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UNITED STATES OF AMERICA

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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 Nos. 34-04040 &
Case No. 39576	)	34-04190
	)	
_____	)	STATUS REPORT

Descriptive Summary

This is the United States' Status Report which identifies the status of each of the objections in these subcases and recommends action to the Court to resolve these subcases.

Discussion

Status of Objections

At the status conference of December 7, 1995, the Special Master for Basin 34 requested that the United States submit a status report summarizing the filing of Standard Form Fives and Motions to Dismiss for the various objections in these

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two subcases. Apparently, there were significant disparities between the Court's and the United States' records regarding the status of the objections and filings relating thereto.

There were 48 separate objections filed in Subcase 34-04040. Of the 48 objections, four of the objections were duplicative objections filed by the same persons. There were 47 separate objections filed in Subcase 34-04190. Of the 47 objections, one objection was a duplicative objection. Another objection was filed by the claimant, the BLM, against its own claim.

Settlement of Objections With Identical SF5s

In an attempt to settle these subcases, the United States sent Standard Form No. 5s to each and every objector. Although this Court has generally required each and every party sign a Standard Form No. 5 to resolve a subcase, given the number of persons involved, it would have been difficult, if not impossible, to logistically obtain the signatures of each and every party on a single SF5. To fulfill the intent of the SF5, that is to obtain settlement of a subcase by each party agreeing to the same terms, identical SF5s were sent to each party filing an objection. Each one of the SF5s sent by the United States provided that the water right at issue be decreed as recommended by the Director of IDWR in his report for Reporting Area No. 1, Basin 34.

In response, a number of objectors signed and returned the SF5s. These were forwarded to the Court for filing.

Upon receipt of the signed SF5s, the United States did not alter the SF5s. Rather, the United States submitted them directly to the Court. In some instances, parties directly filed the SF5s with the Court. A review of the SF5s submitted to date by either the United States or private parties reveals that they do not appear to have been altered.¹

Court's Status Conferences

In addition, the Court has held two status conferences relating to the status of the objections in these subcases, one in September, 1995 and one in December, 1995. Although some parties have appeared, most of the persons appearing have signed SF5s. Other objectors have not signed or submitted the SF5s or appeared at the status conferences. Motions to dismiss the objections of these parties have been filed and are pending before the Court.

Categories of Objections

As explained above, most of the objections filed in these subcases fall into one of two categories, (1) parties who

¹At the status conference the Court mentioned the United States filing an affidavit to the effect that all the SF5s were identical. Unfortunately, for various reasons it was not possible to have an affidavit executed. The furlough of the federal employees and the weather conditions in Washington, D.C. following the furlough made it impossible for undersigned counsel to obtain such an affidavit or have it notarized. Additionally, because several employees and contractors of the United States were involved in the process of sending out, receiving and filing the SF5s, it was difficult to determine precisely who was the appropriate party to execute such an affidavit. Undersigned counsel did direct that all the SF5s sent out on these subcases under her signature be identical. In reviewing the SF5s filed by the United States, it does not appear that there were any alterations to them.

have executed SF5s and stipulations that have been filed with the Court; and (2) parties who have failed to appear and for which Motions to Dismiss have been filed. Exhibits A and B list the objectors who have signed Standard Form Fives and Stipulations with the United States to resolve their objections in these subcases. Twenty-six (26) objectors have resolved subcase 34-04040 by signing the Standard Form Five and Stipulation. Thirty (30) objectors have resolved subcase 34-04190 by signing the Standard Form Five and Stipulation.

Exhibit C and D list the objectors that have failed to appear at hearings and prosecute their objections. The United States has filed a Motion to Dismiss under I.R.C.P. 41(b) for each of these objections.² The United States has also filed a motion to dismiss its own objection in subcase 34-04190.

There are three objectors which do not fall into one of the above described categories. They are:

Larmen Anderson: Mr. Anderson appeared at the first and second status conferences. After the second status conference (December 7, 1995) United States counsel and Mr. Anderson discussed his objection. The United States sent to Mr.

² The court should note that the United States filed a motion to dismiss the objection of Mr. Marshall Todd Perkes in early October, 1995, following the September, 1995 status conference. Subsequently, Mr. Marshall Todd Perkes did appear at the status conference on December 7, 1995 and did discuss settlement informally with William Ferry, counsel for the United States. As a result, Mr. Perkes was sent a Standard Form Five and Stipulation for both subcases for his consideration.

Anderson an SF5 and a Stipulation for both subcases, 34-04040 and 34-04190 on December 18, 1995.

Reuben Babcock: Like Mr. Anderson, Mr. Babcock appeared at both status conferences. The United States has sent Mr. Babcock a Standard Form Five and Stipulation for both subcases.

