



Becky

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
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January 25, 2001

Special Master Brigitte Bilyeu
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, Idaho 83303-2707

Re: Progress Report for License Amendments from GPS Data

Dear Special Master Bilyeu:

I am writing this letter in response to your request on December 20, 2000 for a report on the Idaho Department of Water Resources (IDWR) and Bureau of Land Management's (BLM) progress regarding license amendments based on GPS data. I am sending a copy of this letter to the other two Special Masters as well because the information contained in this report is germane to subcases pending before them.

On December 20, 2000, a status hearing was held in twelve subcases numbered 73-07082, 73-07103, 73-07107, 74-07198, 74-07202, 74-07204, 74-07207, 74-07217, 74-07226, 75-07397, 75-07399, 75-07402. These subcases have all been objected to by the BLM because it believes, among other things, that the points of diversion or places of use are misdescribed based on recent GPS data. Two of these subcases, 73-07103, 73-07107, are based on permits which the BLM can amend if it wants the permit information to match their current GPS data, thus, these two subcases are not part of the following discussion.

The remaining ten subcases, pending before you, are based on licenses and the recommendations mirror those licenses. In order to make changes to the recommendations, the licenses must be amended. On December 21, 2000, IDWR met with BLM to discuss what IDWR's internal process is to amend licenses and IDWR's expectations for GPS data.

IDWR Process to Amend Licenses

IDWR will consider amending a license if it can be clearly shown that an error was made at the time the license was issued. In order to amend licenses, IDWR must be supplied with data that shows clear error. In the case of GPS information being used to show clear error, the GPS data must meet IDWR's standards. The claimant must make a written request to IDWR to amend each license. The written request must include for each license: 1) the element determined to be in error, 2) the proposed correction, and 3) supporting data meeting IDWR standards. Once the written request is received by IDWR, IDWR will file a Notice of Administrative Proceeding (NAP) with the SRBA Court. BLM must also provide IDWR with valid GPS data. Once IDWR receives the data from BLM, IDWR will review the data and confer with BLM if the data are insufficient. If IDWR determines that the license is incorrect a Preliminary Order amending the license will be filed by IDWR and sent to the water right holder. If no response to the Preliminary Order is received, then this order becomes final and the license is amended. IDWR will file a Notice of Completed Administrative Proceeding (NCAP) with the SRBA Court. Once the NCAP is filed with the Court, BLM will withdraw its objection based on the NCAP and the SRBA Court can proceed to decree the right as reflected in the recommendation attached to the NCAP.

IDWR Standards for GPS Data

IDWR has standards that it uses in order to test the validity of GPS data. In order to show that a license contains clear error based on GPS information, BLM must provide IDWR with electronic raw and processed GPS data. This data must be collected according to IDWR standards.

At this time, BLM has been unable to provide IDWR with such data for all the subcases pending before the SRBA Court. BLM has provided IDWR with initial information that does not meet IDWR's standard. IDWR provided BLM personnel with its written standards for gathering GPS information at the December 21, 2000 meeting between the two agencies. In addition, IDWR offered to send one of its technical people with BLM to collect data that will meet IDWR's standards. This will enable BLM to comply with IDWR's technical standards. In the last week, BLM has sent data to IDWR electronically but IDWR has been unable to open the information and is working with BLM to get the data in a readable format.

Summary of Subcases Involving Objections by BLM Based on GPS Data

There are twenty-six subcases pending before all three special masters that are based on licenses and which have objections by BLM based on GPS Data. All twenty-

six¹ subcases are set for status conference at various times on February 15, 2001. The table below summarizes those subcases.

Special Master	Subcase Number
Brigette Bilyeu ²	73-07082
	74-07198
	74-07202
	74-07204
	74-07207
	74-07217
	74-07226
	75-07397
	75-07399
	75-07402
Terry Dolan	35-08009
	35-08039
	35-08644
	35-08650
	35-09040
Thomas Cushman	43-07207
	43-07267
	43-07269
	43-07273
	43-07284
	43-07289
	45-07487
	45-07556
	45-07563
	45-07600
	45-07612

Special Master Dolan has five subcases pending before him. These five subcases are the farthest along in the evaluation process. BLM has provided IDWR with GPS Data for all five subcases and IDWR has requested additional data concerning all five subcases. BLM has provided additional data on one of the subcases (35-08650) and IDWR has found the data sufficient for IDWR to amend the license. The data supplied

¹ There are actually 28 subcases set for status conference on February 15, 2001; however, two of them are based on permits and should be handled differently than those based on licenses. See Footnote 2 below.

² Subcases 73-07103 and 73-07107 are not included in this list because they are based on permits and there is a separate administrative process that BLM can use to amend its permits which is more appropriate than having the SRBA Court or IDWR correct the permit information. If BLM amends its permits, IDWR will send a NCAP to the Court.

for the other four subcases is technically insufficient and additional information is needed

BLM has not provided GPS data to IDWR regarding the other twenty-one subcases pending before Special Master Bilyeu and Special Master Cushman. BLM believed it had provided IDWR technical information in compliance with Special Master Bilyeu's order, dated June 23, 2000, but the information received by IDWR was not GPS data but maps that supported BLM's objection

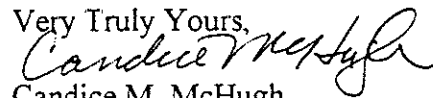
IDWR and BLM's Proposal for Subcase Procedure

As stated above, IDWR offered to send one of its GPS technical people with BLM to assist in gathering GPS data that meets IDWR's standards. Once that fieldwork is completed, BLM will be able to supply IDWR with valid data that can be evaluated to determine whether the license involved contains a clear error. If the license contains a clear error then IDWR will amend the license. Because many of these locations are in remote areas that are not accessible during the winter, IDWR and BLM will not be able to GPS these locations until late spring

The next step in the process is that BLM needs to submit a written request for each license it wishes to amend and the data to support the amendment. Once the request is received by IDWR, IDWR will file a NAP with the Court. BLM is in the process of preparing such requests for all subcases. Once the data is received by IDWR, IDWR will evaluate the information and determine whether the license contains a clear error and warrants being amended. Once a determination has been made, IDWR will issue an NCAP with the Court and then BLM will move to withdraw its objection based on the recommendation attached to the NCAP. IDWR estimates that the NCAPs for all subcases can be submitted by the end of November, 2001, provided the BLM supplies its GPS data to IDWR by the end of August. This process will be discussed with the Court at the February 15, 2001 status conferences and if acceptable, IDWR and BLM will proceed with the written requests and NAPs.

If there are any questions, please call me.

Very Truly Yours,


Candice M. McHugh

cc: Special Master Dolan
Special Master Cushman
Larry Brown, attorney for BLM
Norman Young, IDWR
Glen Saxton, IDWR
Jeff Peppersack, IDWR
David R. Tuthill, Jr., IDWR
Roxanne Brown, IDWR
IDWR Adjudication Attorneys

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IDWR

DOCUMENT DESCRIPTION: PROGRESS REPORT due 1-26-01
Original and copies for all special masters
to be sent by U.S. mail. See list of
subcases affected, page 3.

COVER SHEET + 4 PAGES

CONTACT: 327-1028 IF YOU DO NOT RECEIVE ALL THE PAGES

THANK YOU!