

4-18

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UNITED STATES OF AMERICA

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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	)	Subcase no. 34-04179
	)	
Case No. 39576	)	MOTION FOR CONTINUANCE
	)	

Descriptive Summary

This is the United States' motion for a continuance on the deadline for filing a motion for summary judgment and supporting brief and hearing on summary judgment for subcase no. 34-04179.

Motion

The United States hereby moves for a continuance on the scheduled dates to file a motion and brief in support of summary judgment and for the hearing for summary judgment on subcase 34-04179. The deadline for summary judgment briefing for this subcase is currently set for April 23, 1996. The summary

judgment hearing date is currently scheduled for April 30, 1996. The United States requests that hearing and filing deadlines be extended until after a memorandum decision is rendered in Basin-Wide Issue No. 12.

In support of its motion the United States states the following:

1. The United States is the only party to subcase 34-04179.
2. The SRBA Court set the current summary judgment deadline in a Order dated March 12, 1996. In her order, the Special Master stated that the Court will not continue proceedings because a motion to designate a basin-wide issue has been filed. Id.
3. Subsequent to the scheduling conference, the Court designated Basin-Wide Issue No. 12. Basin-Wide Issue No. 12 addresses the issue of form and content of state-law based stockwatering rights.
4. The issues presented in subcase 34-04179 involve the same legal issues as those that will be resolved by the decision in BW #12. The BW #12 determination of form and content of the elements of a stockwater right will control that issue throughout the SRBA. Any decision by a Special Master while the identical issue is pending in BW #12 would be premature.
5. The United States' briefing on the issues presented for summary judgment in subcase 34-04179 will be duplicative of its briefing in Basin-Wide Issue No. 12. The

party's and judicial resources will be wasted by proceeding on identical issues while the issue is pending in BW # 12.

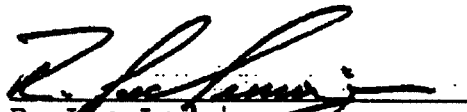
6. A decision rendered in subcase 34-04179 may be inconsistent with the decision rendered in Basin-Wide Issue No. 12 on identical issues of law. However, the decision in the BW No. 12 will be controlling.

7. An appeal of an adverse ruling in subcase 34-04179, while BW No. 12 is pending, will result in further unnecessary expenditure of judicial and party's time and resources.

8. The decision in Basin-Wide Issue No. 12 will directly impact the United States' position on the form and content of its state-law based claims to stockwater, potentially mooted the need for summary judgment procedures in subcase no. 34-04179.

WHEREFORE, for the foregoing reasons, the United States respectfully requests that the Court continue summary judgment deadlines for subcase 34-04179 until after a decision is rendered in Basin-Wide Issue No. 12. Oral argument for BW #12 is currently scheduled for May 15, 1996. The decision in the basin-wide issue will dictate the most efficient and expeditious manner in which to proceed in subcase 34-04179. Depending upon the outcome of the BW # 12 decision, the need for summary judgment procedures in 34-04179 may be moot.

Respectfully submitted this 18th day of April, 1996.

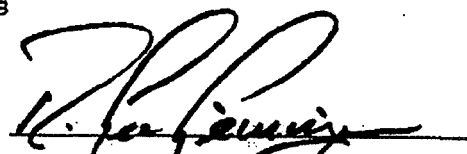

R. Lee Leininger
Attorney, ENRD

CERTIFICATE OF SERVICE

I certify that on the 18th day of April, 1996, I served a true and correct copy of the foregoing Motion for Continuance in Subcase 34-04179 via first-class U.S. mail upon the following individuals:

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SR3A Court / IDWR (ATTN. Matt Houston)

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