

**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)	Consolidated Subcase No. 63-25243
)	(Organic Act -- Channel Maintenance
Case No. 39576)	Claims)
)	
_____)	

**ORDER DISMISSING WITH PREJUDICE THE FEDERAL INSTREAM FLOW
CLAIMS FOR "CHANNEL MAINTENANCE" MADE PURSUANT TO THE
ORGANIC ACT, CONSOLIDATED SUBCASE NO. 63-25243; I.R.C.P. 41(a)(1).**

This matter came before the Court pursuant to the *Stipulation of Dismissal* filed by the parties in the above-captioned matter.

**I.
PROCEDURAL BACKGROUND, FINDINGS AND CONCLUSIONS**

1. The above-captioned consolidated subcase consists of twelve federal reserved water right claims for instream flows made by the United States pursuant to the Organic Act of 1894, 16 U.S.C. § 475 *et seq.* (Organic Act). The purpose of the claims is for the channel maintenance of certain stream reaches situated on national forest land situated within the State of Idaho. The objection period for these claims closed on October 16, 1995.

2. The above-captioned consolidated subcase is comprehensive of all federal reserved instream flow claims for channel maintenance pursuant to the Organic Act. For case management purposes, all federal reserved instream flow claims for channel maintenance under the Organic Act were brought and consolidated into a basin-wide action as opposed to being brought individually within each subbasin. *See Ninth Amended Case Management Order: Federal Tribal and Non-Consumptive (Instream*

Flow) Claims (Sept. 24, 1997). Throughout the proceedings, the United States was granted leave of Court to amend its claims on multiple occasions to facilitate bringing all claims in one consolidated action. The United States has subsequently withdrawn and/or amended some of the original claims, ultimately reducing its total number of claims to twelve (12). These twelve claims comprise the following subcases: 63-25243, 65-19565, 71-10434, 77-11792, 78-10670, 79-10755, 81-10492, 81-10622, 82-10954, 82-10976, 83-10805 and 84-10893.

3. On December 21, 1998, Judge Hurlbutt, then Presiding Judge of the SRBA, issued an order on cross-motions for summary judgment filed by both the United States and the State of Idaho. The order granted in part in the United States' motion and denied the State of Idaho's motion. The State of Idaho initially appealed the decision but later moved to dismiss its appeal. Remittitur to this Court was issued October 14, 1999.

4. On June 5, 2000, this Court entered an order setting the consolidated subcase for trial on the merits and setting deadlines for all other pretrial matters. Trial was set to commence June 5, 2001.

5. On July 31, 2000, counsel for the United States and the State of Idaho notified the Court that the parties had reached an agreement that involved as a term and condition, the dismissal of the subject instream flow claims. The other terms of the agreement were not put on the record or otherwise disclosed to the Court.

6. On August 15, 2000, a hearing was held on the dismissal so that the parties could put on the record the intended nature and scope of the forthcoming stipulation for dismissal. At the hearing, the Court impressed on the parties that dismissal of the consolidated subcase would prevent the United States from re-filing instream flow claims in the SRBA for channel maintenance purposes pursuant to the Organic Act. The Court's reasoning is as follows. The scope of the consolidated subcase covered all instream flow claims for channel maintenance pursuant to the Organic Act that were intended to be brought in the SRBA by the United States. Thus all such claims intended to be filed by

the United States should currently be before the SRBA Court. The time for filing new or amended claims has expired. The United States was given multiple opportunities to amend its claims. All such claims share common threshold legal and factual issues. Had the matter proceeded to trial, the consolidated subcase would have taken over five years to get to trial and ultimately have a determination of the issues by the Court. The future re-filing of similar amended claims under the Organic Act, albeit for different stream reaches, would result in starting from the beginning and going through the same lengthy processes, which have now been nearly completed, to have before the Court the same threshold issues that are currently before this Court. As a result of the foregoing, granting leave of Court in the future for the United States to file new or amended channel maintenance claims under the Organic Act would fall well outside the scope of the standards contemplated by I.R.C.P. 15(a) and AOI 4(e) and (k).

7. On August 21, 2000, the parties to the consolidated subcase filed the above-referenced *Stipulation for Dismissal*.

II. ORDER OF DISMISSAL

Based on the *Stipulation for Dismissal (Stipulation)* filed in the above-captioned consolidated subcase, the comments of counsel for the United States and the State of Idaho at the August 15, 2000, hearing, and the comments of the Court at that same hearing, and for the reasons set forth above, the following are hereby ordered:

IT IS HEREBY ORDERED that the United States instream flow claims for channel maintenance made pursuant to the Organic Act of 1897, designated as consolidated subcase 63-25243 are hereby **dismissed with prejudice**, all parties to bear their own costs and fees. Included are the following subcases: 63-25243, 65-19565, 71-10434, 77-11792, 78-10670, 79-10755, 81-10492, 81-10622, 82-10954, 82-10976, 83-10805 and 84-10893.

IT IS FURTHER HEREBY ORDERED that the *Stipulation*, having been entered into based upon good faith negotiations for the purpose of resolving legal disputes,

including pending litigation, by compromise and settlement and nothing in the *Stipulation*, including the stipulated dismissal of these claims, or any offers or compromises made in the course of negotiating the *Stipulation*, shall be construed as admissions against interest or tendered or used as evidence to show the validity or invalidity of any of the United States' claims in the SRBA or in any other adjudication involving claims for the same or similar purposes, including the quantities of water claimed, or in any other manner by any party in the SRBA in any future proceeding in the SRBA, in any appellate proceedings concerning the SRBA, or in any other proceeding, other than those seeking approval of this *Order*, for interpretation or enforcement of the *Stipulation*, or for a purpose contemplated by Idaho Rule of Evidence 408.

IT IS FURTHER HEREBY ORDERED that a final order disallowing water right claim will be entered in each of the above-referenced individual subcases and shall not be confirmed in any partial decree or in any final decree entered in the SRBA, Case No. 39576, in whatever form that final decree may take or be styled.

IT IS SO ORDERED.

DATED XXXXXXXXXX

DRAFT

BARRY WOOD
Administrative District Judge and
Presiding Judge of the
Snake River Basin Adjudication