



U.S. Department of Justice

Environment and Natural Resources Division

BB:DAJ

90-6-2-63C

David A. Jarvis
Labat-Anderson, Inc.
999 Eighteenth Street
Suite 945, North Tower
Denver, Colorado 80202

Telephone (303) 312-7370
Facsimile (303) 312-7379

September 18, 2003

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SEP 22 2003

Department of Water Resources

via FedEx Mail

Diana R. Delaney, Chief Deputy Clerk
Snake River Basin Adjudication
DISTRICT COURT
253 Third Ave., North
Twin Falls, Idaho 83303-2707

Re: SRBA Case No. 39576
Subcase No. 43-11113

Dear Ms. Delaney:

Enclosed for filing is the following original document in the above mentioned subcase:

1. **MOTION TO CORRECT CLERICAL ERROR**

Thank you for your time and attention in this matter.

Sincerely,

David A. Jarvis
Paralegal

Enclosure

RECEIVED

SEP 22 2003

Department of Water Resources

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division

BRUCE D. BERNARD
Trial Attorney
United States Department of Justice
Environment & Natural Resources Division
General Litigation Section
999 18th St. Suite 945
Denver, CO 80202
(303) 312-7319

**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 No.: 43-11113
)
)
)
)
)

**MOTION TO CORRECT CLERICAL
ERROR**

The United States of America, on behalf of the Interior, National Park Service ("United States"), hereby requests the Court, pursuant to SRBA Administrative Order, § 14.d. and I.R.C.P. 60(a), to correct clerical errors in the *Partial Decree Pursuant to I.R.C.P. 54(b) for Water Right 43-11113*, entered by the Court on July 7, 2003. As grounds for this motion, the United States states as follows:

1. The United States filed its original Notice of Claim to a Water Right Reserved Under Federal Law for the City of Rocks National Reserve in March of 1993. This original claim was for 0.003 cubic feet per second, with a volumetric limitation of 1.21 acre feet per year, for domestic purposes.

2. On December 30, 2002, the United States filed a SF-4 Motion to File Amended Notice of Claim. The Amended Notice of Claim is for a quantity of 0.04 cubic feet per second, up to 13,000 gallons per day, for administrative, including domestic purposes. On January 21, 2003, the Court granted the United States' SF-4 Motion to File Amended Notice of Claim, established a deadline of April 7, 2003 for the filing of objections to the amended claim and ordered that, if no objections were filed to the amended claim, the evidentiary hearing on the amended claim would be held on June 17, 2003. *Subcase: 43-11113, Order Setting Deadline to File Objections to Amended Notice of Claim, Notice of Hearing on Federal Reserved Water Right if Uncontested; I.C. 42-1411A(14)*, Notice of that Order was published in the SRBA Docket Sheet on February 4, 2003.

3. No objections to the Amended Notice of Claim were filed by the April 7, 2003 deadline established by the Court or subsequently.

4. On June 17, 2003, the Court held the evidentiary hearing on the United States' Amended Notice of Claim pursuant to I.C. § 42-1411(A)(12) & (14). During that hearing, the Court and counsel made it clear that the evidentiary hearing was on the United States' Amended Notice of Claim. See following attached portions of *Reporter's Transcript: Monthly Status Conference Hearing of June 17, 2003* ("Tr."): Tr. at 21:12-18 (Court references affidavit of Neil King and affidavit of Jerry [sic] Hughes, both of which reference amended claim, and Exhibit 1, the Amended Notice of Claim); Tr. at 21:22 - 22:1 (Court references "diversion rate of .04 cubic feet per second, to be limited to 13,000 gallons per day for administrative, including domestic purposes," i.e., the quantities and purposes set forth in the Amended Notice of Claim); Tr. at 22:8-22 (counsel clarifies that hearing is the evidentiary hearing on the unobjected to amended claim, not the hearing on the SF-4 Motion to file the Amended Notice of Claim); Tr. at 26:12-25

(counsel notes that matter at bar is the prima facie hearing on the unobjected to amended claim); Tr. at 27:11 - 28:7 (Court grants the “claimed cubic feet per second of .04, . . . limited to 13,000 gallons per day”).