Lloyd Bingham: Mr. Bingham has signed a Standard Form Five and Stipulation for subcase 34-04040 (see Exhibit A). At the time a similar SF5 and Stipulation was inadvertently not sent to Mr. Bingham for his signature. As a result, to date, he has not signed the same for subcase 34-04190. Upon learning of this omission in December, 1995, the United States sent a Standard Form Five and Stipulation to Mr. Bingham to resolve this subcase. Proposed Action Relating to Motions to Dismiss.

The United States asks that the Court grant the motions to dismiss it has filed under I.R.C.P. Rule 41(b). Most of the motions have been pending since October, 1995. The parties have had ample time within which to respond. If it is deemed necessary, the Court can issue an order requiring a response by a date certain and setting a hearing should any responses be filed. A proposed order is attached entitled Order on United States' Motion to Dismiss Objections.

Proposed Action Relating to SF5s Filed With the Court

With regard to the objections for which SF5s have been filed, these can be treated as joint stipulations by the parties to dismiss the objections pursuant to I.R.C.P. Rule 41(a). This

is particularly appropriate given that the parties signing these SF5s have agreed that the rights should be decreed as recommended. In so doing, these parties essentially have agreed to the withdrawal of their objection. If the Court deems it necessary, to ensure that the parties wish their objections to be dismissed, the Court can issue an order advising these parties that the Court intends to treat the submission of these SF5s as joint stipulations to dismiss these objections under I.R.C.P. Rule 41(a). The Court can give the individuals a date certain by which to file a statement with the Court should they not wish to resolve this matter through dismissal of their objection. Should any responses are filed, the Court can then hold a hearing. A proposed order for the Court to issue is included as Order Relating to Stipulations and SF5s Filed.

Handling Objections Where Neither SF5 or Motion to Dismiss Are Filed.

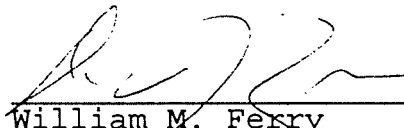
As set forth above, following the December, 1995, status conference, the United States sent the remaining objectors proposed stipulations and SF5s. The United States has been in touch with at least one of these individuals. It appears that the remaining objectors and the United States may well resolve these objections. As a result, the United States asks that the Court wait until the first two categories of objections discussed above are resolved before proceeding with the remaining objections.

Once the above two categories of objectors are resolved under Rule 41, the Court can then proceed to deal with any of the remaining objections. Since there will be only a few objectors, the Court can set a settlement conference to try to settle the matter and at least focus the issues. Subsequently, should settlement efforts fail, the Court can set a schedule for litigating the issues.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, the United States requests that the Court grant its Motions to Dismiss or at least set the matter for response and hearing. The United States further requests that the Court issue an order requesting that any parties who have signed SF5s that do not want them to be treated as Stipulations to Dismiss the Objections file a statement to this effect with the Court by a date certain and hold a hearing as necessary.

Respectfully submitted this 11
day of January, 1996



William M. Ferry
Daria J. Zane
Attorneys, ENRD
U.S. Department of Justice

Subcase No. 34-04040

LIST OF NAMES OF OBJECTORS WHO HAVE
SIGNED SF5s AND STIPULATIONS, WHICH HAVE BEEN
FILED BY BOTH THAT OBJECTOR AND THE CLAIMANT IN THIS SUBCASE

Wanda Smith	Richard Reynolds
Dale Smith	Leo & Bonnie Jensen
Lawrence Babcock	Fred Burt
Lloyd Bingham	Gerald Stewart
Karalee & Dean Anderson	
Albert Babcock	
Anthony Madsen	
Jay & Jean Andersen	
Jay & Susan Pearson	
Seth Beal (2 Obections)	
Billy Haralson	
Jack Jensen	
Leah Nation	
Nora Techick	
James & Erwin Matthews	
Joel Andersen	
Richard & Thora Beal	
Seth & Shelley Beal	
Robert & Josephine Spraker	
Craig & Jackie Stewart	
Glen Guthrie	
Dr. Jack Sowards	

EXHIBIT A

Subcase 34-04190

LIST OF NAMES OF OBJECTORS WHO HAVE
SIGNED SF5s AND STIPULATIONS, WHICH HAVE BEEN
FILED BY BOTH THAT OBJECTOR AND THE CLAIMANT IN THIS SUBCASE

