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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 the General Adjudication)
of Rights to the Use of Water)
from the Snake River Basin)
Water System)

The State of Idaho, ex rel.)
R. Keith Higginson in his)
official capacity as director)
of the Idaho Department of)
Water Resources,)

Plaintiff,)

v.)

the United States;)
the State of Idaho;)
and all claimants to the use)
of water from the Snake River)
Basin Water System,)

Defendants.)

Case No. 39576

Subcase No. 34-10873

UNITED STATES' MOTION TO
REINSTATE OBJECTION

34-10873 -0003/
93-12-0090

DESCRIPTIVE SUMMARY

This is the United States' Motion to Reinstate
Objection to Claim No. 34-10873.

I. BACKGROUND AND FACTS

The United States hereby moves to reinstate its
objection to Water Right No. 34-10873. In support of this
motion, the United States states that:

This claim was originally filed by the Big Lost River
Irrigation District. The claim was for water diverted from the
Big Lost River through several diversions including the Blaine
and Moore Diversions. The original claim did not list places of
use. See Exhibit 1, attached to IDWR's Response to Objection.

Subsequently, IDWR recommended this claim in the
Director's Report for Basin 34. In its recommendation, IDWR
added various places of use, presumably within the Big Lost
Irrigation District.

The United States, on behalf of the Bureau of Land
Management, originally filed a timely objection to this claim on
February 26, 1993. See Exhibit 2. The United States objected to
quantity, priority date, place of use and consumptive use.

In addition to this claim, the U.S. objected to the
priority date of several similar claims, all claims that diverted
through the Moore and Blaine Diversions. In most instances, the
main and, possibly only, issue in the United States' objection to
this and these similarly situated claims was the priority date.

Following the filing of this and other similar
objections, the United States withdrew its priority date

objection to this and other similarly situated claims. A total of over 260 such objections were withdrawn.

Upon further review, the United States discovered that it had inadvertently withdrawn the place of use and quantity objection to this claim. Due to the great number of objections being reviewed and withdrawn at the time, this objection was inadvertently withdrawn in its entirety. Although the United States intended to withdraw its priority date objection to this claim, it did not intend to withdraw the place of use objection as this place of use objection remained unresolved.

The United States' place of use objection are to some very specific portions of the places of use recommended by IDWR in this claim. These specific places of use are all places of use on public lands. Specifically, the United States objects to the following places of use: (1) T.6N, R.25E, Section 18, NESW, SWSW, NESE, and NWSE; (2) T.6N, R.25E, Section 14, SWNE; (3) T.6N, R.25E, Section 28, NWSE; and (4) T.7N, R.25E, Section 35, NWSW. Along with place of use, the United States objects to the total quantity sought based on the fact that if the place of use is decreased, the accompanying quantity of water permitted for the remaining acreage may be decreased.

II. ARGUMENT

The United States now moves to reinstate its objection as to place of use and quantity. First, the failure to maintain this objection is excusable. At the time the BLM withdrew this objection it was reviewing several hundred objections and

actually withdrew more than 250 such objections. Due to the large number of objections, the independent basis for this objection were not identified. This objection was inadvertently withdrawn in its entirety. Given the magnitude of this task, failure to retain this particular portion of this objection is excusable.

The United States has not sat idly by, refusing to participate. Rather, the United States filed its objection in this subcase in a timely manner. The United States continues to be an active participant in the SRBA. See Newbold v. Arvidson, 105 Idaho 663, 672 P.2d 231, 233 (Idaho 1983).

Moreover, the United States has a meritorious objection. Essentially, the irrigation district has sought to claim lands within its irrigation district. However, the small acreages of public lands identified as places of use would not be included within the irrigation district. Rather, they are public lands. Irrigation of these lands are subject to approval by the Bureau of Land Management (BLM). See Stirm v. Puckett, 107 Idaho 1046, 695 P.2d 431, 436 (Idaho App. 1985).

Finally, there will be no prejudice by reinstating this objection. Other private claimants have filed objections to this claim. Thus, there is already a subcase pending. In addition, the litigation phase of this subcase has not yet started so that there will be no delay caused by reinstating this objection. In fact, the claimant was previously on notice of a place of use objection. See Stirm, 695 P.2d at 436.

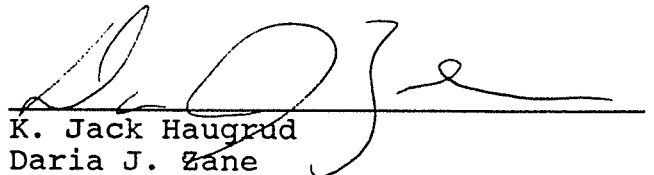
As stated above, it is clear the the United States has a valid excuse for not maintaining its objection in its entirety and that such objection is valid as well as the fact that no prejudice will be suffered by reinstating this objection. It is well recognized where there is a valid claim and excuse and no prejudice will suffer, the Court is required to lean in favor of granting relief and permitting adjudication on the merits. See Schraufnagel v. Quinowski, 113 Idaho 753, 755, 747 P.2d 775 (Idaho App. 1987).

III. CONCLUSION

WHEREFORE, for the foregoing reasons, the United States respectfully requests that the United States' objection be reinstated.

Respectfully submitted this 29th day of December, 1993.

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