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DEPARTMENT OF
WATER RESOURCES

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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 Nos.: 36-00012, 36-00030,
) 36-00043A, 36-00084, 36-00104A,
) 36-00104B
)
) ORDER GRANTING LEAVE TO
) FILE LATE RESPONSES TO
) OBJECTIONS

On July 13, 1995, the above six subcases were consolidated under subcase no. 36-00012 upon the United States of America, Department of the Interior, Fish and Wildlife Service's unobjected-to motion because they presented common issues of fact and law. At the time of consolidation, the United States was a party having filed objections in each subcase. A mandatory settlement conference for all six subcases is set to reconvene on December 12, 1995.¹

On August 18, 1995, the United States filed its *Motion for Leave to File Late Responses to Objections* in three of the above subcases: 36-00030 (Flying Triangle, Inc.), 36-00043A (Omohundro) and 36-00104A (Mavencamps). The *Motion* alleges "that the United States relied on the Director's Report . . . and on the IDWR's defense of the elements of the water rights as defined in the Director's Report." Essentially, the United States seeks to support recommendations in the Director's Report as to elements put at issue by the claimants' objections. Hence, the *Motion* argues that no new issues will be raised and the proceedings will not be disrupted.

¹ Claimants in the six subcases are: Idaho Department of Fish and Game (36-00012); Flying Triangle, Inc. (36-00030); Nevada B. Omohundro (36-00043A); Shelby and Joan Wise (36-00084); Fred and John Mavencamp (36-00104A); and Ronnie and Sharlene Smith (36-00104B).

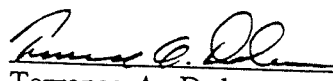
A hearing was held on November 15, 1995, at the SRBA Courthouse in Twin Falls, Idaho. Appearing in person were James J. Dubois for the United States, Patrick D. Brown for the Wises and Mavencamps, and John K. Simpson for Flying Triangle, Inc. Appearing by telephone were Nicholas B. Spencer for IDWR and Rinda R. Just for Idaho Department of Fish and Game. Ms. Omohundro and the Smiths failed to appear.

After considering the pleadings and hearing arguments of counsel, it is clear that the United States is entitled to participate in the three subcases due to the removal of the Director and IDWR as a party and the change of the Director's Report as a pleading. The United States has (1) filed its *Motion* within twenty-one days of Judge Hurlbutt's Order of July 28, 1995; (2) attached to its *Motion* a completed *Response* which does not enlarge or add to existing issues; (3) shown good cause for untimeliness; and (4) shown the existence of a meritorious position.

Therefore, IT IS ORDERED that the *Motion* is **granted**. However, the United States' participation shall be limited to litigation of those elements in the Director's Report to which the claimants have objected and to which IDWR has responded, in addition to the United States' objections.

The responses previously lodged with this court will be deemed filed as of the date of this Order.

DATED November 27, 1995.



Terrence A. Dolan
Special Master, Reporting Area 3
Snake River Basin Adjudication

GRANTING LEAVE TO FILE
RESPONSES TO OBJECTIONS

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRATING LEAVE TO FILE LATE RESPONSES TO OBJECTIONS was mailed on November 27, 1995, with sufficient first-class postage to the following:

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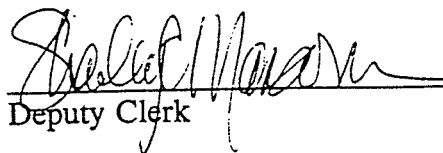
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