

Movant's Name:

UNITED STATES OF AMERICA

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JAN 19 1995

Department of Water Resources
Adjudication Bureau

Attorneys' Names and Addresses:

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JAN 18 1995

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Counsel for the United States of America

**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. 34-00436
	)	
CASE NO. 39576	)	MOTION TO VACATE
	)	MANDATORY SETTLEMENT
	)	CONFERENCE
_____	)	

DESCRIPTIVE SUMMARY

This document is a motion to vacate a mandatory settlement conference set for February 7, 1995, in the above referenced subcase.

Motion

Pursuant to SRBA Administrative Order 1, the United States, by and through counsel of record, respectfully moves the Court for an Order vacating the mandatory settlement conference in the above referenced subcase for the reason that the claimant, Lloyd Bingham, is out of the country on a religious mission for the next several months. The Idaho Department of Water Resources has stated that they do not oppose this motion. These facts are set forth in more detail below.

Memorandum

The subcase at issue involves Lloyd Bingham, claimant and the United States Department of Agriculture, Forest Service (hereinafter "Forest Service"). The Forest Service filed an objection to Mr. Bingham's claim because the point of diversion recommended in the Director's Report was located on Forest Service property. After meeting with Mr. Bingham, the parties determined that the point of diversion was inadvertently listed on National Forest land and that Mr. Bingham's intent was to locate the point of diversion on his adjoining property.

The parties thereafter reached an agreement whereby Mr. Bingham would amend his point of diversion to locate it on his land and the Forest Service would withdraw its objection. This agreement was reduced to writing and a joint settlement agreement executed by both parties on August 9, 1994. A copy of that agreement is attached.

Immediately after reaching this agreement, Mr. Bingham and his spouse left the United States for a year long religious mission overseas. As a result of Mr. Bingham's inability to attend the conference presently scheduled for February 7, 1995 in Arco, Idaho, the United States respectfully requests that the conference date be vacated and reset at a later date when Mr. Bingham returns.

Conclusion

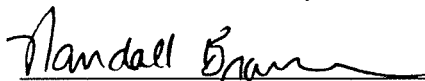
For the foregoing reasons, the Court should grant the Motion to vacate the mandatory settlement conference in the above referenced subcase.

DATED this 18 day of January, 1995

Respectfully submitted,

LOIS J. SCHIFFER
Acting Assistant Attorney General
Environment and Natural Resources
Division

BETTY H. RICHARDSON
United States Attorney



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CERTIFICATE OF MAILING

I CERTIFY that on the 18th day of January, 1995, I served the original and copies of this Motion to Vacate Settlement Conference:

By Facsimile To:

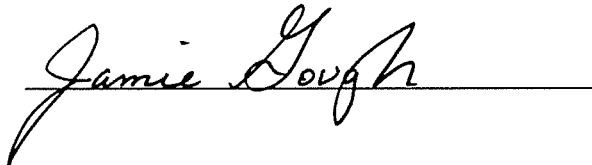
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, Idaho 83303-2707

By U. S. Mail, postage prepaid on:

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, Idaho 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, Box 33
Boise, Idaho 83724

Lloyd Bingham
P. O. Box 21
Moore, Idaho 83255

A handwritten signature in cursive script, reading "Jamie Gough", is written over a horizontal line.

**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. 34-00436

CASE NO. 39576) **ORDER**

_____)

Upon consideration of the United States' Motion to Vacate the February 7, 1995 mandatory settlement conference, finding sufficient cause, the motion is hereby GRANTED and the February 7, 1995 conference is vacated.

Dated: January ____, 1995

Brigette Bilyeu
Special Master
Reporting Area 34

JOINT SETTLEMENT AGREEMENT

WHEREAS, the parties, the United States and Lloyd Bingham, have agreed to a resolution of United States objection to water right claim number 34-00436 in the Snake River Basin Adjudication; and

WHEREAS, the Court of the SRBA, which has jurisdiction over water right claim number 34-00436, has stayed all proceedings by order of Judge Hurlbutt on April 19, 1994;

WHEREAS, the Court will not accept documents until such time as the Court deems appropriate;

WHEREAS, the role of the Idaho Department of Water Resources (IDWR) pursuant to the recently enacted adjudication statutes and the necessity to include the IDWR as a party in any stipulated agreement has not been determined;

