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Department of Water Resources
Adjudication Bureau

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DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

FILED _____

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 Nos. See Exhibit 1

)
) ORDER REJECTING
) STIPULATION TO RESET
) HEARING ON MOTION TO
) BIFURCATE AND CONSOLIDATE

On February 11, 1994 the Idaho Department of Water Resources (IDWR) and other parties filed a motion seeking to bifurcate and consolidate portions of certain subcases. The motion was entitled *Joint Motion by IDWR and Other Parties to Bifurcate and Consolidate Objections to Pages 1 through 17 of the Director's Report for Reporting Area 1 (Basin 34) and Notice of Hearing (Joint Motion)*. The United States sought to change the date of the hearing by filing a *Stipulation to Reset Hearing on Joint Motion by IDWR and Other Parties to Bifurcate and Consolidate Objections to Pages 1 through 17 of the Director's Report for Reporting Area 1 (Basin 34) (Stipulation)*. The *Stipulation* is held invalid and the original time and date of the hearing on the *Joint Motion* will remain. The *Stipulation* failed to include all parties involved in the *Joint Motion* as required by SRBA Administrative Orders. In addition, the *Stipulation* was not properly served as required by the Idaho Rules of Civil Procedure.

I. SERVICE REQUIREMENTS UNDER THE RULES OF CIVIL
PROCEDURE

The Idaho Rules of Civil Procedure clearly establish the service requirements for pleadings, motions and other papers.

[E]very pleading subsequent to the original complaint unless the court otherwise orders . . . and similar paper shall be served upon each of the parties affected thereby . . .

I.R.C.P. 5(a) (*Emphasis added*)

According to the certificate of service, the *Stipulation* filed by the United States was not served on all parties to the subcases which are the subject of the *Join Motion*. Improper service was apparently due to the erroneous conclusion that each objection to a water right created a separate subcase.

II. SUBCASES UNDER SRBA ADMINISTRATIVE ORDER 1

Subcase is defined in *SRBA Administrative Order 1 (A.O.1)* as follows:

Subcase - A water right which is the subject of a post director's report pleading.

(A.O.1 Section 2u.)

The SRBA procedural rules explain that a water right becomes a subcase when an objection is filed:

When an objection is filed to a recommendation or abstract, a separate subcase file shall be opened and separately docketed on IWATRS. The water right number becomes the subcase number. The subcase number shall be included in the caption for all documents filed in the subcase and all entries under the *General Docket Sheet Procedure*.

A.O.1 Section 6a.

Some parties have erroneously interpreted this section of A.O.1 to mean that each objection to a single water right results in a separate subcase. The correct interpretation of this rule, consistent with prior proceedings and rulings, is that every contested water right, whether it contains one objection or multiple objections, will proceed as a single subcase.¹ A.O.1 Section 6a explains that a water right is not a subcase until there is an objection. It does not create subcases for each objection.

¹ The changes proposed for *SRBA Administrative Order 1* are consistent with this conclusion. *Notice of Intent to Amend SRBA Administrative Order 1, Rules of Procedure* (February 18, 1994).

The court has held that multiple objections to the same water right shall be treated as separate issues in the same subcase. Multiple objections to a single water right are not separate subcases. To hold otherwise would compel an absurd result.

If each objection became a separate subcase, a claimant could be required to have a separate trial and to put on evidence of his water right for each and every objection. *A.O.1* Section 6c. If each objection became a separate subcase, a claimant could be required to make a motion to consolidate in order to have all of the objections to his water right heard at the same time. These results are contrary to judicial economy and the plain reading of the rules of civil procedure. Individual objections to a water right do not constitute individual subcases.

III. PARTIES REQUIRED TO BE INCLUDED IN A STIPULATION TO RESET HEARING UNDER SRBA ADMINISTRATIVE ORDER NO. 8.

The court promulgated *SRBA Administrative Order No. 8* to allow the parties a method of rescheduling hearings. The rule requires that every stipulation be agreed upon by each party to a subcase involved in the hearing. The rule clearly requires that at a minimum, a stipulation must include every claimant, objector and respondent to each subcase involved in the hearing or motion. The *Stipulation* did not include all parties to the subcases involved in this *Joint Motion*. Therefore, the *Stipulation* is invalid and the hearing previously set on the *Joint Motion* will remain **unchanged**.

IT IS ORDERED that the *Stipulation* has no force or effect. IT IS FURTHER ORDERED that the hearing set for 10:00 a.m. on March 9, 1994 on the motion to bifurcate and consolidate shall be heard at that time.

DATED March 2, 1994.


BRIGETTE BILYEU
Special Master, Reporting Area 34
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER REJECTING STIPULATION TO RESET HEARING ON MOTIONS TO BIFURCATE AND CONSOLIDATE was mailed on March 2, 1994, with sufficient first-class postage to the following:

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ORDER REJECTING STIPULATION TO RESET
HEARING ON MOTION TO BIFURCATE AND
CONSOLIDATE

3/2/94

EXHIBIT 1

34-00017D	34-02358E	34-07154
34-00060	34-02389	34-07179
34-00259F	34-02412A	34-10043
34-00378	34-02417B	34-10454
34-00556	34-02428	34-10832
34-00647	34-02429B	34-12368
34-00738E	34-02491E	34-12381
34-00911	34-07059B	34-12432
34-02277	34-07075	34-02330A
34-00050B	34-07120	34-02358D
34-00168F	34-07122B	34-02373
34-00315	34-07176	34-02410
34-00384	34-07223	34-02417A
34-00559	34-10397	34-02426C
34-00654A	34-10484	34-02429A
34-00789	34-10939	34-02472A
34-00970	34-12377	34-02512
34-00052A	34-12431	34-07059D
34-00168G	34-02315	34-07079
34-00354	34-02358A	34-07121B
34-00508	34-02358F	34-07164
34-00646	34-02395	34-07201
34-00692D	34-02412C	34-10272
34-00796	34-02419A	34-10455
34-02272A	34-02491H	34-10896
34-02308A	34-07059C	34-12376
34-02309	34-07077	34-12417
34-2330B	34-07122A	34-12433

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