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Movant: State of Idaho

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DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
MAY 28 2002	
By <u>JB RH</u>	Clerk
	Deputy Clerk

**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	)	Subcase Nos. 34-13676, 34-13677, 34-13678, 34-13679,
	)	34-13681, 34-13682, 34-13683, 34-13684, 34-13685,
Case No. 39576	)	34-13686, 34-13687, 34-13689, 34-13690, 34-13691,
	)	34-13692, 34-13693, 34-13694, 34-13695, 34-13696,
	)	34-13697, 34-13698, 34-13699, 34-13700, 34-13701,
	)	34-13702, 34-13703, 34-13704, 34-13705,
	)	and 34-13706
	)	
	)	BRIEF IN SUPPORT OF MOTION RE STOCK
	)	WATERING CLAIMS
	)	

INTRODUCTION

On February 8, 2002, the United States filed twenty-nine motions to file late claims in Basin 34 that are presently pending before the Court. The State of Idaho opposes the United States' motions. A brief review of the history of the Snake River Basin Adjudication will put this matter into perspective.

STATEMENT OF FACTS

The Commencement Notice for Basin 34 set the deadline for filing notices of claim to be June 24, 1991. Affidavit of Service of Commencement Notice—Basin 34; Document No. 92-01—049. Thereafter, the United States filed over 800 notices of claim for stock watering with a basis of PWR 107 in Basin 34 alone. Director's Report Part II For Basin 34—Abstracted Claims to Water Rights Based Upon Federal Law, hereinafter Director's Report Part II.¹ The Director's Report Part II was filed on or about November 17, 1992. Objections were due on March 17, 1993. Affidavit of Service: Notice of Filing Director's Report of U.S. Water Rights Claims in Basin 34, Document No. 92-12007. The United States filed over 10,000 notices of claim based on PWR 107 in the SRBA. Many of these were dual-based stock watering claims. Thus, the stock watering claims filed by the United States represent a significant percentage of the total number of claims filed in the SRBA.

On February 8, 2002, the United States filed twenty-nine motions to file late claims in Basin 34. Twenty-one of these notices of claim were dual based claims—the bases for each claim were a state water right and a federal reserved water right under PWR 107. Seven of these motions concern stock watering claims to water with a state law basis. The remaining motion concerns a dual based claim for instream stock watering (34-13705).²

¹ See page numbers A-4, A-5, A-11, A-15 through A-469.

² The motion for this notice of claim is particularly egregious because the source described in the notice of claim is the Big Lost River and its basis includes PWR 107. The District Court just held that "[s]tream segments and other bodies of water that do not constitute a spring or water hole within the common meaning of the terms are outside the scope of PWR 107." Memorandum Decision And Order On Challenge, at 35. The Big Lost River can hardly be characterized as a spring or water hole.

I. THE DISTRICT COURT SHOULD EXERCISE ITS DISCRETION AND DENY THE UNITED STATES LEAVE TO FILE THE LATE NOTICES OF CLAIM FILED IN FEBRUARY 2002.

Administrative Order No. 1 provides that a *Motion to File a Late Notice of Claim* will be reviewed under the criteria of I.R.C.P. 55(c). SRBA AO1. Rule 4d(2)(d). I.R.C.P. 55(c) in turn provides that the court may grant relief "for good cause shown." Simply put, the good cause standard under I.R.C.P. 55(c) is a matter committed to the sound discretion of the District Court. *Baldwin v. Baldwin*, 114 Idaho 525, 527 (1988). The Court later stated, "the moving party must demonstrate that his conduct was of a type expected from a reasonably prudent person under the circumstances." 114 Idaho at 527.

The State of Idaho has not historically opposed any motions to file late claims in the SRBA. We do so with much reluctance here for the following reasons. The large number of stock watering notices of claim has consumed an inordinate amount of state resources in responding and analyzing them. Those notices of claim have imposed a substantial burden on the other claimants and on the court staff as well. We fear that the present late claims are just the tip of an iceberg. If another ten thousand stock watering notices of claim dribble into the Court over the next couple of years, those claims will cause a substantial adverse impact on the state's resources, on other claimants and on the Court. We simply think that the United States has not acted like a reasonably prudent person in filing these claims. Since the United States filed over 10,000 stock watering claims, why were those claims not enough?

The location of these notices of claims in one of the original test basins had much to do with our decision to oppose the motions. The litigation process--the process of reviewing a Director's Report, preparing objections, and responding to objections--does much to make the claimants aware of the unique facts of each sub-basin and provides an opportunity for identifying

valid claims that were inadvertently not filed upon by a claimant agency. The Director's Report of U.S. Water Rights Claims in Basin 34 was filed on or about November 17, 1992. Objections were due on March 17, 1993. Affidavit of Service: Notice of Filing Director's Report of U.S. Water Rights Claims in Basin 34, Document No. 92-12007. A period of nine years has elapsed since that date. That was sufficient time for the United States to identify any missing stock watering claims in Basin 34.

A few comments about our views concerning stock watering notices of claim in other sub-basins are probably warranted because they explain how we believe the Court should exercise its discretion in such matters. Because the litigation process helps identify valid missed claims, we do not recommend to the Court that it should preclude all future motions to file late stock watering claims by the United States. Rather, the United States should demonstrate a reasonable basis for its untimely notice of claim. In addition, because the United States has filed such a large number of stock watering claims already in the SRBA, the State of Idaho, other claimants, and the Court should know whether the present motions to file late notices of claim are the tip of the iceberg. Does the United States intend to file another ten thousand notices of claim over the next couple of years? The Court could address this latter concern by asking the United States to provide a status report on its plans regarding further filings of motions to file late notices of claim for stock watering.

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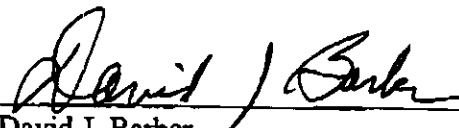
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CONCLUSION

For the reasons stated, the District Court should deny the motions to file late claims in Basin 34 and should require the United States to state its plans in a status report about further stock watering notices of claim in other sub-basins.

Respectfully submitted this 28th day of May 2002.

ALAN G. LANCE
Attorney General

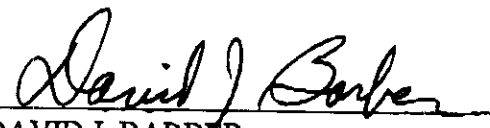

David J. Barber
Deputy Attorney General
Natural Resources Division

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of May 2002, I caused to be served a true and correct copy of the foregoing BRIEF IN SUPPORT OF MOTION RE STOCK WATERING CLAIMS by the methods designated below as follows:

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