

RECEIVED

FEB 02 1995

Department of Water Resources
Adjudication Bureau

RECEIVED

FEB 01 1995

OFFICE OF THE
ATTORNEY GENERAL

1995 JAN 31 PM 5:03

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 No. 34-07228

)
) ORDER GRANTING MOTION TO
) FILE LATE OBJECTION OR, IN
) THE ALTERNATIVE, GRANTING
) MOTION TO AMEND DIRECTOR'S
) REPORT

The State of Idaho Department of Water Resources filed a motion for this water right entitled *IDWR's Motion to Correct Errors in Water Right No. 34-07228 (Motion)*. A hearing was held January 17, 1995 at which the Department appeared. The claimant, Wayne Rathbun, did not attend.

The *Motion* states that the Director's Report inaccurately described another water right number in the remarks.

Although the Department termed this a *Motion to Correct Errors*, the *Motion* relied on IRCP 15(a) which sets forth the requirements for amending pleadings. It appears from the *Motion* and from oral argument that the IDWR either seeks leave to amend the Director's Report for this water right or agrees to a change proposed by an informal *Objection* not filed with the court. Therefore, the court will treat the *Motion* as a *Motion to Amend Director's Report or in the Alternative Motion to File Late Objection*. At the oral argument, the court ruled that the parties to this subcase could affectuate the change in this water right by amending the Director's Report. On further reflection, there appears to be another method of accomplishing the change which could be quicker.

ORDER GRANTING MOTION TO FILE LATE
OBJECTION OR, IN THE ALTERNATIVE,
GRANTING MOTION TO AMEND DIRECTOR'S
REPORT
1/31/95

The change to the director's recommendation may be accomplished in at least one of two ways. The parties could seek leave to amend the Director's Report or seek leave to file a Late Objection. If this change is accomplished by amending the Director's Report, the Department would report the change in a *Supplemental Director's Report*. Once the *Supplemental Director's Report* is filed, the statute allows between 60 and 180 days for an objection period with additional time for responses. I.C. § 42-1411. If this change in the basis of the right is accomplished by amending the Director's Report, the claimants could have to wait for more than 180 days before they would be able to submit this water right to the court to be recommended or decreed.

If, however, the change is accomplished by allowing the claimant to file a late objection, the time frame for submitting this water right for final resolution could be much quicker. The claimant could file an objection, and as soon as the period for responses has elapsed, the parties could then submit a *Standard Form 5*. The court could proceed to recommend or decree the water right much sooner.

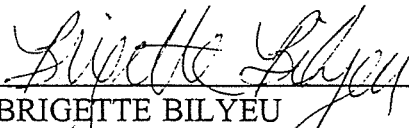
IT IS THEREFORE ORDERED, that leave is granted to amend the Director's Report for this water right. IT IS FURTHER ORDERED that leave is also granted to file a late objection for this water right. If the parties elect to file a late objection rather than wait for the *Supplemental Director's Report*, the following deadlines shall apply:

Objections due: February 15, 1995

Responses due: April 14, 1995

IT IS SO ORDERED.

DATED January 31, 1995.


BRIGETTE BILYEU
Special Master, Reporting Area 1
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the **ORDER GRANTING MOTION TO FILE LATE OBJECTION OR, IN THE ALTERNATIVE, GRANTING MOTION TO AMEND DIRECTOR'S REPORT** was mailed on January 31, 1995, with sufficient first-class postage to the following:

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, ID 83711-4449

The United States Department of Justice
Environment and Natural Resources Division
550 West Fort Street, Box 033
Boise, ID 83724

Wayne Rathbun
Mildred Rathbun
231 Skyline Dr.
Richland, WA 99325



Deputy Clerk

