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DEPARTMENT OF
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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 CSRBA	)	Subcase Nos. 91-07726, 91-07862, 91-07866,
Case No. 49576	)	91-07868, and 91-07884
	)	
	)	UNITED STATES' MOTION TO AMEND
	)	OBJECTIONS AND NOTICE OF HEARING
	)	
	)	

The United States of America ("United States"), objector in these subcases, moves to
amend its objections based upon the following grounds:

BACKGROUND

On June 23, 2015, the United States filed timely objections in each of these subcases. The objections, in general, are based on unauthorized points of diversion and places of use on federal land.

On July 17, 2015, the State of Idaho (“State”) filed motions to file late objections in a number of subcases, including each of these subcases. On August 31, 2015, the State’s motions were granted by the Court.

The State’s objections challenge the quantity element of the claims, stating that the quantities were inadvertently recommended as 0.2 cubic feet, amounts that are inconsistent with the statutory authority cited in the Director’s Report in support of the recommendations. The State’s motions in support of its late objections state that the error was “not obvious,” and did not come to its attention until after the deadline for filing objections.

At the August 26, 2015, initial hearing for these subcases, and after review of the State’s motions for late objections, counsel for the United States informed the parties and the Court that it planned to amend its objections.

ARGUMENT

CSRBA Administrative Order 1, Rules of Procedure (“AO1”), contains standard forms for motions to amended claims, to file late claims, and to file late objections. AO1 also provides standards for Court review of such filings. See AO1 § 4.d.(2)(d) (leave to amend claims “shall be freely given where justice so requires”), § 4.d.(3)(d) (late claims “will be reviewed under the criteria of I.R.C.P. 55(c)”), and § 4.d.(5)(a) (late objections “will be reviewed under the criteria of I.R.C.P. 55(c)”). AO1, however, provides no standard for court review of amendments to objections.

I.R.C.P. 15(a) provides that pleadings may be amended by leave of court and that such “leave shall be freely given when justice so requires.” Factors considered by Idaho courts in construing this provision include whether the amendment would cause delay or prejudice the other parties, Carl H. Christensen Family Trust v. Christensen, 993 P.2d 1197, 1202-03 (Idaho 1999), and whether any deadlines for amendment of pleadings or discovery had passed, Maroun v. Wyreless Sys., Inc. 114 P.3d 974, 983 (Idaho 2005).

All of these factors support the United States’ motion. No litigation, discovery, or other deadlines have yet been set by the Court. The cases are set for a scheduling conference on December 10, 2015, with only the initial hearings having occurred to date. The United States is already an objector in these cases, and has informed the parties of its intent to move to amend its objections at the initial hearings. The issue of the allowable quantity for these claims has previously been raised by the State’s objections. Thus, granting of this motion would neither delay the proceedings or prejudice any party. Accordingly, the United States’ motion should be granted.

Moreover, even under the stricter “good cause” standard of I.R.C.P. 55(c), applicable to motions to file late objections in the CSRBA, see AO1 § 4.d.(5)(a), this motion should be granted. The “good cause” standard takes into account 1) whether the delay was willful; 2) whether setting aside the judgment would prejudice the opponent; and 3) whether a meritorious position has been presented. Order on Motion to Set Aside Partial Decrees and File Late Objections, SRBA subcase nos. 65-07267 et al. (January 31, 2001) at 7.

As explained in the State’s Motions to File Late Objection, the quantity element of the recommendations was based on a clerical error by IDWR. As such, it appears that legal and

factual support for the quantities recommended is absent and, accordingly, meritorious grounds exist to object to the recommended quantities.¹

For these reasons, the Court should grant this Motion.

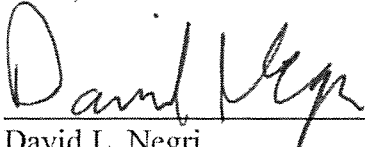
NOTICE OF HEARING

PLEASE TAKE NOTICE that hearing on this Motion will be held before Special Master Bilyeu on **Thursday, December 10, 2015 at 9:00am (PT), 10:00 am (MT)** at the following location:

IDAHO WATER ADJUDICATION COURT
253 3RD AVE, NORTH
TWIN FALLS, IDAHO 83301

Parties may participate by telephone for the hearing by dialing 1-720-279-0026 and when prompted enter guest code 476045#. For questions regarding telephone participation, please contact the Court Clerk's office at (208) 736-3011.

Respectfully submitted this 12th day of November, 2015.



David L. Negri
Bruce D. Bernard
Counsel for the United States

¹ In subcase 91-07862, the United States also moves to correct the legal description in part E of the point of diversion on federal land. The United States' original objection lists section 11; the amended objection corrects this to section 10.

CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2015, I caused to be served a true and correct copy of the foregoing upon the following individuals by placing the document in the United States

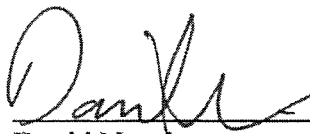
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