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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. 36-02018
Case No. 39576	)	
	)	UNITED STATES' RESPONSE TO STATE
	)	OF IDAHO'S MOTION TO FILE LATE
	)	RESPONSE

DESCRIPTIVE SUMMARY

This is the United States' response to the State of Idaho's Motion to File Late Response.

I. BACKGROUND

The State of Idaho's Motion (hereinafter the State) was filed in response to the Court's order of July 28, 1995. That order was intended to allow parties that had opted to rely on

IDWR to litigate and advocate in favor of the Director's report to participate in subcases where participation was required due to the removal of the Director and IDWR. See Court's order of July 28, 1995.

II. DISCUSSION

D. The Court Should Not Decide This Motion In Light Of The State's Motion For Basinwide Issue No. 5.

1. It is unclear how this is intended to be coordinated with the litigation of Basinwide Issue No. 5.

In its motion, the state makes clear that its response is aimed at having the Court address the general provisions. At the same time, the state and others have filed a Motion to Designate a Basinwide Issue No. 5, the validity of the general provisions. The outcome of that motion is currently pending before the Court. Responses to that motion are due on November 15, 1995.

The state has also indicated that if this motion is granted it would move to consolidate this motion with other subcases. Despite raising these issues in the subcase context, in its motion, the state also avers that it believes that general provision objections should be addressed in a basinwide hearing or series of hearings. See p. 6.

Given these various statements, it is unclear how the State believes these motions within the context of subcases should be coordinated with the motion to designate basinwide issue No. 5. On the one hand, the state seems to suggest that it can be handled within each basin through consolidating subcases.

On the other hand, the state suggests a basinwide hearing is necessary.

Because it is uncertain how these are to be coordinated, it is not possible to evaluate precisely what procedure the state is advocating for handling the issues relating to general provisions.¹ Until it is clear what the state's proposal is, it is not possible to address the sufficiency of such proposal.

2. The decision on the Motion for Basinwide Issue No. 5 could make this motion moot.

Should the Court grant the state's Motion to Designate Basinwide No. 5, under AO-1, the state or others can move to designate subcases that should be consolidated and tried within the context of the basinwide issue. In fact, the state in its motion avers that it believes objections to general provisions should be addressed in a basinwide hearing. Thus, it is anticipated that the State or others would make such a motion to consolidate these subcases to be handled under a Basinwide issue.

If this were to occur, the present motion would be moot. As a result, it makes sense to stay any decision on this

¹ There seems little disagreement as to the procedures for reviewing the general provisions once the mechanism for doing so has been established. For each of the general provisions, the Court must determine if the particular provision is in fact general as defined by I.C. 42-1411(3), that it applies to all rights. If so, the Court must determine if it is necessary.

If it is determined that the provision is not in fact general, then it must be determined to which rights the provision applies and if it is really an element of those rights, including the element identified in 42-1411(2)(k), the catch-all element that relates to matters, necessary to define, clarify or administer the right.

motion until the Court has made a decision on Basinwide No. 5.
This would be in the interest of judicial economy.

II. CONCLUSION

WHEREFORE, for the foregoing reasons, the United States respectfully requests that claimant's motion be denied or alternatively that a decision on this matter be stayed pending the decision with the Motion to Designate Basinwide No. 5.

Respectfully submitted this 13th day of October, 1995.



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