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Department of Water Resources
Adjudication Bureau

CLAIMANT: STATE OF IDAHO
TRANSPORTATION DEPARTMENT

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SEP 12 11:53

DISTRICT COURT - 5th JUDICIAL DISTRICT
TWIN FALLS, IDAHO

9-18

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	)	MOTION TO FILE LATE
Rights to the Use of Water from	)	OBJECTION TO THE
the Snake River Basin Water System	)	DIRECTOR'S REPORT
	)	
Case No. 39576	)	Subcase No. 36-02660

DESCRIPTIVE SUMMARY

95-08-0044

This document is the State of Idaho Transportation Department's motion to file late objection. The objection is necessary to clarify the actual area of diversion and use of the above referenced water right which is used presently used to supply water for the operation of a highway safety rest stop.

MOTION TO FILE LATE OBJECTION TO DIRECTOR'S REPORT - 1

MOTION

The Idaho Transportation Department (ITD) by and through its undersigned attorney and pursuant to the Idaho Rules of Civil Procedure and the SRBA Rules of Procedure as set forth in SRBA Administrative Order 1 and the Order Granting in Part, and Denying in Part, Joint Motions For Amendment of Administrative Order 1, moves this court to allow the filing of a late objection to the Report of the Director of the State of Idaho Department of Water Resources. The completed Objection is attached hereto.

This motion is made upon the grounds and for the reasons that the water right described in the Director's Report is in error regarding the area of diversion and use. The water right as described in the Directors Report does in fact correspond with the location described in ITD's claim. However, recent investigation indicates the diversion and use actually occurs on an area directly adjacent to that described in the Director's Report. More particularly, the diversion occurs in the NW 1/4 of the NE 1/4 of Section 16 of Township 9, South, Range 17 East instead of the SE 1/4 of the SW 1/4 of Section 9 and that the use of the water occurs in the NE 1/4 of the NW 1/4 and the NW 1/4 of the NE 1/4 of Section 16 of Township 9. South, Range 17 East, instead of the SE 1/4 of the SW 1/4 of Section 9. ITD does not otherwise object to the amounts or use of the water recommended by the Director in his report.

GOOD CAUSE

Relying on the standards set forth in I.R.C.P. Rules 55(c) and 60(b) ITD asks this Court to relieve it from the original deadline for filing objections. ITD's failure to file a timely objection is the result of mistake, inadvertence and/or excusable neglect and as such there is good cause to allow ITD a late filing of its objection.

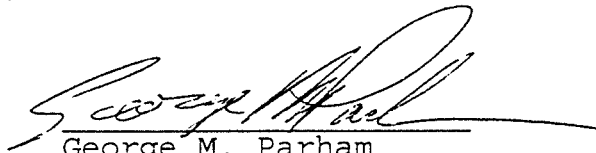
Since the Idaho Department of Water Resources (IDWR) and its Director were originally parties to the SRBA, ITD reasonably assumed that IDWR as a state agency, represented the proprietary water rights interests of all state agencies including ITD. Because of its reasonably founded beliefs, ITD did not question the accuracy of the Director's findings nor did it actively participate in the SRBA. ITD had no reason to contest the Director's Report insofar as this claim was concerned because the Director's Report delineating the place of diversion and use corresponded to the area described in the permit application and license granted to ITD.

Since ITD was not participating as a party it did not receive any of the notices, orders or other documents relative to its respective water rights in this sub basin. It was not until after the Supreme Court ruled that the IDWR and its Director were not parties that ITD became aware of a need to actively participate in the SRBA. Since then, ITD has diligently investigated its claims in the respective sub basins where

reports have been issued and it was pursuant to that investigative process that the error regarding the legal description was discovered. Failure to allow ITD to participate in the SRBA regarding this sub basin will result in severe prejudice to the state and its residents since the water right is essential to the operation of a highway safety rest area on Interstate highway 84.

Counsel requests oral argument on this motion.

DATED This 18th of August, 1995.



George M. Parham
Deputy Attorney General for the
Idaho Transportation Department

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 18th day of August, 1995, I caused a true and accurate copy of the foregoing document to be served by depositing same in the U.S. Mail, postage prepaid, addressed to:

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The United States Department of Justice
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