

A. STANDARD OF REVIEW

Idaho Rule of Civil Procedure 15(a) provides that leave of the court to amend a pleading “shall be freely given when justice so requires.” The purpose of I.R.C.P. 15(a) is two-fold: “First, to allow the best chance for each claim to be determined on its merits rather than on some procedural technicality; and, second, to relegate pleadings to the limited role of providing parties with notice of the nature of the pleader’s claim and the facts that have been called into question. Issue formulation is to be left to the discovery process and pleadings are not to be viewed as carrying the burden of fact revelation or of controlling the trial phase of the action.” *Clark v. Olsen*, 110 Idaho 323, 326, 715 P.2d 993, 996 (1986). Accordingly, the Idaho Supreme Court has found that “courts should favor liberal grants of leave to amend.” *Wickstrom v. North Idaho Coll.*, 111 Idaho 450, 453, 725 P.2d 155, 158 (1986).

B. THE INTERESTS OF JUSTICE ARE BEST SERVED BY COMPLETE DEVELOPMENT AND RESOLUTION OF ALL ISSUES RELATED TO THE LARGEST STORAGE RIGHT ON THE UPPER SNAKE RIVER.

The State of Idaho’s amended objection to the American Falls storage right recommendation should be determined on its merits. Water right claim no. 01-02064 was recommended in the name of the United States Bureau of Reclamation as the sole storage right at the American Falls Reservoir. In April 2007, the State of Idaho filed timely objections to the priority date, purpose of use, and other provisions necessary elements of the *Director’s Report* for water right claim no. 01-02064. It was only after further investigation into the record that covers the 80-plus-year history of the American Falls project that the State discovered evidence that further informs its objection to the *Director’s Report* for water right claim no. 01-02064. As a result, the State now seeks to clarify its objections to the priority date and purpose of use elements of the recommendation as well as to set forth an additional objection to the hydropower aspects of the quantity element of the recommendation.

C. NO PREJUDICE WILL RESULT FROM AMENDMENT OF THE STATE'S OBJECTION AT THIS TIME.

The parties have already been put on notice that the quantity of hydropower storage at American Falls is at issue. The Idaho Power Company, for example, has objected to the recommendation for 01-02064, claiming that the right should be adjusted to take into account its claims for 300,000 afa of hydropower storage. Furthermore, the Power Company has also objected to the disallowal of its claims for water right nos. 01-10485, 01-10486, and 01-10487, which consist of alternative claims for 300,000 afa of American Falls hydropower storage. In June 2007, the State of Idaho filed timely responses to all four of the Power Company's objections, including responses to the quantity element of those objections. As such, due notice has already been made that the quantity of hydropower storage at American Falls is at issue.

Due to the relatively early stage of the proceedings, no undue prejudice will fall upon the parties by the State's amended objection. In April 2008, an initial hearing was held in the American Falls Reservoir subcases, including the above-entitled subcase no. 01-02064. At that time, a trial schedule was set for only one issue in the subcase—the effect of the Idaho Supreme Court's decision in *United States v. Pioneer Irrigation District* on title ownership. At an October 2, 2008 status conference, the parties agreed to attend an unmoderated settlement conference, one of the purposes of which was to discuss potential scheduling dates to resolve the remaining issues in subcase no. 01-02064. As set forth in the State's *Motion to Amend*, the State filed its motion in order to give the parties notice of those additional elements to which the State intends to object prior to the mandatory settlement conference. Where no scheduling or trial order has been set, this subcase is at a stage where the State's amended objection will cause no prejudice.

II. CONCLUSION

The State of Idaho's amended objection furthers the interests of justice by ensuring

complete development and resolution of all issues related to the largest storage right on the Upper Snake River, and therefore, the *State of Idaho's Motion to Amend Objection* should be granted.

DATED this 13th day of November 2008.

A handwritten signature in black ink, appearing to read 'D. Stanish', written over a horizontal line.

DAVID L. STANISH
Deputy Attorney General

CERTIFICATE OF SERVICE

I certify that on this 13th day of November 2008, I caused to be served the original and copies of the **MEMORANDUM IN SUPPORT OF THE STATE OF IDAHO'S MOTION TO AMEND OBJECTION** on the following persons by the indicated methods:

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