5. On July 7, 2003, the Court entered its *Order of Partial Decree on Uncontested Federal Reserved Water Right Claim for Administrative Site, for Water Right: 43-11113*. That *Order* noted that the claim is a *de minimus* claim limited to 13,000 gallons per day. The *Order* stated that water right 43-11113 is hereby granted as set forth in the attached *Partial Decree Pursuant to I.R.C.P. 54(b) for Water Right 43-11113*.

6. The *Partial Decree*, however, identifies the quantity of the right as 0.003 cubic feet per second, with a volumetric limitation of 1.21 acre feet per year, and the purpose of the right as domestic. These are the quantities and purpose identified in the United States’ original claim, rather than its amended claim. The transcript of the evidentiary hearing on the amended claim and the *Order of Partial Decree on Uncontested Federal Reserved Water Right Claim for Administrative Site, for Water Right: 43-11113* make it clear that the Court intended to approve the amended claim, which identifies the quantity of the right as 0.04 cubic feet per second and 13,000 gallons per day, and the purpose as administrative, including domestic.

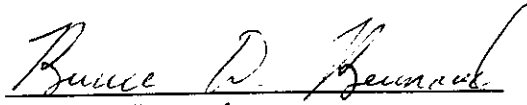
WHEREFORE, the United States requests the Court to enter a corrected *Partial Decree Pursuant to I.R.C.P. 54(b) for Water Right 43-11113*, correctly identifying the quantity and purpose of the water right as follows:

QUANTITY: 0.04 CFS
 13,000 GPD

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE Administrative, including Domestic	PERIOD OF USE 01-01 TO 12-31	QUANTITY 0.04 CFS 13,000 GPD
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PRESENT AND FUTURE USES: ADMINISTRATIVE, INCLUDING
DOMESTIC

Respectfully submitted this 18th day of September, 2003.

A handwritten signature in cursive script, reading "Bruce D. Bernard", written in dark ink.

Bruce D. Bernard
Trial Attorney
United States Department of Justice
Environment and Natural Resources Division
999 18th Street, Suite 945
Denver, Colorado 80202
Telephone: (303) 312-7319
Telefax: (303) 312-7379

CERTIFICATE OF SERVICE

I certify that on this 18th day of September, 2003, I served a true and correct copy of foregoing Motion to Correct Clerical Error upon the following individuals by serving as indicated, postage pre-paid, addressed as follows:

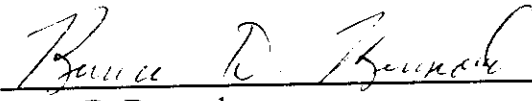
via Facsimile:

Diana R. Delaney, Chief Deputy Clerk (Original)
Snake River Basin Adjudication
DISTRICT COURT
253 Third Ave., North
Twin Falls, ID 83301

via First-Class Mail:

U.S. Department of Justice
Environment and Natural Resources
550 W. Fort Street, MSC 033
Boise, ID 83724

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098



Bruce D. Bernard

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

REPORTER'S TRANSCRIPT

Case No. 39576

FILE

MONTHLY STATUS CONFERENCE HEARING
TAKEN BEFORE
HON. ROGER S. BURDICK
District Judge, Presiding

DATE: TUESDAY, JUNE, 17, 2003

TIME: 1:30 P.M.

PLACE: COURTROOM OF THE DISTRICT COURT
SNAKE RIVER BASIN ADJUDICATION
BUILDING - 253 3RD AVENUE NORTH
TWIN FALLS, IDAHO

REPORTED BY:
VIRGINIA M. BAILEY, RPR, CSR No. 262
OFFICIAL COURT REPORTER

1 1:30 P.M., TUESDAY, JUNE 17, 2003,
2 COURTROOM OF THE DISTRICT COURT,
3 SNAKE RIVER BASIN ADJUDICATION
4 BUILDING, 253 3RD AVENUE NORTH,
5 TWIN FALLS, IDAHO.

6
7 * * * * *

8
9 THE COURT: At this time we are on record
10 in the SRBA, Roger Burdick presiding. As such, I
11 will call a roll of the parties who have joined us
12 for this session of court on the telephone, if those
13 parties would please identify yourselves at this
14 time.

15 MR. BROWN: Your Honor, this is Larry
16 Brown with the United States, and I'm here in three
17 different matters, I believe.

