

RECEIVED

JUN 12 1996

Department of Water Resources

1996 JUN 11 PM 2:51

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

) Subcase 34-10873

Case No. 39576

)
) ORDER GRANTING UNITED STATES'
) MOTION TO REINSTATE
) OBJECTION
)

The United States filed two timely objections to water right 34-10873 dated February 26, 1993. Before a Response was filed, the United States filed its *United States' Notice of Withdrawal of Objection* (June 21, 1993). Subsequently, the United States altered its position again, seeking to reinstate portions of its original objections. *United States' Motion to Reinstate Objection* (December 30, 1993). In the *Motion to Reinstate*, the United States asserts it inadvertently sought to withdraw objections to this water right due to the large volume of subcases in which it withdrew similar objections. Upon further review, the United States realized it had mistakenly withdrawn place of use and quantity objections to this water right.

The United States still intends to withdraw objections as to priority for this water right. No party to this subcase filed any objection to the *Motion to Reinstate*.

Whether the *Motion to Reinstate* is reviewed under the standards for a Motion for Late Objection or some less stringent standards for reinstating, the court finds the Objections may be reinstated. In the SRBA, Motions to File Late Objections have been reviewed under the criteria of I.R.C.P. 55(c) and 60(b). The proponent of a Motion for Late Objection, like a party seeking to file an untimely answer, must show **both** good cause for untimeliness and the existence of a meritorious position. I.R.C.P. 55(c); *Reeves v. Wisenor*, 102 Idaho 271, 29 P.2d 667 (1981); *McFarland v. Curtis*, 123 Idaho 931, 854 P.2d 274 (App. 1993). Here, the United States has

asserted good cause for filing the objection late (or more accurately, filing objections timely, withdrawing them, and then seeking to reinstate). There was no objection by any party to the United States' assertion of good cause.

The United States also alleges a meritorious position to object to place of use and quantity based on the assertion that part of the place of use is on federal land. Since there were no objections to the United States' assertion of a meritorious position, and based on the strong policy favoring deciding cases on the merits the court finds that a sufficient meritorious position has been alleged.

IT IS ORDERED that the *Motion to Reinstate* for subcase 34-10873 is GRANTED **except for those portions of the objections which address the priority date**. For those portions of the United States' objections which address priority date, the *Motion to Reinstate* for subcase 34-10873 is DENIED.

DATED June 11, 1996.



DANIEL C. HURLBUTT, JR.

Presiding Judge for
BRIGETTE BILYEU, Special Master
Snake River Basin Adjudication

ORDER GRANTING UNITED STATES' MOTION TO REINSTATE OBJECTION

JUN 15 1996

RECEIVED

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING UNITED STATES' MOTION TO REINSTATE OBJECTION was mailed on June 11, 1996, with sufficient first-class postage to the following:

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, ID 83711-4449

The United States Department of Justice
Environment and Natural Resources Division
550 West Fort Street, MSC 033
Boise, ID 83724

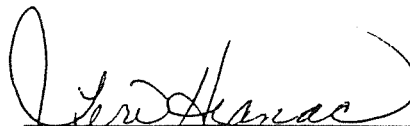
William Hollifield
P.O. Box 66
Twin Falls, ID 83303
Rep: Damiana

Kent Foster
P.O. Box 50130
Idaho Falls, ID 83405
Rep: Jay Jensen

Roger D. Ling
P.O. Box 396
Rupert, ID 83350
Rep: Big Lost River Irr. Dist.

Randall Budge
P.O. Box 1931
Pocatello, ID 83204
Rep: Harvey Walker

Arthur W. Quist
Route 1, Box 203
Arco, ID 83213



Deputy Clerk