

RICHARD L. HARRIS
ATTORNEY AT LAW
1023 Arthur Street
P. O. Box 1438
Caldwell, Idaho 83605
Telephone: (208) 459-1588
Fax: (208) 459-1300

Attorney for Joyce Livestock

RECEIVED

APR 25 1996

Department of Water Resources
Adjudication Bureau

4-22

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

Subcase 57-11124

**MOTION TO VACATE AND CONTINUE
SCHEDULING CONFERENCE AND FOR
EXPEDITED HEARING**

COMES NOW, JOYCE LIVESTOCK, by and through their Attorney for Record, RICHARD L. HARRIS, and moves that the Court vacate and continue the scheduling Conference set for April 24, 1996, at 10:00 A.M., in Twin Falls, Idaho and to expedite the hearing on this Motion for the following reasons:

I.

Late in the day of April 19, 1996, Counsel's office was made aware of the scheduling conference set for April 24, 1996. Exhibit (A) is a copy of the Certificate of Mailing of the Order setting the conference Exhibit (A) shows that counsel was not included on the service requested because there is insufficient time list for the Order.

II.

Counsel already had scheduled discovery matters for April 24, 1996, when he was shown the order setting the scheduling conference. Those previously scheduled matters are critical to a previously scheduled trial and must be completed to meet deadline.

COPY

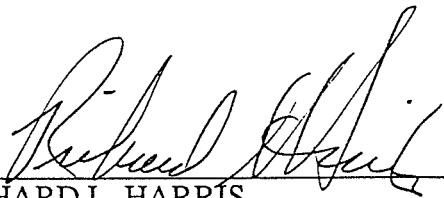
III.

Attached to this Motion as Exhibit (B) is a narrative setting forth matters relevant to this Motion for Continuance, and this motion incorporate those matters as reasons for the requested action. Exhibit (B) was sent to counsel for the BLM by facsimile on April 11, 1996.

IV.

An expedited hearing is requested because there is insufficient time to provide the notice required by the Idaho Rules of Civil Procedure, and Counsel's clients will be prejudiced if such expedition hearing is not granted. Counsel's office has already conferred with Counsel for the BLM and has arranged a time for telephone conference with said Counsel and is now awaiting word from Counsel for IDWR and will then confirm with Special Master on the time at 9:00 A.M., April 23, 1996, for such hearing to take place.

DATED; This 22nd day of April, 1996.



RICHARD L. HARRIS
Attorney For Joyce Livestock

CERTIFICATE OF SERVICE

I the undersigned to hereby certify that a true and correct copy of the foregoing instrument was served on the following this 22nd day of April, 1996.

Clive Strom
Attorney General Office
Statehouse Mail
Boise, Idaho 83720
Fax: (208) 334-2690

✓ United States Mail
 Hand Delivered
✓ Facsimile

Fritz Holoman
Attorney for BLM
Washington, D.C.
Fax: (202) 305-0267

✓ United States Mail
 Hand Delivered
✓ Facsimile

Special Master Fritz X Haemmerle
Snake River Basin Adjudication
P. O. Box 2707
Twin Falls, Idaho 83303-2707

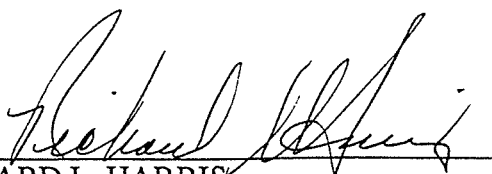
✓ United States Mail
 Hand Delivered
✓ Facsimile

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

✓ United States Mail
 Hand Delivered
 Facsimile

U. S. Department of Justice
Environmental and Natural Resources Division
550 West Fort Street, MSC 033
Boise, Idaho 83724

✓ United States Mail
 Hand Delivered
 Facsimile


RICHARD L. HARRIS

This is to advise you that I have been told that the Chipmunk Grazing Association has met and decided to retain my services in representing their interests in the Adjudication. My legal assistant spent Thursday and most of Friday reviewing claims and files which have been returned from the office prior counsel. Late Friday afternoon one of the clients asked about the procedure for a scheduling conference set for Wednesday, April 24, 1996. This was the first information we had received regarding the conference which had been scheduled. The client provided my office with a copy of the Order Setting Subcase For Scheduling Conference, showing the date and time of Wednesday, April 24, 1996 at 10:00 a.m. My office did not receive a copy of the Order. As you can see from the Certificate of Mailing, a copy of which is attached as Exhibit A, my name was not included on the list. Mr. Nettleton received a copy, but presumed that I did too and did not call to alert my office of the scheduling.

When we concluded our recent telephone conference I was under the impression that we would confer again once the representation of Chipmunk was settled and that a scheduling conference would be set during our next conference. I did receive a copy of the Order Vacating Prior Scheduling Order. As you can see from the Certificate of Mailing, a copy of which is attached as Exhibit B, my name was included on that certificate, but not on the Scheduling Order itself. When I received the April 10, 1996 Order Vacating the Prior Scheduling Order, and saw that it stated that "The court will schedule a new scheduling conference in the near future" I still believed that a telephone conference would be held during which we would set a scheduling conference.

Exhibit (B)

Once I saw the new Scheduling Conference Order I see that it was also entered on April 10.