18 THE COURT: All right.

19 MR. HANSEN: This is Bill Hansen in
20 Colorado with the National Park Service.

21 THE COURT: And you are here on the City
22 of Rocks, Mr. Hansen?

23 MR. HANSEN: Correct.

24 THE COURT: Very good. And who else? No
25 other parties? Anybody else on the phone? Very

1 Supreme Court for publication in the Advocate as
2 well as to the publishers of the rules volume.

3 Anything further, then, Mr. Brown?

4 MR. BROWN: No, Your Honor. Thank you.

5 THE COURT: Thank you, sir.

6 I will note, the hearing on the language
7 regarding the Swan Falls agreement was continued by
8 this court based upon a family emergency. We
9 certainly hope that family emergency has worked
10 itself out on behalf of that lawyer, and our
11 sympathies go out.

12 The evidentiary hearing, there is an
13 evidentiary hearing on water right claim 43-11113,
14 and that has to do with the City of Rocks. There is
15 an affidavit of Neil King, which is in the court
16 file. There is an affidavit of Jerry Hughes in the
17 court file, properly notarized, et cetera. The
18 court has reviewed Exhibit 1, Exhibit 2A, Exhibit
19 2B, Exhibit 2C, Exhibit 2D and, in addition, will
20 note that this is an express federal reserved water
21 right. However, there is no quantification in that
22 regard, and I believe this is in fact a -- the
23 quantity of water in subsection E is a diversion
24 rate of .04 cubic feet per second, to be limited to
25 13,000 gallons per day for administrative, including

1 domestic purposes.

2 Is there any party who objects to this
3 proposed federal reserved water right?

4 MR. BARBER: Your Honor, if I could
5 address the court quickly?

6 THE COURT: Mr. Brown, yes, sir.
7 Mr. Barber. Excuse me, sir.

8 MR. BARBER: Yes. I may have
9 misunderstood the nature of this proceeding. This
10 is not just a motion to allow the filing of the late
11 claim. It's actually the evidentiary hearing on an
12 unobjected to water right; is that --

13 THE COURT: I believe that's what I've got
14 it down for. Let me review the notice, sir.

15 MR. BERNARD: Your Honor, Bruce Bernard on
16 behalf of the United States.

17 THE COURT: Mr. Bernard.

18 MR. BERNARD: That is correct. The motion
19 to file the amended claim was filed sometime ago and
20 granted, and the 60-day objection period has run.

21 THE COURT: All right. Anything further
22 then, Mr. Barber?

23 MR. BARBER: Well, we didn't file an
24 objection. I guess we should have. I guess I'd at
25 least like the opportunity to make some comment

1 about the documentation here.

2 THE COURT: All right. At this time the
3 court will give you -- the court will take a brief
4 recess, allow you to review that -- well, the time
5 period for the objections have run, and I'm not sure
6 you have standing to do so.

7 MR. BARBER: I believe on the evidentiary
8 hearing anyone can show up and at least participate.

9 THE COURT: Put the United States to their
10 test?

11 MR. BARBER: Yeah.

12 THE COURT: Well, I will allow you an
13 additional 20 minutes. Is that a --

14 MR. BARBER: That's fine.

15 THE COURT: Or half hour, whichever is
16 appropriate.

17 MR. BARBER: Okay.

18 THE COURT: You tell me when you are
19 ready to address this issue. Then if you object to
20 his comments, I will take that objection prior to
21 listening to those comments, Mr. Bernard.

22 MR. BERNARD: All right. Thank you, Your
23 Honor.

24 THE COURT: Anything further, sir?

25 MR. BERNARD: Not at this time, Your

1 Honor.

2 THE COURT: All right. We'll take a brief
3 recess. Thank you very much.

4 MS. SCOTT-BRIER: Excuse me, Judge. This
5 is Barbara Scott-Brier. Should we hold on or call
6 back?

7 THE COURT: Would you please call back?
8 Well, leave us a message phone, and we will call you
9 back, Ma'am.

10 MS. SCOTT-BRIER: All right. There are
11 two of us that need to be called back.

12 THE COURT: All right. If you would give
13 us those numbers, and I appreciate your giving the
14 heads-up in that regard.

