

EUGENE F. and SUSAN G. ROBERTSON
HC 85 Box 139E
Bruneau, ID 83604
(208) 845-2106
Appearing Pro Se

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Department of Water Resources

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 51-02214, 51-04000A (Split into
	)	51-12976 & 51-1297) and 51-10207 (Split
Case No. 39576	)	into 51-12978 & 51-12979)
	)	(Tri-Vial, Inc.)
	)	
	)	
	)	MOTION TO FILE LATE NOTICE OF CLAIM

COME NOW Eugene F. and Susan G. Robertson (hereinafter collectively Robertsons) and hereby move this Court for an Order Granting Leave to File a Late Notice of Claim to a water right.

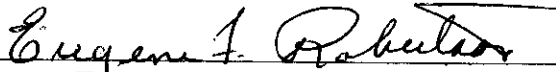
This motion is made on the grounds that the Idaho Department of Water Resources (hereinafter IDWR) originally recommended that Right 51-0207 be split into two separate water rights: 51-12978 and 51-12979. However, after a fact finding hearing, IDWR issued a Supplemental Director's Report regarding the above referenced cases and recommended in that report that 51-10207 not be split and that the domestic water uses originally recommended under those rights should be applied for under separate domestic water rights. IDWR recommended that the parties seek leave of the Court to file late notice of claims for these rights.

This motion is based on the recommendations of IDWR. Excerpts from the Supplemental Director's Report pertaining to this issue are attached as Exhibit 1.

Robertsons further request that the Court grant leave to file the late notices without having the matter argued orally as there is no objection by IDWR, Kohrings nor Tri-Vial as

supported by the Declaration of Susan Wildwood, counsel for Tri-Vial, previously filed with the Court..

RESPECTFULLY SUBMITTED this 3rd day of June, 2003.


Eugene F. Robertson

12979. This information, as well as other additional evidence, requires IDWR to change its recommendation of 51-12979. This is discussed in detail below under the section titled "Water Right No. 51-12978 and 51-12979".

In conclusion, IDWR believes that both parties are entitled to a beneficial use domestic right out of the Section 36 well with a priority date of 1981 or 1982, but not under the existing water rights. IDWR suggests that both parties file motions to file late notice of claims with the SRBA court and file new claims for the domestic uses from the Section 36 well.

iii. Priority Date:

The Kohrings raised the issue of the priority date for 51-12977 for the first time at the fact finding hearings. As discussed above under 51-12976, the evidence submitted to support an earlier priority date was based upon a canceled permit. Thus, IDWR does not believe that the priority date for this water right should be changed.

D. Water Right No. 51-12978 and 51-12979:

IDWR split water right number 51-10207 into 51-12978 and 51-12979 and recommended all the domestic uses under these two splits. 51-12978 was recommended to the Robertsons and 51-12979 was recommended to the Kohrings. The Kohrings objected, arguing that this water right number has always been associated with the well on their property (not the well in Section 36) and should not have been split. Based upon the additional evidence presented at the fact finding hearings, IDWR finds that 51-10207 should not have been split. The testimony at the fact finding hearings is that the well in the SWNWSE of Section 25 ("Kohring Domestic Well") was developed in 1963 when the Kohrings moved onto the property and has been used solely on the Kohring's property. As

discussed above, the Section 36 well was not used for domestic water until 1981. Because the various domestic uses were developed at different times, IDWR no longer recommends trying to fit all domestic uses under this one water right. Because the Kohring Domestic Well was developed separately from the domestic system built in 1981, IDWR recommends that the court recognize 51-10207 as originally recommended but without the point of diversion in section 36. IDWR believes that this will best capture the historical beneficial use of this right.

Furthermore, as discussed above under 51-12977, IDWR suggests that the parties each file new claims for domestic uses from the Section 36 wells, to document the historical beneficial use of the Section 36 wells for domestic uses. This way, the irrigation rights can be recommended separately from the domestic rights and the domestic rights can be recommended as they have been developed.

IV. CONCLUSION

Based upon the written responses and the testimony given at the fact-finding hearings, as well as the Department's records, IDWR finds:

51-2214: Annual volume amount should be changed to 1,560 acre feet per year. IDWR's recommendation should be corrected and 51-2214 should be decreed by the SRBA court as licensed with an annual volume of 1,560 acre feet per year.

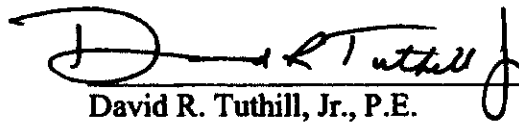
51-04000A (split into 51-12976 and 51-12977): The annual volume should not be enlarged for either of these rights and Section 25 well should not be deleted from 51-12976. Finally, the domestic use for the Kohring portion of this right, specifically that from the Section 36 well, should not be included.

51-10207 (split into 51-12978 and 51-12979): 51-10207 should not have been split into 51-12978 and 51-12979. 51-10207 should be recommended as originally submitted to the court, except for the point of diversion in section 36 removed.

New Domestic Claims: IDWR finds that Robertsons and the Kohrings are each entitled to domestic rights from the well in Section 36. The existing recommendations do not accurately reflect these uses and should be claimed separately. The parties should seek leave of the SRBA court to file late notice of claims for these rights.

Finally, upon leave from the court, IDWR would be willing to submit revised Director's Reports reflecting the changes recommended to the Director's Report based upon this 706 report.

Respectfully submitted this 24th day of April, 2003.

A handwritten signature in black ink, appearing to read "D. R. Tuthill, Jr.", with a stylized flourish at the end.

David R. Tuthill, Jr., P.E.
Adjudication Bureau Chief

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Case No. 39576	)	into 51-12978 & 51-12979)
	)	(Tri-Vial, Inc.)
	)	
	)	CERTIFICATE OF SERVICE

I, Eugene F. Robertson, hereby declare under penalty of perjury that I am a party to the within action and am over the age of 18. I hereby certify that a true and correct copy of the Motion for Leave to File Late Notice of Claim to Water Right and the proposed Order were served upon the following:

Kent and Virginia Kohring
Jim Jones, Attorney at Law
1275 Shoreline Lane
Boise, ID 83702

[] Facsimile
[XX] Mailing
[] Hand Delivery

Tri Vial, Inc.
Susan Wildwood, Chartered
P.O. Box 6502
Boise, ID 83707

[] Facsimile
[XX] Mailing
[] Hand Delivery

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

[] Facsimile
[XX] Mailing
[] Hand Delivery

DATED this 5th day of June, 2003.



Eugene F. Robertson