The Scheduling Conference set for April 24, 1996 at 10:00 a.m. puts me at a real disadvantage. My schedule for that date is committed to discovery proceedings vital to a multiple day trial which has been set for sometime. The discovery proceedings must be completed as scheduled in order to meet deadlines for the trial. Had I received a copy of the Order setting the Scheduling Conference I could have perhaps rescheduled the discovery. But, at this late date it is not practicable to do so without endangering the trial date. I cannot risk the trial date because that would be doing my client a great disservice.

I would appreciate it if a new date could be set for the scheduling conference, or if I could be allowed to participate by telephone in the conference as currently scheduled. I can tell you that our review of the files and claims shows that there is much material which I must obtain in order to continue preparation in this case. For example, the files returned to my clients contained copies of neither of the Subclaims which are being tried: 57-10373 and 57-11124. My legal assistant will attempt to obtain those claims and copies of relevant IDWR documents from the IDWR on Tuesday, April 23, 1996. We will also be attempting to obtain copies of claims 57-04099 and 57-10770 relating to Joyce Livestock. They were not included in the files which were returned to Mr. Nettleton. We have asked clients Blackstock, Bass, and Brandau to carefully examine their files and determine whether we have copies of all their claims. We also have now determined that there is a real necessity of filing for permission to file objections to several claims filed by the BLM which were placed in a second book by IDWR and not seen by our clients at the time objections were filed. At least that is our understanding at this time, and we will be inquiring further into that matter on Tuesday at IDWR.

We will be filing an amended Motion to Consolidate. As Counsel for the BLM pointed out to us prior to our file review on Thursday and Friday, some of the claims which we identified for Joyce Livestock in the Motion to Consolidate are not stockwatering claims. Because of the deadline for filing the motion to consolidate which was imminent when my office was approached regarding representation we listed all the claims identified as those of Joyce Livestock. Our Amended Motion will delete the following claims, all of which were also identified by counsel for the BLM: 57-00001A, 57-00002, 57-00173, 57-00174, 57-00176, 57-00180A, 57-02293, 57-10428, 57-10488, and 57-10922. Those claims are for irrigation uses. However, our review of the files indicates that 57-04008 is a claim for both irrigation and

stockwatering purposes, thus we cannot delete it from our Motion until we can further review the IDWR files.

Our initial review of the files also indicates the need to review the original claims filed by our clients and compare them to the claims as styled by IDWR. We feel there is a real need to make this comparison in order to determine the basis for some of the conclusory statements made on the IDWR formats. None of those original claims are contained in the files which were returned to my clients.

I recognize that the on-again, off-again relationship between my clients and their prior counsel may have caused some disruption in the court's scheduling process. I regret that fact, but there is nothing I can do to repair that situation. If I am to represent these clients I can only prepare from this point on, and there is much preliminary work for me to do. I assure the court that if I am to remain in this case I will do everything I can to move with dispatch, and will in no case attempt to stall these proceedings. However, given the state of the clients' files, and the amount of inquiry needed I cannot be in a position by Wednesday, April 24, 1996 to accurately respond to all the issues listed in the Scheduling Conference Order which I have now seen.

If we can be granted a continuance of the Scheduling Conference for a two week period I should be able to respond to the issues. If no continuance is possible, but I am allowed to participate by telephone I can respond to some of the issues but will have to ask for more time as to the others. If such accommodation can be made, I can continue to represent these clients without doing harm to other clients whose interests demand that I adhere to my previously scheduled proceedings on Wednesday, April 24, 1996. I would appreciate your assistance in this matter, and would certainly appreciate the cooperation of counsel for the BLM. Counsel has certainly to this time been understanding and cooperative to my needs upon late entry into this case.

Very truly yours,

Richard L. Harris

CERTIFICATE OF MAILING

I Certify that a true and correct copy of the ORDER SETTING
SUBCASE FOR SCHEDULING CONFERENCE was mailed on APRIL 10, 1996,
with sufficient first-class postage to the following:

CHIPMUNK GRAZING ASSN
PO BOX 175
MARSING, ID 83639

CLIVE STRONG
DEP AG OFFICE OF ATTY GEN
STATEHOUSE MAIL
BOISE, ID 83720
Phone: 208-334-2400
Rep: STATE OF IDAHO

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

JOYCE LIVESTOCK
C/O PAUL NETTLETON
MURPHY, ID 83650

K. JACK HAUGRUD
U.S. DEPARTMENT OF JUSTICE
550 WEST FORT STREET, BOX 33
BOISE, ID 83724-0663
Phone: 202-272-4134
Rep: USDI BLM

USDI BLM
IDAHO STATE OFFICE
3380 AMERICANA TERRACE
BOISE, ID 83706

EXHIBIT A

CERTIFICATE OF MAILING

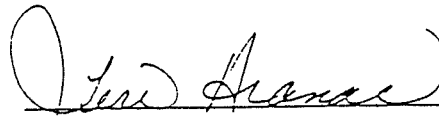
I certify that a true and correct copy of the ORDER VACATING PRIOR SCHEDULING ORDER was mailed on April 10, 1996, with sufficient first-class postage to the following:

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

The United States Department of Justice
Environment and Natural Resources Division
550 West Fort Street, MSC 033
Boise, ID 83724

Director of IDWR
P.O. Box 83720
Boise, ID 83720-0098

Richard Harris
P.O. Box 1438
Caldwell, ID 83605



Deputy Clerk

EXHIBIT B