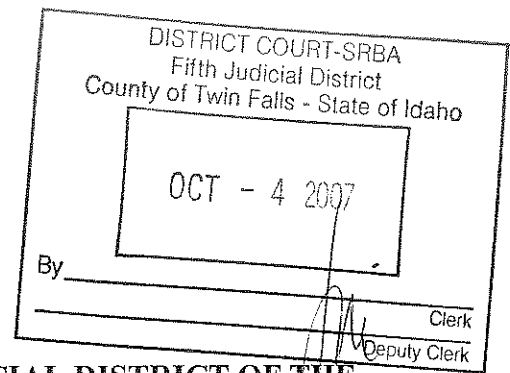




**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA

Case No. 39576

) Subcases: 55-10288B, 55-10289B,
) 55-10290B, 55-10292B, 55-10293B, 55-
) 10295, 55-10296, 55-10297B, 55-10298, 55-
) 10299B, 55-10300, 55-10301B, 55-10303B
) and 55-13451 (LU Ranches)
)
) **SCHEDULING ORDER ON REMAND**
) **AND NOTICE OF STATUS**
) **CONFERENCE ON SETTLEMENT OF**
) **COW CREEK ALLOTMENT CLAIMS**
)
)

This matter came before the Court pursuant to a status conference on remand held September 18, 2007. At the status conference counsel for both parties indicated that the parties would be able to reach an agreement as to the priority dates for all of the claims located within the boundaries of the Cow Creek Allotment. These claims include 55-10295, 55-10296, 55-10297B, 55-10298, 55-10299B and 55-10300.

Counsel indicated that the parties would not be able to come to an agreement on the remainder of the claims, which include claims located in the South Mountain Allotment (55-10288B, 55-10289B, 55-10290B, 55-10292B, 55-10293B) and the Cliff's Allotment (55-10303B, 55-13451). As to the remaining six claims the Court intends to decide the matter based on the existing record and the application of the Idaho Supreme Court's reasoning in *LU Ranching Co. v. United States*, 144 Idaho 89, 156 P.3d 590 (2007) and *Joyce Livestock Co. v. United States*, 144 Idaho 1, 156 P.3d 502 (2007). The Court does not intend to re-open the matter up to the taking of new evidence.

The remaining claims are to different water sources located on federal land. The claims are based on the beneficial use of water used in conjunction with various private

ranching property prior to the enactment of the Taylor Grazing Act and/or or base ranch properties after the enactment of the Taylor Grazing Act. LU Ranches ultimately acquired these properties together with any appurtenant water rights. The instruments in the chains of title for the various properties are either silent or non-specific as to the scope of any appurtenant water rights.

In *Joyce*, the Supreme Court held that when an instrument is silent regarding water rights established by a private party on public land the water rights transfer as a matter of law as appurtenances to the privately owned base ranch property. The Supreme Court's ruling applies both prior to and following the implementation of the Taylor Grazing Act.

Each of the water right claims has a separate pedigree or history. Part of the problem the Court had in sorting through the findings in the proceedings before the Special Master was that the earliest use established by the Special Master for one of the water rights was imputed to all of the water rights claimed by LU Ranches despite the different pedigrees. This oversimplification of the process required the Court to parse out and separately trace the chain of title and related water use for each of the claims to determine the scope of the water right established by the various predecessors-in-interest.

On remand the Court must still go through this same process for each claim, albeit applying the reasoning of the Supreme Court regarding the water rights transferring as appurtenances to private or base ranch property as a matter of law. In furtherance of this process the Court seeks the following from the parties:

From LU Ranches: For each remaining claim briefly trace the chain of title back to the earliest date the water right can be established and specify the evidence in the record that is being relied on to establish the scope of the water use. If the earliest use relies on the legal significance of the issuance of a particular type of grazing permit issued, then explain why. The Court already traced the chain of title in the *Memorandum Decision* from which the appeal was taken. *See pages 30-40*. Counsel may rely on the Court's findings of the chains-of title, in part or in whole, and state which specific evidence in the record is being relied on to establish the earliest priority and scope of the water right.

From the United States: The United States will have the opportunity to file a response to LU Ranches' statement on priority dates.

Following the briefing the Court will consider the matter deemed fully submitted for decision.

Therefore, THE FOLLOWING ARE HEREBY ORDERED:

1. **Notice of hearing:** A status conference on the Cow Creek Allotment claims, which the parties represented could be settled, will be held on this matter on **October 16, 2007, at 2:30 p.m.** at the Snake River Basin Adjudication Courthouse, 253 3rd Avenue North, Twin Falls, Idaho. Telephone participation will be available by calling 1-918-583-3445 and entering 406128 when prompted.
2. **LU Ranches' deadline for submitting statement on priority dates: November 1, 2007.**
3. **United States' deadline for filing response: November 30, 2007.**

Dated October 4, 2007


JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SCHEDULING ORDER ON REMAND AND NOTICE OF STATUS CONFERENCE ON SETTLEMENT OF COW CREEK ALLOTMENT CLAIMS was mailed on October 04, 2007, with sufficient first-class postage to the following:

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