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NICHOLAS B. SPENCER
DANIEL L. STECKEL
Deputy Attorneys General
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098
Telephone: (208) 327-7900
FAX: (208) 327-7866

Attorneys for IDWR

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 No. 36-11584
	)	
Case No. 39576	)	JOINT MOTION TO VACATE
	)	TRIAL SETTING AND SET
	)	SUBCASE FOR MANDATORY
	)	SETTLEMENT CONFERENCE
	)	

DESCRIPTIVE SUMMARY

This document is the joint motion of IDWR and claimant/objector Land View Fertilizer, Inc. to vacate the trial presently set in this subcase for July 7, 1995, and to set the subcase for mandatory settlement conference.

JOINT MOTION TO VACATE TRIAL SETTING
AND
SET SUBCASE FOR MANDATORY SETTLEMENT CONFERENCE

COME NOW the Idaho Department of Water Resources (IDWR) and Land View Fertilizer, Inc. (Land View), successor in interest to claimant/objector Patterson Farms of Idaho, Inc. (Patterson Farms), by and through their respective undersigned counsel of record, and move the Court for the entry of an order vacating the trial setting in this subcase and, in lieu thereof, setting this subcase for JOINT MOTION TO VACATE TRIAL SETTING AND SET SUBCASE FOR MANDATORY SETTLEMENT CONFERENCE, Page 1

mandatory settlement conference. This motion is made for the following reasons:

1. On April 20, 1995, a scheduling conference was held in this subcase before the Honorable Terrence A. Dolan, SRBA Special Master for Basin 36 (Reporting Area 3). At that time counsel for claimant/objector Patterson Farms of Idaho, Inc., reported that Patterson Farms had filed for bankruptcy protection, and that the property in question, including appurtenant water rights, had been purchased by Land View Fertilizer, Inc. He further reported that he needed to discuss with Land View whether it wished to continue to press the objection that had originally been filed on behalf of Patterson Farms in this subcase.

2. Legal counsel for both IDWR and Patterson Farms then reported that, if Land View wished to continue to press the objection in question, that objection very likely could be resolved by IDWR sending a water agent to the property to confirm the existence of the additional uses asserted in the objection and to determine how much, if any, additional water within the total quantity claimed should be recommended for those additional uses. Legal counsel further contemplated that this subcase could thereafter be resolved through the filing of a Standard Form 5 with the Court.

3. However, to address the contingency that IDWR and the claimant/objector might not be able to resolve the objection, Special Master Dolan set the subcase for a one day trial to be held in Rupert on Friday, July 7, 1995. This trial setting was

JOINT MOTION TO VACATE TRIAL SETTING AND SET SUBCASE
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memorialized in a trial scheduling order entered by the SRBA Court on April 27, 1995.

4. On June 14, 1995, IDWR was informed by letter from legal counsel for Patterson Farms that Land View had decided to continue to press the objection to recommended water right no. 36-11584. Also enclosed with that letter was a copy of a Standard Form 3 that had been filed with the Court. This form substituted Land View for Patterson Farms, and indicated that legal counsel for Patterson Farms would represent Land View in this subcase.

5. On or about June 26, 1995, Mr. Steve Clelland, a Senior Water Rights Agent at IDWR's Southern Region office in Twin Falls met with Mr. Roy Young, agent for Land View, at the subject property near Paul, Idaho.¹ It appears from Mr. Clelland's discussion with Mr. Young, coupled with Mr. Clelland's inspection of the place of use, that Land View is in the process of making significant modifications both to the diversion system for this right and to the uses of water undertaken pursuant to it. Moreover, it appears that these changes implicate not only water right no. 36-11584, to which Patterson Farms had filed an objection, but also water right no. 36-15347, the companion water right to which no objection has been filed.

6. At this juncture it is clear that representatives of Land View must meet with IDWR representatives to discuss (1) how much,

¹ Mr. Clelland is the water agent who conducted the original field examination of this water right and prepared its recommendation for the director's report for Basin 36 (Reporting Area 3).

if any, of the change in question can be brought under the umbrella of water right nos. 36-11584 and 36-15347, as originally claimed and presently used, and (2) what parts of the change, if any, might need to be addressed through IDWR's transfer and permitting processes.

7. Legal counsel for Land View and IDWR therefore request that the trial presently set in this subcase be vacated on the following grounds: (1) a trial at this time is unnecessary because, (2) counsel believe the objection can be resolved through negotiation, and neither Land View nor IDWR wishes to have the case tried at this time; (3) new information has been brought to light which must be further explored and developed through discussion between representatives of Land View and IDWR; and (4) because of this, neither counsel for Land View nor counsel for IDWR is presently prepared to go to trial on the uses of water being made pursuant to this right.

8. Accordingly, both IDWR and Land View request that the present trial setting be vacated and the subcase be set over for a mandatory settlement conference to be held at some time later in the summer that is mutually convenient to the Court, counsel, and representatives of Land View and IDWR.²

² Counsel for IDWR notes that with the press of scheduled litigation, settlement conferences already set, and the field season investigation responsibilities of IDWR's adjudication water agents, it will be difficult for IDWR effectively to participate in such a conference until after the end of August. IDWR suggests that the settlement conference could perhaps be set for either the afternoon of September 7th or the morning of September 20th. IDWR legal counsel will be in Twin Falls for other settlement

DATED this 5th day of July, 1995.


NICHOLAS B. SPENCER
Deputy Attorney General
Idaho Department of Water Resources

DATED this 5th day of July, 1995.


ROGER D. LING, Esq.
Attorney for Land View Fertilizer, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of July, 1995, I served true and correct copies of the foregoing JOINT MOTION TO VACATE TRIAL SETTING AND SET SUBCASE FOR MANDATORY SETTLEMENT CONFERENCE on the each of the following persons in the manner specified below.

VIA FACSIMILE TRANSMISSION

Nicholas B. Spencer
Deputy Attorney General
Idaho Department of Water Resources
1301 North Orchard St.
Boise, Idaho
FAX NO. (208) 327-7866

VIA FIRST CLASS MAIL

U. S. Department of Justice
Environment and Natural Resources Section
550 West Fort Street, Box 33
Boise, Idaho 83734


ROGER D. LING

conferences at that time and could more easily travel on to Rupert from there to attend a settlement conference in the present subcase.

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