



U.S. Department of Justice

Environment and Natural Resources Division

DWG:DAJ

90-6-2-63c

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September 8, 2006

SEP 12 2006

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 Nos. 63-00146, 63-00183, 63-00192, 63-00198AC, 63-00216C, 63-00230M, 63-00278, 63-00279B, 63-19425, 63-20041, 63-31808, and 63-31892

Dear Ms. Delaney:

Enclosed for filing is the original document and eleven in the above mentioned subcases:

1. **UNITED STATES' MOTION FOR LEAVE TO FILE AMENDED OBJECTIONS**

enclosed are copies of the twelve Amended Objections (one for each subcase) for which the United States is seeking leave to file.

Thank you for your time and attention in this matter.

Sincerely,

David A. Jarvis
Paralegal

Enclosures

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DEPARTMENT OF
WATER RESOURCES

Names of Parties Filing Document:

UNITED STATES OF AMERICA

Attorneys' Names and Addresses:

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**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 No.: 63-00146, 63-00183, 63-00192,
	)	63-00198AC, 63-00216C, 63-00230M, 63-00278,
Case No. 39576	)	63-00279B, 63-19425, 63-20041, 63-31808 and
	)	63-31832
	)	
	)	UNITED STATES' MOTION FOR LEAVE
	)	TO FILE AMENDED OBJECTIONS
	)	

The United States, on behalf of the Bureau of Reclamation ("BOR") and pursuant to Idaho Rule of Civil Procedure 15(a), hereby petitions this Court for leave to file amended SF-1 Objections in the above listed subcases.

Standard of Review

Once responsive pleadings have been filed, a party may "amend a pleading only

by leave of court or by written consent of the adverse party.” I.R.C.P. 15(a) (2006). However, “leave shall be freely given when justice so requires.” *Id.* Under the liberal approach to pleading employed by the rule,

In the absence of any apparent or declared reason – such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of the allowance of the amendment, futility of amendment, etc. – the leave sought should, as the rules require, “be freely given.”

Clark v. Olsen, 110 Idaho 323, 326, 715 P.2d 993, 996 (1986), citing *Foman v. Davis*, 371 U.S. 178, 182 (1962).

Factual Background

The United States objected to one aspect of the Director’s determination of the “season of use” for the listed subcases. The question of the appropriate season of use was originally broached in Basin 63, Part I, when the United States challenged the extended season. After negotiation between the United States and the Idaho Department of Water Resources (“IDWR”), a settlement was adopted which subordinated the extended season to storage at BOR reservoirs. The subordination language was used to resolve the United States “season of use” objections in Part I. The same language was then applied in the Director’s Report for Basin 63, Part II; however, the Director’s Report erroneously applied the subordination only to irrigation uses and omitted other extended season uses such as aesthetics and recharge.

Consequently, on April 21, 2006 the United States filed Objections to these twelve subcases so that the season of use language could be conformed to the terms of the settlement agreement and the season of use decreed in Basin 63, Part I. However, the United States’ objections inadvertently applied this subordination to only one of the BOR reservoirs – Lucky Peak Reservoir – rather than to all four BOR reservoirs – Lucky Peak Reservoir, Lake

Lowell, Arrowrock Reservoir, and Anderson Ranch Reservoir – listed on the Director’s Report recommendations for period of use.

Argument

Leave to amend is appropriate here because the United States has not engaged in dilatory actions and amendment will not result in prejudice to the other parties to these subcases.

There cannot be delay here because the initial hearings have not yet been set. Nor there is there prejudice to the other parties. In *Smith v. Great Basin Grain Co.*, 98 Idaho 266, 272, 561 P.2d 1299, 1305 (1977), the Idaho Supreme Court held that where the basic facts at issue will remain unaltered by an amendment, granting a motion to amend does not prejudice the opposing party. Here the basic facts remain unaltered. The United States’ proposed amendment does not substantially alter the United States’ position in these subcases, nor does it seek to modify the Director’s recommendations. Rather, the United States is merely seeking to correct an obvious omission to each of the twelve Objections. Moreover, given the resolution of the season of use in Basin 63, Part I, and the Director’s recommendation that the subordination language from Basin 63, Part I, be applied to all four of the BOR Reservoirs at issue in Basin 63, Part II, the United States’ proposed amendment will not come as a surprise to the other parties.

The Idaho Supreme Court’s decision in *Christensen Family Trust v. Christensen*, 133 Idaho 866, 993 P.2d 1197 (1999) makes it obvious that leave to amend is appropriately granted here. First, in contrast to the United States’ prompt action, in *Christensen* the plaintiff waited almost a year before moving to amend its complaint. Despite that long delay, the court found that the circumstances of the case were such that the amendment would not delay

resolution of the matter.¹ *Christensen Family Trust*, 133 Idaho at 872, 993 P.2d at 872. Such is the case here as well. Second, the court recognized that the opposing party was not prejudiced because basic facts giving rise to the claims were already known. *Id.* Again, that is the case here as well.

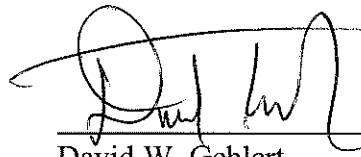
As the Idaho Supreme Court has frequently reminded, “[i]n the interest of justice, district courts should favor liberal grants of leave to amend a complaint.” *Hines v. Hines*, 129 Idaho 847, 853, 934 P.2d 20, 26 (1997). Here, because there is neither prejudice, nor delay nor bad faith, this Court should grant the United States’ motion.

Petition

Thus, the United States now asks the Court’s leave to allow the United States to file amended SF-1 Objections in order to correct its error of omission regarding the desired subordination language in each of these twelve subcases.

Respectfully submitted this 8th day of September, 2006.

Attorney for the United States



David W. Gehlert

¹ The district court had cancelled the original trial setting in favor of a motions hearings. The Idaho Supreme Court found that nothing in the record indicated that considering the allegations in the amended complaint would have delayed the motions hearing. *Christensen Family Trust*, 133 Idaho at 872; 993 P.2d at 872.

CERTIFICATE OF MAILING

I certify that on September 8th, 2006, true and correct copies of the **UNITED STATES' MOTION FOR LEAVE TO FILE AMENDED OBJECTIONS** was served as noted on the following:

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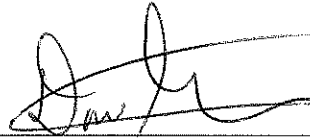
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A handwritten signature in black ink, appearing to read 'David W. Gehlert', written over a horizontal line.

David W. Gehlert