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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. 34-07245B
	)	
Case No. 39576	)	IDWR REPORT ON SUBSTITUTION OF
	)	PARTIES IN THE EVENT OF THE DEATH
		OF THE ORIGINAL CLAIMANT

DESCRIPTIVE SUMMARY

This document is the report of the Director of the Idaho Department of Water Resources ("IDWR") on a procedure to substitute parties where the original or prior claimant is deceased. The Director submits this report pursuant to I.C. § 42-1412(4) in response to Special Master Bilyeu's request.

DISCUSSION

Special Master Bilyeu expressed concern that the present Standard Form 3 procedure for substituting a new claimant/purchaser may be inadequate in those situations where

the prior claimant/purchaser died. This concern arises out of the requirements of Idaho Rule of Civil Procedure ("I.R.C.P." or "Rule") 25(a)(1).

Pursuant to Rule 25(a)(1), when a party dies but the claim is not extinguished the court may order substitution of the proper parties. The motion to substitute together with notice of hearing are to be served on the parties and on any other persons as necessary. If substitution is not made within a reasonable time then the action may be dismissed as to the deceased party.¹

In the Snake River Basin Adjudication change of ownership or substitution of party occur as follows. Section 42-1409(6)² requires every purchaser of a claim to present notice of the change in ownership to the Director. A purchaser is defined as "any successor in interest of a claimant, whether the interest is acquired by purchase, gift, *inheritance*, or other means." See I.C. § 42-1401A(10) (*italics added*). The express language of the

¹ Rule 25(a)(1) states in full:

Substitution of parties - Death. - If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by the successors or representatives of the deceased party or by any party and together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon person not parties in the manner provided in Rule 4 for the service of a summons. If substitution is not made within a reasonable time, the action may be dismissed as to the deceased party.

² I.C. 42-1409(6) was previously designated as I.C. 42-1409(7).

statute anticipates that ownership of the claims may be changed as a result of the death of the original claimant. The § 42-1409(6) procedure to change ownership is an administrative procedure to assure accuracy in IDWR records. It does not insure that similar changes are made in the court's records of the proceedings on reported water right claims.

To provide for the substitution of a claimant of a reported water right claim, the District Court established the Standard Form 3 procedure set forth in Administrative Order 1. Specifically, section 4Ac(3) of Administrative Order 1 requires a claimant/purchaser of a reported water right to file a "Standard Form 3 - Consent to Substitution of Party."

The Standard Form 3 procedure was developed in consultation with the IDWR. The objective was to develop a procedure that would meet the statutory requirements for notice to both IDWR and to the parties in the adjudication of change a of ownership, thereby minimizing the burden on the claimants of water rights where the ownership has changed after the filing of a director's report.

Standard Form 3 defines a "new claimant/purchaser" as "any successor in interest of the 'prior claimant/seller' whether the interest is acquired by purchase gift, *inheritance* or other means." (Italics added.) Hence, like I.C. § 42-1401A(10) and § 42-1409(6), Standard Form 3 contemplates that a claim may be transferred as a result of the death of the original claimant.

The Standard Form 3 is executed by the new claimant/purchaser and signed by the prior claimant/seller. IDWR recommends that in the event of the death of the prior claimant/seller, the personal representative of the deceased person's estate sign the Standard Form 3 on behalf of the prior claimant/seller, and provide documentation of his or her authority as personal representative.³ This will insure notice to and consent of the prior claimant's estate is obtained prior to the substitution of the new owner. The District Court has also indicated that where the signature of the prior claimant (or the prior claimant's representative) cannot be obtained, proof of ownership may be accomplished by providing a will, probate documents or other document supporting the change of ownership. See, e.g., Exhibit 1 attached hereto. Documented proof of ownership substitutes for the signature of the prior claimant where it cannot be obtained. A fully executed Standard Form 3 is filed with the Court and served on all parties to a subcase, the State of Idaho and the United States.

The procedure established by Administrative Order 1 and Standard Form 3 is intended to supplement the Rules of Civil Procedure and any other applicable laws to the extent necessary

³ Although this can be done utilizing the current Standard Form 3, it may be helpful to the claimants to clarify the instructions for the form to address this particular circumstance.

to allow for the fair and expeditious resolution of all claims or issues in the adjudication. Administrative Order 1 at 2.

Administrative Order 1 and the associated procedure were established pursuant to the authority granted to the District Court by the Idaho Supreme Court in its Order dated February 19, 1988. The Idaho Supreme Court recognized that the number of claimants and complexity of the case caused the adjudication to be unique, requiring special rules not provided for in the I.R.C.P. To meet the needs of the adjudication while providing for the fair and expeditious resolution of all claims the District Court was authorized to,

modify the procedure for making service of pleadings, motions, notice of hearing and other documents and the procedure of giving notice of hearings and trials before the court or any masters appointed by th [sic] Court.

February 19, 1988 Order at 2. To the extent the Standard Form 3 modifies the procedure in I.R.C.P. 25(a)(1), such modifications are authorized by the Supreme Court pursuant to the above language.

In addition to modifying service and notice requirements, Administrative Order 1 specifically states that no hearing will be held on a substitution of parties. Administrative Order 1 at 6. In contrast, I.R.C.P. 25(a)(1) implies that there will be a hearing on the substitution of parties.

The Idaho Rules of Civil Procedure, however, "shall be liberally construed to secure the just, speedy and inexpensive

determination of every action and proceeding." I.R.C.P. 1(a). Similarly, a principal goal of the adjudication and Administrative Order 1 is to provide for the fair and expeditious resolution of all claims and issues in the SRBA. Administrative Order 1 at 2. Holding a hearing on what amounts to a clerical function does not further these objectives. On the contrary, additional cost and time is incurred validating an uncontested change of ownership.

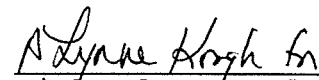
Furthermore, the mere change of ownership does not alter the underlying dispute in a subcase. All that changes is the original claimant's interest, if any, in the property and the appurtenant water right. Standard Form 3 ensures that proper documentation and consent for the substitution is filed with the Court and that notice of the substitution is served on all interested parties. The added burden of a hearing to authorize an uncontested change of ownership is unnecessary and wasteful. Certainly, it is within the discretion of the District Court to eliminate unnecessary hearings. To conclude otherwise only defeats the effort to expeditiously adjudicate water rights from the Snake River Basin.

CONCLUSION

The current procedure for change of owner pursuant to Administrative Order 1 and Standard Form 3 is consistent with I.R.C.P 25(a)(1). To the extent it is not, any variance is authorized by the Supreme Court Order dated February 19, 1988.

No party is prejudiced by the procedure of the Standard Form 3 process, and the procedure promotes the fair and expeditious resolution of claims.

Dated this 16th day of February, 1996.



Richard B. Burleigh
Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I served true and correct copies of the foregoing document to each person at the address listed on the court's certificate of mailing by mailing in the U.S. Mail with the correct postage affixed thereto on the 16th day of February, 1996.

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