THE PARTIES AGREE AS FOLLOWS:

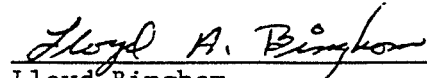
1. The point of diversion as recommended in the Director's Report is incorrect. The following point of diversion should be deleted: T5N, R24E, Section 4, NWSESE. The following point of diversion should be inserted: T5N, R26E, Section 4, NWSESE.
2. A copy of the claim as recommended in the Directors Report is attached.
3. All revised recommendations in the IDWR Director's Report concerning this water right claim and future decrees, whether partial or final, should include the modification as described in paragraph 1.
4. The United States objection to this water right shall be withdrawn.
5. The objection to an "unknown" water right claim owned by the USDA Forest Service filed by Lloyd Bingham is hereby resolved and withdrawn.
6. All parties agree to bear their own costs and attorneys fees in connection with this matter.
7. This agreement is entered into and executed voluntarily by all parties in good faith, and without any fraud, misunderstanding, overreaching, misrepresentation, duress, or undue influence, whatsoever.

8. This agreement resolves all objections of United States to water right 34-00436.

9. This agreement resolves all objections of Lloyd Bingham to the "unknown" water right.

10. The parties agree to submit to the Court after the lifting of the stay, a stipulation to resolve the United States objection. Such stipulation will incorporate the terms of this settlement agreement in a format acceptable to the Court.

Dated: Aug 9, 1994


Lloyd Bingham

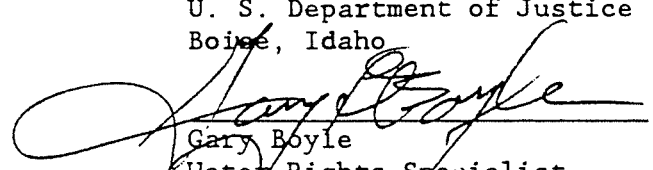
Dated: Aug. 9, 1994

UNITED STATES OF AMERICA
on behalf of the
Forest Service

Daria J. Zane
Attorney
General Litigation Section
Environment & Natural Resources
Division
U. S. Department of Justice

By:


Randall J. Bramer
Special Assistant United States
Attorney
U. S. Department of Justice
Boise, Idaho


Gary Boyle
Water Rights Specialist
Intermountain Region
USDA Forest Service
Ogden, Utah

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE		QUANTITY	BASIS OF
				FROM	TO		

SOURCE: BIG LOST RIVER

TRIBUTARY: SINKS

34-00436	LLOYD A. BINGHAM P.O. BOX 21 MOORE ID 83255	05/21/1894	IRRIGATION	05-01	10-15	.8	CFS	DECREED
TOTAL QUANTITY:						.8	CFS	

POINT OF DIVERSION:
T05N R24E S04
PLACE OF USE: IRRIGATION

NWSESE

T05N R26E S33
SENW 37.0

REMARKS: WATER DELIVERED THROUGH THE MOORE DIVERSION, WESTSIDE DITCH.
THIS RIGHT IS USED IN COMBINATION WITH RIGHT NO. 34-02426A, AND
USE OF THE TWO RIGHTS IS LIMITED TO A TOTAL COMBINED DIVERSION
RATE OF 1.06 CFS AND TO A TOTAL COMBINED ANNUAL CONSUMPTIVE USE
VOLUME OF 92.5 ACRE FEET AND TO THE IRRIGATION OF A COMBINED
TOTAL OF 37 ACRES IN A SINGLE IRRIGATION SEASON.
0.093 CFS OF RIGHT NO. 34-02426A IS LIMITED TO USE FOR
CONVEYANCE LOSSES IN DELIVERY OF THIS RIGHT AND RIGHT NO.
34-02426A.

34-00312A	DONALD S. HYMAS GEORGANNA C. HYMAS RT. 1, BOX 26 MOORE ID 83255	05/31/1894	IRRIGATION	05-01	10-15	.74	CFS	DECREED
TOTAL QUANTITY:						.74	CFS	
CONSUMPTIVE USE:						90.0	AFY	

POINT OF DIVERSION:
T05N R26E S04
PLACE OF USE: IRRIGATION

NWSESE

T05N R26E S33
SENW 36.0

REMARKS: WATER DELIVERED THROUGH THE MOORE DIVERSION, WESTSIDE DITCH.