

Department of Water Resources

The IDWR Report on Substitution of Parties in the Event of the Death of the Original Claimant ("IDWR Report") focused on Rule 25(a)(1). Report at 2. Rule 25(a)(1) provides for the

substitution of a party in the case of that party's death where the claim is not extinguished upon motion and hearing.¹

In the matter at hand, Lynn Reno and Diane Reno filed their claim jointly. Both Lynn Reno and Diane Reno appear as parties on the directors page for their subcase. Diane Reno is now deceased and, from information divulged in a prior status conference, Lynn Reno is sole heir to her estate and any interests therein. As Lynn Reno is already a named party in this subcase, a motion for substitution of party under Rule 25(a)(1) may not be the most applicable action.

The IRCP addresses the death of a co-party under Rule 25(a)(2). Rule 25(a)(2) provides that where one of the parties in an action dies, and the right sought to be enforced survives to the surviving co-party, the action does not abate. The death is noted on the record and the action proceeds.² Since Lynn

¹ IRCP Rule 25(a)(1) 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 persons not parties in the manner provided in Rule 4 for the service of summons. If substitution is not made within a reasonable time, the action may be dismissed as to the deceased party.

² Rule 25(a)(2) in full:

Death of Coparty - Effect - In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be

(continued...)

Reno and Diane Reno were co-parties, and Lynn Reno as Diane Reno's sole heir possesses any interest that Diane may have had, the action continues with no need to substitute any other party.

As for noting the death of a co-party on the record, we turn to Section 4A of Administrative Order 1. Section 4A outlines the standard forms to be used in this adjudication. Administrative Order 1 at 6. Among these forms is the Notice of Change in Address or Consent to Substitution of Party (Standard Form 3). Id. A simple entry into the record using Standard Form 3 should be sufficient to note the death of a co-party for the record. Standard Form 3 defines a "new claimant/purchaser" as any successor in interest of a "prior claimant/seller," including inter alia where the interest is acquired through inheritance. Standard Form 3 at 2. Per its instructions for use, Standard Form 3 is a multipurpose form for changing addresses and noting changes of interest. Even though the aspects of Standard Form 3 that deal with transfers of interests focus primarily on issues of noting substitution of party, this form remains an appropriate vehicle for noting on the record, as in the present matter, that all interests of a deceased party have been transferred to her co-party. Pursuant to Administrative Order 1, no hearing shall be held for noting such transfers. Administrative Order 1 at 6.

In subcases where there are no co-parties, or where an interest is transferred to a person other than a co-party, we

²(...continued)
suggested upon the record and the action shall proceed in favor of or against the surviving parties.

concur with IDWR that notice is effective by the filing of Standard Form 3. Administrative Order No. 1 sets forth the Trial Procedures in the Snake River Basin Adjudication ("SRBA"). As pertains to the scope and purpose of these procedures, section 1(b) states that

[t]hese procedures supplement the Idaho Rules of Civil Procedure and any other applicable laws or orders of this court, only to the extent necessary to allow for the fair and expeditious resolution of all claims or issues in the SRBA.

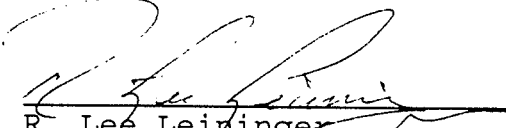
Administrative Order 1 at 2. Use of the Standard Form No. 3 to effect the substitution of parties in the event of death promotes fair and expeditious resolution of the claims. Further, the requirement per Administrative Order 1 that no hearing be held is appropriate because transfer of whatever interests plaintiffs may possess do not affect the substantive issues of the subcases. Fair and expeditious resolution is achieved by the filing of the Standard Form No. 3 without the need for a hearing.

CONCLUSION

Standard Form 3 is an appropriate vehicle for noting on the record and giving effective notice of transfer of interests whether or not these transfer result in a substitution of parties. Standard Form 3 may be used to give notice as to the death of one co-party and the subsequent transfer of interest to another co-party. Use of Standard Form 3 in this manner is consistent with the Rules of Procedure set forth in Administrative Order 1, and promotes judicial economy by not

requiring hearings for incidental changes that do not impact the substantive issues of the subcases.

Respectfully submitted this 26th day of March, 1996.



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CERTIFICATE OF SERVICE

I certify that on the 30th day of March, 1996, I served a true and correct copy of the foregoing Response to IDWR's Report on Substitution of Parties upon the following individuals via first-class United States mail:

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