15 MS. SCOTT-BRIER: All right. This is
16 Barbara Scott-Brier, I'm at 503-231-2139.

17 THE COURT: And?

18 MS. SCOTT-BRIER: Jeff Hughes, are you
19 still on?

20 MR. HUGHES: Yeah.

21 MS. SCOTT-BRIER: Okay.

22 MR. HUGHES: My telephone number is area
23 code 507-452-2768.

24 THE COURT: We will call you as soon as
25 the recess is completed.

1 MR. HANSEN: Your Honor, there is one
2 more. Bill Hansen in Colorado.

3 THE COURT: Very well, Mr. Hansen.

4 MR. HANSEN: 970-225-3532.

5 THE COURT: All right. Thank you,
6 Mr. Hansen. Are there any other parties who wish to
7 be heard except on this issue?

8 Any other matters I might have missed?
9 Hearing none, the court will be in recess except as
10 to water right claim 43-11113.

11 Thank you.

12 MS. SCOTT-BRIER: Thank you, Your Honor.

13 MR. HANSEN: Thank you, Your Honor.

14 (2:05 p.m. - Recess.)
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1 (2:15 p.m. - Reconvene.)

2 THE COURT: At this time we are on record
3 in City of Rocks application, and it is water right
4 claim 43-11113. The court had previously given
5 Mr. Barber time to review his file, the court's
6 file; and the parties are back on the record, except
7 for Mr. Hansen, who we evidently got some sort of
8 telephone intercept, but Mr. Bernard indicates we
9 can, in fact, proceed without him.

10 Mr. Bernard, on behalf of the United
11 States, sir.

12 MR. BERNARD: Yes, Your Honor.

13 This claim number 43-11113 is, as Your
14 Honor indicated, for de minimis amounts for
15 administrative uses at the City of Rocks National
16 Reserve. The amended claim is unobjected to, and
17 the United States, on June 3rd, 2003, did file its
18 memorandum in support of the claim and two
19 affidavits: an affidavit from Jeff Hughes and an
20 affidavit from Neil -- lost his name here.

21 THE COURT: King.

22 MR. BERNARD: Neil King. Thank you, Your
23 Honor. And the affidavits are filed pursuant to
24 Idaho Code 42-1411A, subsections 12 and 14, to
25 provide the court prima facie evidence of the claim.

1 Your Honor, at this point I will simply
2 stand on the memoranda and the affidavits, stand for
3 any questions the court might have, and request the
4 court to enter a partial decree granting the claim.

5 THE COURT: All right. Mr. Barber, do you
6 wish to be heard?

7 MR. BARBER: Thank you, Your Honor, and at
8 this point I simply have no comment on the matter,
9 and I appreciate the court's indulgence in giving me
10 the time to look at the file further. Thank you.

11 THE COURT: Thank you, sir. At this point
12 in time, the court believes that there is prima
13 facie evidence in the record to support the claim.
14 I look to Exhibit 2D, Public Law 100-696 of the
15 Arizona-Idaho Conservation Act of 1988, and then go
16 to Section 202, subsection 2, or 3F, excuse me,
17 subsection F, wherein it says that the United States
18 shall retain that reserved water right which is
19 associated with the initial establishment and
20 withdrawal of the national forest lands which will
21 be transferred to the reserve under this title.
22 This court feels that that is an express, for
23 purposes of today's hearing, an express water right
24 and, as such, have reviewed the affidavits as to the
25 use, find that that use is beneficial,

1 administrative and domestic -- excuse me just one
2 second -- and that although there is in fact a
3 claimed cubic feet per second of .04, that has been
4 limited to 13,000 gallons per day at a well depth of
5 200 feet currently. Therefore, the court, based
6 upon the file, will in fact allow the partial decree
7 and enter same as proposed.

8 Anything further, Mr. Bernard?

9 MR. BERNARD: Nothing further. Thank you,
10 Your Honor.

11 THE COURT: Anything from the parties on
12 the telephone?

13 MS. SCOTT-BRIER: No, Your Honor. Thank
14 you.

15 MR. HUGHES: No, Your Honor. Thank you
16 very much.

17 THE COURT: Thank you, Sir, Ma'am.

18 Mr. Barber, anything further, sir?

19 MR. BARBER: Nothing.

20 THE COURT: Very good. The court will
21 enter that partial decree. I appreciate,
22 Mr. Bernard, your effort in that regard.

23 Court is in recess.

24 (End of Proceedings.)
25