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Department of Water Resources

Movant: State of Idaho

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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. 36-00049
	)	
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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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.

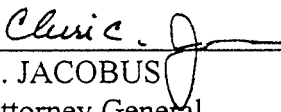
Motion To Designate Basin-Wide Issue No. 5, p. 3.

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 16th day of November, 1995.

ALAN G. LANCE
Attorney General



CHERI C. JACOBUS
Deputy Attorney General
Natural Resources Division

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:

Idaho Department of Water Resources
Statehouse Mail
Boise, Idaho

Statehouse Mail

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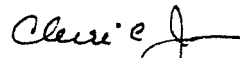
U.S. Mail

Patrick D. Brown
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United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, Idaho 83734

Overnight Mail



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STATE OF IDAHO'S REPLY TO UNITED STATES' RESPONSE TO STATE OF IDAHO'S
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