Wanda Smith	Raymond Noble
Robert Waddoups	Richard & Thora Beal
Dale Smith	Jack Jensen
Lawrence Babcock	Billy Haralson
Donald Hymas	Leo & Bonnie Jensen
Karlalee & Dean Andersen	Jay & Jean Andersen
Albert Babcock	Fred Burt
Anthony Madsen	Gerald Stewart
Jay & Susan Pearson	
Richard Reynolds	
G.T. Guthrie	
Jack Sowards	
Seth Beal	
Robert & Josephine Spraker	
Steve Tibbitts	
Craig & Jackie Stewart	
Gertrude & Alvin Roessner	
James Matthews	
Nora Techick	
Leah Nation	
Joel Andersen	
Seth & Shelley Beal	

Subcase No. 34-04040

LIST OF OBJECTORS IN THIS SUBCASE
FOR WHICH MOTIONS TO DISMISS WERE FILED
BY THE UNITED STATES

Dave Nelson

Robert Waddoups

Donald Hymas

Doyle Jensen

Gaven & C.G. Knighton

Jim & Linda Scouten

Herman Aikele

Jack & Lois Walker (2 objections)

Fred Dundas (2 objections)

Randal & Sandra Damiana (2 objections)

LeAnne & Wade Waddoups

Marshal Perkes

Thomas Perkes

Ned & Riva Walker

Doug & Vickie Hendricks

Exhibit C

Subcase No. 34-04190

LIST OF OBJECTORS IN THIS SUBCASE
FOR WHICH MOTIONS TO DISMISS WERE FILED
BY THE UNITED STATES

BLM

Doyle Jensen

Gaven & C.G. Knighton

Jim & Linda Scouten

Herman Aikele

Randal & Sandra Damiana (2 objections)

Fred Dundas

Jack & Lois Walker

Doug & Vickie Hendricks

LeAnne & Wade Waddoups

Ned & Reva Walker

Marshal Perkes

Thomas Perkes

Exhibit P

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 Nos. 34-04040 & 34-04190
Case No. 39576	)	
	)	Order on United States' Motion to
	)	Dismiss Objections.
	)	
_____	)	

This matter is before the Court with regard to the filing of various Motions to Dismiss by the United States relating to certain objections in the above-captioned subcases. The parties to each of these subcases against whom the Motions to Dismiss have been filed have failed to attend status conferences set in these subcases or respond to these motions to dismiss, evidencing a failure to prosecute the objections. Given this, the Court deems it appropriate to dismiss these objections pursuant to Rule 41(b), Idaho Rules of Civil Procedure. Accordingly, it is hereby

ORDERED that the any party against whom a Motion to Dismiss has been filed shall have until _____
to show cause why his or her objection should not be dismissed. Should no response or objection be filed, the Court will thereafter dismiss the objection; and it is further

ORDERED that should any responses be filed, a hearing
will be held on _____ at _____
to determine whether such objection should be dismissed.

IT IS SO ORDERED.

DATED: _____

BRIGETTE BILYEU
Special Master

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. 34-04040 & 34-04190
Order Relating to Stipulations and SF5s
Filed.

This matter is before the Court with regard to the filing of various Stipulations and SF5s in the above-captioned subcases. Each of the SF5s submitted request that the signators ask that the water rights at issue be decreed as recommended in the Director's Report for Reporting Area No. 2, Basin 34. In so doing, these SF5s and stipulations request that the Court dismiss the objection. Given this, the Court deems it appropriate to treat these as stipulations to dismiss these objections pursuant to Rule 41(b), Idaho Rules of Civil Procedure. Accordingly, it is hereby

ORDERED that the SF5s filed to date shall be treated as Stipulations to Dismiss Objections Under I.R.C.P. Rule 41(a). Should any party signing such stipulation and SF5s object to treating these SF5s and Stipulations as Stipulations to Dismiss and desire to litigate these matters, such party shall file a statement with the Court to that effect on or before _____
_____; and it is further

ORDERED that should any responses be filed, a hearing
will be held on _____ at _____
relating to the treatment of these SF5s.

IT IS SO ORDERED.

DATED: _____

BRIGETTE BILYEU
Special Master

CERTIFICATE OF SERVICE

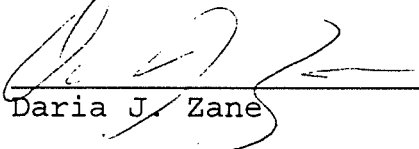
I certify that on the 11 day of
January, 1996, I served a true and correct copy of the United
States' Status Report in Subcase Nos. 34-04040 and 34-04190 by
first-class, postage paid mail on the following individuals:

1. Original to

Clerk of the District Court by fax
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707
FAX 208/736-2121

2. Copies to individuals listed on the following pages and
courtesy copy faxed to

Idaho Dept. of Water Resources
1300 N. Orchard St.
Boise, Idaho 83702
Attn: M. Howard, FAX 208/327-5400


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