

**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) **Subcases 51-12711 (USDI / BLM)**
) **and**
Case No. 39576) **51-12891, 51-12894, 51-12895B,**
) **51-12896B, 51-12897B, 51-12898B,**
) **51-12925 & 51-12954 (Brackett)¹**
)
) **ORDER VACATING HEARING ON**
) **REQUEST FOR EXTENSION OF**
) **TRIAL DATE AND TRIAL SETTING**
) **and SPECIAL MASTER REPORT AND**
) **RECOMMENDATION**

Findings of Fact

Director's Reports

The Director of the Idaho Department of Water Resources filed his *Director's Report, Irrigation and Other Uses, Reporting Area 6, Volume Two (IDWR Basin 51), Qualified Recommendations for Water Rights with Diversions in the State of Nevada* on November 24, 1998, for claims 51-12711, 51-12891, 51-12894, 51-12895B, 51-12896B, 51-12897B and 51-12898B.

The Director filed his *Director's Report for Late Claims & Misc. Claims, Domestic and Stockwater and Irrigation and Other Water Rights, Qualified Recommendations for Water Rights with Diversions in the State of Nevada (51-12925 & 51-12954)* on November 27, 2000.²

For each of the above 9 claims, the Director stated:
Water Right Claim number _____ is for water diverted in the State of Nevada. IDWR makes no recommendation to the SRBA District Court regarding whether or not this claim is for a valid water right or whether the

¹ The various Brackett entities include: Bert, Paula and Chet Brackett, Brackett Ranches, Ltd., Brackett Livestock, Inc., and C.E. Brackett Cattle Company.

² On December 23, 1999, former SRBA Presiding Judge Barry Wood entered an *Order Granting Motions to File Late Notices in Claim* in several subcases, including subcase 51-12925. On June 12, 2000, Judge Wood entered an *Amended Order Granting Motion to File Amended Notice of Claim* in subcase 51-12954.

elements claimed are appropriately described in the claim under Nevada law.

SOURCE: Jim Bob Creek [or Chimney Spring] in the State of Nevada is tributary to the Snake River Basin within the State of Idaho.

PLACE OF USE: The water is used on the following lands within the State of Idaho: [legal descriptions omitted].

PURPOSE OF USE:

[USDI / BLM] – The water is used within the State of Idaho for Stockwater, Wildlife, Stockwater Storage, Stockwater from Storage, Wildlife Storage, Wildlife from Storage.

[Brackett] – The water is used within the State of Idaho for Stockwater, Stockwater Storage and Stockwater from Storage.

PERIOD OF USE: The water is used within the State of Idaho from 01/01 to 12/31.

Objections

Chet Brackett, dba C.E. Brackett Cattle Company, filed an *Objection* to 51-12711 (USDI / BLM) on March 31, 1999, objecting to quantity, priority date, purpose of use and alleging the water right should not exist. Bert Brackett, Brackett Livestock, Inc., filed an identical *Objection* the same date.³

The United States of America, Department of Interior, Bureau of Land Management filed *Objections* in subcases 51-12891, 51-12894, 51-12895B, 51-12896B, 51-12897B and 51-12898B (Brackett) on March 31, 1999, objecting to priority date, point of diversion and place of use.

Chet Brackett, dba C.E. Brackett Cattle Company filed *Objections* in subcases 51-12891, 51-12894, 51-12895B, 51-12896B, 51-12897B and 51-12898B on April 1, 1999, objecting to priority date.

On January 22, 2001, the United States filed identical *Objections* in subcases 51-12925 and 51-12954 objecting to priority date, point of diversion and place of use.

³ An *Order Granting United States Motion to File Amended Notice of Claim* in subcase 51-12711 was entered on February 21, 2006. IDWR filed an *Amended Director's Report, Subcase No. 51-12711* on April 21, 2006. Chet Brackett dba C.E. Brackett Cattle Company, Bert Brackett dba Brackett Livestock, Inc., and Noy E. III and Paula Brackett, Brackett Livestock, Inc., filed identical *Amended Objections* in subcase 51-12711 on August 7, 2006, objecting to period of year. The same parties filed identical *Second Amended Objections* on September 29, 2006, objecting to name and address, purpose of use, period of year and alleging the water right should not exist.

Stay

On January 16, 2001, the Special Master entered an *Order Staying Subcases* in subcases 51-12891, 51-12894, 51-12895B, 51-12896B, 51-12897B and 51-12898B pending issuance of a final order of determination by the Nevada State Engineer as part of the Jarbidge General Stream Adjudication. On October 14, 2004, the Special Master entered an *Order Lifting Stay* in those subcases and trial was set to begin June 11, 2007, for all 9 of the above subcases.

Stipulation and Joint Motion

On January 29, 2007, the parties filed a *Stipulation and Joint Motion for Order Dismissing Claims and Objections, Without Prejudice* in the above 9 subcases. The parties agreed to dismiss, without prejudice, all 9 claims and all objections to those 9 claims and the parties agreed to bear their own costs and attorney fees.

Conclusions of Law

It is in the parties' best interests and it would further the efficient administration of justice that the Court grant the parties' *Joint Motion for Order Dismissing Claims and Objections, Without Prejudice* in the above 9 subcases. The parties understand the implications of dismissing the claims and the binding effect of re-filing the claims in Idaho at some later date.⁴

Order

THEREFORE, IT IS ORDERED the hearing of the parties' request for extension of trial date set for February 8, 2007, is **vacated** as well as the trial setting.

⁴ See December 20, 1988 *Stipulation for Establishment of Procedure for the Adjudication of Domestic and Stockwater Claims* between the United States and the State of Idaho, and *SRBA Administrative Order No. 10, Order Governing Procedures in the SRBA for Domestic and Stock Water Users*, March 22, 1995.

Recommendation

THEREFORE, IT IS RECOMMENDED that the Presiding Judge **grant** the parties' *Joint Motion for Order Dismissing Claims and Objections, Without Prejudice* in the above 9 subcases.

DATED February 1, 2007.

/s/ Terrence A. Dolan
TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication