

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
JUN 16 2008	
By _____	Clerk
Deputy Clerk	

**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	)	Subcase 63-18957
	)	
Case No. 39576	)	ORDER GRANTING MOTION TO
	)	ENTER UPON LAND FOR INSPECTION
	)	OF WATER DIVERSION AND
	)	DISTRIBUTION SYSTEM / MOTION TO
	)	COMPEL
	)	
	)	ORDER VACATING TRIAL AND
	)	REQUESTING PROPOSED TRIAL
	)	SCHEDULE

On June 11, 2008, The Terteling Company, Inc., objector in the above-captioned subcase, through its attorney Charles L. Honsinger, filed a *Motion to Enter Upon Land for Inspection of Water Diversion and Distribution System / Motion to Compel*, seeking an order allowing access for the objector's expert to inspect the water diversion and distributions system of the Owyhee Motorcycle Club, Inc. The matter was heard on June 16, 2008. The objector having demonstrated good cause, and in the interests of justice, the motion is hereby **granted**.

In granting objector's *Motion*, this Special Master notes that the *Director's Report* for the water right claim recommends a quantity of 0.16 cfs and an annual volume limitation of 142.40 AFY. This annual volume limitation is clearly in error in relation to the quantity of 0.16 cfs – as 0.16 cfs running 24 hours a day, year round, would amount to 115.86 AFY.¹ Therefore, statutorily provided *prima facie* weight of the *Director's*

¹ A diversion rate of approximately 0.197 cfs would be required in order to divert 142.40 AFY, again running 24 hours a day, year round. Because one of the purposes of use of the water right claim is for dust abatement, it is inconceivable that such use would require diversion of water in all seasons of the year.

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Report would not apply to the annual volume limitation as reported. Accordingly, in the absence of trial testimony from qualified experts regarding the quantity element of the water right claim, this Special Master would be concerned about the validity and accuracy of the information that may be presented at trial in the situation where the *Director's Report* is known to be in error as to annual diversion volume. It is for this reason that the *Motion* is granted.

The currently scheduled trial date will unlikely allow sufficient time for the inspection of the diversion and distribution works by the objector's expert, the preparation of an expert report, the review of that report by claimant's expert, and the taking depositions that may be necessary. **Therefore, the July 17, 2008 trial date is vacated.** Counsel for the claimant and objector are ordered to confer as to a new trial schedule which shall include deadlines for the following:

- 1) The date and time for the inspection of the diversion and distribution works;
- 2) The date for disclosure of a report prepared by objector's expert;
- 3) The date for disclosure of a rebuttal expert report;
- 4) The deadline for the completion of depositions of the parties expert witnesses;
- 5) The deadline for disclosure of fact witnesses;
- 6) A trial date (please contact Diana Delaney at 736-3011 for trial date / location)

The parties are ordered to file a proposed joint schedule including these dates and deadlines **no later than Tuesday, June 24, 2008**. In the event that the parties are unable to agree as to any part of a schedule, counsel shall contact the Clerk of the Court and request a hearing date / time for a scheduling conference.

Dated June 14, 2008



THEODORE R. BOOTH
Special Master
Snake River Basin Adjudication

Therefore, if the 142.40 AFY number is correct, the rate of diversion would necessarily have to be something much greater.

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CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING MOTION TO ENTER UPON LAND; ORDER VACATING TRIAL & REQUESTING PROPOSED TRIAL SCHEDULE was mailed on June 16, 2008, with sufficient first-class postage to the following:

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