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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - CSRBA Fifth Judicial District County of Twin Falls - State of Idaho	
SEP 18 2019	
By _____	Clerk Deputy Clerk

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: 95-9793
)
) ORDER GRANTING MOTION TO FILE
) AMENDED NOTICE OF CLAIM
)
) ORDER OF REFERENCE APPOINTING
) BRIGETTE BILYEU AS SPECIAL
) MASTER

Allan D. Kyle ("Claimant") filed a claim in the above-captioned subcase to divert 1.8 cfs of surface water from Sage Creek for irrigation purposes. The claim was based on beneficial use and sought a priority date of March 15, 1952. On August 2, 2018, the Director of the Idaho Department of Water Resources filed his *Director's Report* for Basin 95 Part 1, which included a recommendation for the claim. On April 23, 2019, the Claimant filed a *Motion* to amend the total number of acres irrigated as well as the volume of water claimed. A hearing on the *Motion* was held on September 17, 2019.

A *Director's Report* has previously been filed for this 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.* At the hearing, the Court in an exercise of its discretion determined to grant the *Motion*.

The Court found 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 there has not been any dispositive motions or hearings in this subcase. Additionally, 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 Claimant leave to file the *Amended Claim*.

The Court notes the Claimant has not yet filed an *Amended Notice of Claim*. However, the Claimant indicated at the hearing that he could file an *Amended Notice of Claim* with the Court on or before September 30, 2019. Last, the Court determined at the hearing to refer this subcase to Special Master Brigitte Bilyeu for all future proceedings.

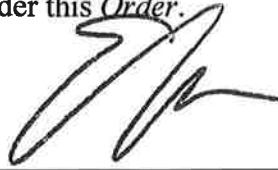
THEREFORE, BASED ON THE FOREGOING, THE FOLLOWING ARE HEREBY ORDERED:

1. The Claimant’s *Motion to File Amended Notice of Claim* **is hereby granted**.
2. The Claimant shall file an *Amended Notice of Claim* along with any additional filing fees with the Court on or before September 30, 2019. Once filed, 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.
3. Brigitte Bilyeu is hereby appointed as Special Master for the above-captioned subcase. The Special Master shall preside over the subcase and issue reports as set forth in *CSRBA Administrative Order 1, Rules of Procedure* and shall have the authority to: fix the time and conditions for the filing of supplemental pleadings and amendments to pleadings; schedule and hear dispositive and nondispositive motions of any party; schedule and conduct all pretrial matters, including pretrial, status and scheduling conferences; issue pretrial orders; schedule and limit the scope of discovery; order the discovery of facts known and opinions held by experts; issue protective orders; issue orders compelling discovery; sanction failure to comply with pretrial, trial-related or post-trial orders; summon witnesses and issue subpoenas; take such evidence as may be introduced or deemed necessary by her; rule on the admissibility of evidence; call witnesses on behalf of the court; and appoint expert witnesses for the court. The Special Master shall set proceedings in conformity with *CSRBA Administrative Order 1, Rules of Procedure*, notwithstanding the provisions of I.R.C.P. 53(d)(1), and exercise the power to

regulate all proceedings in every hearing and to do all acts and take all measures necessary or proper for the efficient performance of her duties under this *Order*.

IT IS SO ORDERED.

DATED: Sept 18, 2019.



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 NOTICE OF CLAIM/ORDER OF REFERENCE APPOINTING BRIGETTE BILYEU SPECIAL MASTER was mailed on September 18, 2019, with sufficient first-class postage to the following:

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

ALLAN D KYLE
25249 N HATCH RD
ATHOL, ID 83801-8683
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ORDER

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Deputy Clerk

A handwritten signature in cursive script, reading "Julie Murphy", is written over a horizontal line. The signature is in dark ink and is positioned to the right of the printed text "Deputy Clerk".