED that:

1. The trial set for March 8, 2006, in subcases 45-10480, 45-10481, 45-10502, 45-12906 and 45-13669 is **vacated**;
2. The parties' *Stipulation to Remove Sub-Case No. 45-13669 from the Trial Schedule Presently Adopted for Sub-Case Nos. 45-10480, 45-10481, 45-10502 and 45-12906* is **granted**;
3. The Smyers' *Motion in Limine to Exclude Memorandum Decision and Evidence from Administrative Hearing for Water Right No. 45-0292 in any Proceedings Regarding Subcase Nos. 45-10480, 45-10481, 45-12906 and Earl Warthen's Objection to Motion in Limine* are **held in abeyance** pending any subsequent trial;
4. Earl Warthen's *Motion to File Amended Notice of Claim* (source, point of diversion, place of use and priority date) in subcase 45-13669 is **granted**. IDWR shall

prepare and file with the SRBA Court no later than **Friday, June 9, 2006**, its recommendation concerning amended claim 45-13669; objections to the amended claim shall be filed no later than **June 30, 2006**; responses shall be filed no later than **July 14, 2006**; and a status conference shall be held by telephone on **Thursday, August 10, 2006, 10:00 a.m.**; and

5. Earl Warthen's *Motion for Leave of the Court to File a Late Claim*, filed in subcase 45-10502, is moot because the matter must be determined by SRBA Presiding Judge John M. Melanson.

DATED March 3, 2006.


TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

NOTE: During the March 2, 2006 hearing, the Special Master mistakenly granted Earl Warthen's *Motion to Amend Claim No. 45-10502*. The *Motion* was not then set for hearing and Norman and Delores Smyer filed their *Objection to Earl Warthen's Motion to Amend Claim No. 45-10502*. Mr. Warthen's *Motion* and the Smyers' *Objection* in subcase 45-10502 will be heard on Thursday, March 9, 2006, 10:00 a.m.

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDERS was mailed on March 03, 2006, with sufficient first-class postage to the following:

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