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Department of Water Resources

**Movant: State of Idaho**

**ALAN G. LANCE  
ATTORNEY GENERAL**

**CLIVE J. STRONG  
Deputy Attorney General  
Chief, Natural Resources Division**

**CHERI C. JACOBUS  
Deputy Attorney General  
P.O. Box 44449  
Boise, Idaho 83711-4449  
Telephone: (208) 334-2400  
FAX: (208) 334-2690**

**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. 34-02322                        |
|                | ) |                                             |
| Case No. 39576 | ) | STATE OF IDAHO'S REPLY TO UNITED STATES'    |
|                | ) | RESPONSE TO STATE OF IDAHO'S MOTION TO FILE |
| _____          | ) | LATE RESPONSE                               |

**DESCRIPTIVE SUMMARY**

*This is the State Of Idaho's Reply To United States' Response To State Of Idaho's  
Motion To File Late Response.*

**STATE OF IDAHO'S REPLY TO UNITED STATES' RESPONSE TO STATE OF IDAHO'S  
MOTION TO FILE LATE RESPONSE**

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## REPLY TO UNITED STATES' RESPONSE

On October 13, 1995, the United States filed its response to the *State Of Idaho's Motion To File Late Response*. The United States did not oppose the substance of the State of Idaho's motion. It simply questioned whether participation in a subcase with the intention to file a motion to consolidate that subcase with others was the most appropriate method for achieving the State of Idaho's goals and alternatively suggested decision in this matter be stayed pending decision on the *Motion To Designate Basin-Wide Issue No. 5*. Decision should not be delayed. The State of Idaho's participation in this subcase with its intention to file a motion to consolidate the subcase with other subcases raising similar issues best meets both the claimants' needs and the Court's needs. It will allow the Court to fully consider the appropriateness of the general provisions in a broad sense and to resolve the question of the particular general provision at issue in this subcase.

The State of Idaho chose to file both a motion to consolidate and a motion to designate a basin-wide issue because the State of Idaho "believes that a broad spectrum of actual controversies in multiple subcases will assist in the resolution of such issues." *SRBA Administrative Order Rules Of Procedure*, section 9. This Court anticipated the very situation presented here.

It is anticipated that a motion to consolidate may accompany a motion to designate basin-wide issues when either a movant or a respondent to a motion to designate believes that a broad spectrum of actual controversies in multiple subcases will assist in the resolution of such issues.

*Id.*

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The appropriateness of specific general provisions cannot be considered in a vacuum. The need for a particular general provision can be determined only within the context of the facts. It is a fact driven decision. As such, those subcases in which objections have been filed should be part of the basin-wide proceeding - to provide the Court with the facts and to allow it to fully consider the implications of the actual controversy. This is precisely the type of situation envisioned by the Court when it suggested using both motions to consolidate and designation of basin-wide issues. The Court was right.

As the claimants moving for designation of Basin-Wide Issue No. 5 stated in their motion to designate:

Within each Reporting Area (Reporting Areas 1 (Basin 34), 2 (Basin 36), and 3 (Basin 57)) certain general provisions and other statements in the Director's Report apply to all water rights within that area. Other general provisions and other statements may apply to discrete classes of water rights. The resolution of objections to a general provision or other statement directly affects all water rights subject to that provision, including uncontested water rights.

Any change in a "general provision" in one subcase affects the exercise of all claimants' rights that are subject to the provision. Some claimants have relied on the inclusion of general provisions and other statements to define or aid in the administration of either their right or another claimant's right. Others object to their inclusion. Some of the provisions define or describe practices inherent in the exercise of water rights in a particular basin. The provisions are premised on their application to all rights within the identified class. Therefore, removing or altering a provision in one claim affects all other claims - even uncontested claims.

In order to avoid due process concerns arising from the deletion of a general provision from some but not all rights within a class, and to ensure timely and inexpensive resolution of the outstanding objections, all objections to general provisions and other statements should be addressed in a basin-wide

hearing or series of hearings where all claimants have appropriate notice and can choose to participate. This allows the Court to quickly and decisively resolve the objections for all claimants within a sub-basin.

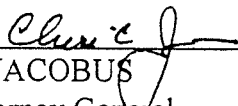
*Motion To Designate Basin-Wide Issue No. 5, p. 3.*

In summary, the United States does not oppose the resolution of objections to the General Provisions or certain specific provisions in a basin-wide or more global proceeding. It simply misses the reason consolidation will facilitate those goals. The State of Idaho believes that consolidation of those sub-cases in which objections have been filed is essential to a careful consideration of the appropriateness of certain "general provisions" and that the facts of individual claims are important to that consideration. General provisions apply to real water rights and will affect their administration.

Therefore, the State of Idaho's motion to file late response should be granted.

DATED this 16<sup>th</sup> day of November, 1995.

ALAN G. LANCE  
Attorney General

  
\_\_\_\_\_  
CHERI C. JACOBUS  
Deputy Attorney General  
Natural Resources Division

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CERTIFICATE OF SERVICE

I certify that on this \_\_\_\_\_ day of November, 1995, I served a true and correct copy of the STATE OF IDAHO'S REPLY TO UNITED STATES' RESPONSE TO STATE OF IDAHO'S MOTION TO FILE LATE RESPONSE, by the method indicated below to:

United States Department of Justice  
David Harder  
550 West Fort Street, MSC 033  
Boise, Idaho 83734

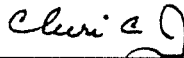
*Overnight Mail*

Idaho Department of Water Resources  
Statehouse Mail  
Boise, Idaho

*Statehouse Mail*

Lillian G. Bell  
Route 1  
Darlington, ID 83231

*U.S. Mail*

  
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CHERI C. JACOBUS  
Deputy Attorney General