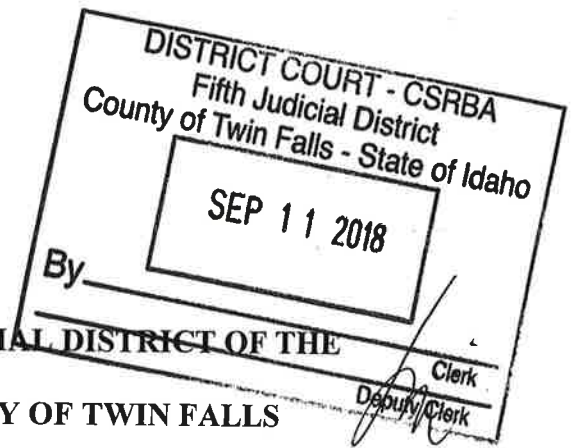


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DEPARTMENT OF
WATER RESOURCES



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

Case No. 49576

) WATER RIGHT NO: 95-11631
)
) ORDER GRANTING MOTION TO FILE
) AMENDED NOTICE OF CLAIM
)
) REQUEST FOR AMENDED
) DIRECTOR'S REPORT
)

Francis Brunner ("Claimant") filed a claim in the above-captioned subcase to divert .02 cfs of ground water for domestic purposes. The claim sought a priority date of December 31, 1990. On August 2, 2018, the Director of the Idaho Department of Water Resources filed his *Director's Report* for Basin 95 Part 1. The *Director's Report* included a recommendation for the claim. On September 6, 2018, the Claimant filed a *Motion* to amend the priority date of the claim from December 31, 1990, to July 31, 1978.

A *Director's Report* has previously been filed for this particular claim. As a result, leave of the Court is required to amend the claim. *CSRBA Administrative Order 1, Rules of Procedure* § 4.d.(2)(d). District courts should favor liberal grants of leave to amend a pleading in the interest of justice. *Hines v. Hines*, 129 Idaho 847, 853, 934 P.2d 20, 26 (1997). The decision to grant or refuse permission to amend a pleading is left to the sound discretion of the trial court. *Id.* For the reasons set forth below, the Court in its discretion will grant the Claimant's *Motion* to amend the claim.

First, the Court finds that the Claimant has filed the *Motion* sufficiently early in the proceeding to warrant the granting of the request. The *Director's Report* for the claim was just recently filed and the time for the filing of *Objections* and *Responses* to the recommendation has not run. As a result, there have been no objections filed to the recommendation at this time, nor have there been any other dispositive motions or hearings in this subcase. Second, the Court does not find that the Claimant's *Motion* was filed in bad faith or with any dilatory motive. See e.g., *Drennon v. Fisher*, 141 Idaho 942, 946, 120 P.3d 1146, 1150 (Ct. App. 2005) (providing

that “[i]n the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of the allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, ‘be freely given’”). Therefore, the Court in its discretion will grant the Plaintiff leave to file the *Amended Claim*.

The Court notes that under *CSRBA Administrative Order 1, Rules of Procedure* § 4.d.(2)(d) it may grant leave to amend a claim with or without a hearing. Since this subcase is in its infancy, and since no objections have been filed at this time, the Court finds a hearing on the *Motion* to be unnecessary.

THEREFORE, BASED ON THE FOREGOING, THE FOLLOWING ARE HEREBY ORDERED:

1. The Claimant’s *Motion to File Amended Notice of Claim* is **hereby granted**.
2. The *Amended Notice of Claim*, as well as any attached filing fees, and a copy of this **Order** will be forwarded to the Idaho Department of Water Resources for further action. Following investigation by the Idaho Department of Water Resources, recommendation for the claim will be reported in the next *Late Claims Director’s Report*.

Dated: September 11, 2018



ERIC J. WILDMAN

Presiding Judge

Coeur d’Alene-Spokane River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING MOTION TO FILE AMENDED CLAIM / REQUEST FOR DIRECTOR'S REPORT was mailed on September 11, 2018, with sufficient first-class postage to the following:

DIRECTOR OF IDWR
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