

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

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| In Re SRBA |) | Subcases 51-12711, <i>et al.</i> |
| |) | (see list of 9 subcases attached) |
| |) | (USDI/BLM & Brackett) |
| |) | |
| Case No. 39576 |) | ORDER SETTING SCHEDULING |
| <hr/> |) | CONFERENCE |

Counsel for the various Brackett entities¹ reported to the court on August 12, 2005, that the above nine claims should first be adjudicated in Nevada since “all of the essential elements of the water rights must be determined by the Nevada State Engineer including but not necessarily limited to, the ownership of the water rights, the priority date, the beneficial use, the point of diversion, and the amount of water diverted from the source.”² The counsel also wrote that “it is highly unlikely that these [Nevada] cases will be set for administrative hearings before the fall of 2006.”

The Special Master wrote to the Nevada State Engineer on September 21, 2005, to “encourage adjudication of the Nevada claims at the earliest possible date.” There was no response to the letter.

On September 26, 2005, the Special Master filed a ***Status Report to Presiding Judge***. In the ***Status Report***, the Special Master concluded that although there are no orders staying further proceedings, “it would be wasteful and inefficient to proceed to trial on the SRBA claims

¹ C.E. Brackett Cattle Company, Brackett Ranches, Ltd., Bert and Paula Brackett and Brackett Livestock, Inc.

² The United States of America, Department of Interior, Bureau of Land Management filed one of the claims (51-12711) and the Bracketts filed the other eight claims. The claims are for diversions from Jim Bob Creek and Chimney Spring in Nevada for stockwater and wildlife uses in Idaho. For purposes of partially decreeing these claims, IDWR will likely designate the “point of diversion” as the point where the conveyance system enters Idaho.

because parties to the Nevada proceedings would be compelled to litigate issues in Idaho that are generally conceded to be properly before the Nevada State Engineer.”

Since the filing of that *Status Report*, the Special Master has entered an *Order Granting United States Motion to File Amended Notice of Claim* in subcase 51-12711 on February 21, 2006. IDWR filed its *Amended Director’s Report, Subcase No. 51-12711* on April 21, 2006, no one objected to the Director’s amended recommendation and the time to object has expired.

It now seems apparent that the time to proceed with adjudicating these claims in the SRBA is here. It is clear that some elements of the water rights are properly before the Nevada authorities while other elements are properly before the SRBA Court. Without deciding any particular issue, it seems like this court has jurisdiction to at least determine the purpose of use, period of use and place of use. Perhaps there are additional elements over which both states have concurrent jurisdiction. But in any event, the SRBA Court cannot hold these claims until some indefinite time when Nevada acts.

With that in mind, the Special Master will require that the parties consider two matters in preparation for a scheduling conference: 1) which elements can this court adjudicate and 2) what form should that final action take (partial decree, contingent partial decree, binding settlement agreement, withheld judgment, etc.?). Whatever the final resolution, the goal is to conclusively adjudicate these claims in Idaho so that when Nevada proceeds, it will be a simple matter for them to “plug in” the Idaho elements.

THEREFORE, IT IS ORDERED that a scheduling conference shall be held by telephone conference on **Thursday, July 27, 2006, 10:00 a.m.** Parties may participate by telephone by dialing the number 1-225-383-1099 and when prompted entering code 654400. If you have any difficulty connecting to this call, call the SRBA Court immediately at 208-736-3011.

DATED June 15, 2006.

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