

**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)	Consolidated Subcase No. 92-00080
)	
Case No. 39576)	ORDER DISMISSING OBJECTIONS WITH PREJUDICE
)	
)	ORDER SETTING BRIEFING SCHEDULE
)	
)	ORDER ON HEARING ON <i>MOTION TO DISMISS</i>
)	
)	ORDER ON COURT'S CERTIFICATE OF MAILING
)	
)	

I.

ORDER DISMISSING OBJECTIONS

On January 5, 2006, this Court issued an *Order to Show Cause* to certain individuals and/or entities who filed *Objections* in the above-captioned consolidated subcase. Those objectors were given the opportunity to show cause as to why their objections should not be dismissed for want of standing in the SRBA.

The following individuals either failed to appear at the show cause hearing on January 17, 2006, or failed to demonstrate standing in the SRBA.

Jean O. Nelson
RR 1 Box 69A9
Kooskia, ID 83539

Ronald G. Bierer
Rt 1 Box 19
Kamiah, ID 83536

Geary Morgan
Gloria Morgan
Rt 1 Box 180
Kooskia, ID 83539

Keith Keysor
Rt 1 Box 69A4
Kooskia, ID 83539

James C. Ashton, Jr.
Rt 1 Box 74F
Kamiah, ID 83536

Julia Louise Igo
27 Friendship Lane
Kamiah, ID 83536

Jack Heiermann
HC 11 Box 360
Kamiah, ID 83536

Thomas L. Pruett
HC11 Box 421
Kamiah, ID 83536

Thomas Glen Igo
HC 11 Box 427
Kamiah, ID 83536

Mike Molesworth
HC 11 Box 56
Kamiah, ID 83536

Therefore, IT IS ORDERED, based on the reasoning set forth in the Court's ***Order to Show Cause*** the *Objections* filed by the foregoing individuals are hereby **dismissed**. The Clerk of the Court is instructed to remove these parties from the Court's ***Certificate of Mailing*** for Consolidated Subcase 92-80.

II.

STATUS OF OBJECTORS DAVID F. CAPPS & MIRIAM G. CARROLL

At the hearing on the ***Order to Show Cause***, the Court dismissed objectors David F. Capps and Miriam G. Carroll. However, a subsequent review of Court files indicates a *Motion to File Late Notice of Claim* for water right 84-12230. Accordingly, the dismissal on the record of said *Objection* is **reversed**. David F. Capps and Miriam G. Carroll have standing to participate and are therefore parties to the consolidated subcase.

III.

STATUS OF LATE OBJECTOR RUTH HEDDEN

On November 3, 2005, Ruth Hedden filed an *Objection* past the November 1, 2005, deadline. A *Motion to File Late Objection* was not noticed with the Court. Because the *Objection* was filed shortly after the deadline and within the response period, and the *Objection* raises no additional issues, the Court will allow the filing of the *Objection* upon a showing of standing by objector.

Therefore, IT IS ORDERED, that objector, Ruth Hedden, has until January 31, 2006, to file with the Court, documentation of a claim either filed or decreed in the SRBA, or a statement supporting the basis for claimed standing in the SRBA. Failure to provide such documentation within the time permitted will result in the Court's dismissal of the *Objection*.

IV.

ISSUE REGARDING TELEPHONE PARTICIPATION

At the hearing on the *Order to Show Cause* it was mentioned that some of the objectors may have failed to appear as a result of difficulty in joining the telephonic hearing. The Court made a further inquiry into this possibility. Only one party contacted the SRBA during the hearing regarding this difficulty and that party was ultimately connected and participated in the hearing. The Court learned the party's difficulty in connecting to the conference call was as a result of trying to include an area code despite being instructed not to do so in the *Notice of Hearing* and by the deputy clerk.

On January 23, 2006, Mike Hensel sent a letter to the Court stating he was also unable to join the conference call. (A copy is attached to this *Order* as the letter was not served on the rest of the parties to the consolidated subcase.) A review of Mr. Hensel's letter indicates he was calling an incorrect telephone number (1-919-583-3445). The correct number is properly stated in the *Notice of Hearing* (1-918-583-3445). The Court finds that proper notice was given. Accordingly, the Court finds that none of the other parties failing to appear did so as a result of being unable to join the conference call to participate in the hearing.

Mr. Hensel also indicated in his letter that his wife, Judie Hensel, was also a "petitioner" but the Court served Mr. Hensel two copies of the *Order to Show Cause* and served nothing to his wife, Judie Hensel. The Court's review of Mr. Hensel's objections indicates that both were filed in the name of Mike Hensel only. Accordingly, the Court has no record of Judie Hensel being a party to this subcase.

Therefore, IT IS ORDERED, that objector, Mike Hensel, has until January 31, 2006, to file with the Court, documentation of a claim either filed or decreed in the

SRBA, or a statement supporting the basis for claimed standing in the SRBA. Failure to provide such documentation within the time permitted will result in the Court's dismissal of the *Objection*.

V.

BRIEFING SCHEDULE ON *MOTION TO DISMISS*

On January 17, 2006, the Court also held a scheduling conference on a *Joint Motion to Dismiss Objections* filed by the United States on behalf of the Nez Perce Tribe and by the Nez Perce Tribe. The Court ordered on the record at the conclusion of the hearing, and does order, the following briefing schedule.

Objectors' Responsive Briefing: On or before January 31, 2006

Reply Briefs: On or before February 14, 2006

VI.

HEARING ON *JOINT MOTION TO DISMISS*

At the scheduling conference certain objectors inquired as to whether the Court would consider holding the hearing on the *Motion* in Lewiston as opposed to Twin Falls. The Court has taken that request under advisement and will notify parties of its decision via separate notice. The hearing is currently scheduled for Tuesday, February 21, 2006, in the SRBA District Court in Twin Falls. The Court will issue a separate notice of hearing either confirming this time and date in Twin Falls, with telephone participation, or resetting the hearing in Lewiston, Idaho, also with telephone participation.

VII.

CERTIFICATE OF SERVICE

Following the service of this *Order*, the Court's *Certificate of Mailing* for consolidated subcase 92-00080 will include the following parties:

USA, Trustee for benefit of
Represented by:
US Department of Justice
Environment & Nat'l Resources
550 West Fort Street, MCS 033
Boise, ID 83724

Alvin Hohmann
Mary Hohmann
General Delivery
Kamiah, ID 83536

Joe Presti
HC 11 Box 17
Kamiah, ID 83536

Dolores A. Jones
Wilbern Jones
HC 11 Box 174
Kamiah, ID 83536

Mike Hensel
HC 11 Box 211
Kamiah, ID 83536

Darrell Sparks
Mary Sparks
HC 11 Box 31
Kamiah, ID 83536

Darlene M. Malone
Mark L. Jackson
HC 11 Box 32
Kamiah, ID 83536

Gloria Jean Hisaw
Jim W. Hisaw
HC 11 Box 353
Kamiah, ID 83536

Carol J. Asher
Gerald J. McLamb
PLL Designs
HC 11 Box 357
Kamiah, ID 83536

David F. Capps
Miriam G. Carroll
HC 11 Box 366
Kamiah, ID 83536

Kathleen A. Wingen Trust
HC 11 Box 419A
Kamiah, ID 83536

Claude Simmons
HC 11 Box 59B7
Kamiah, ID 83536

Barbara Celmer
Stan Celmer
HC 11 Box 842
Kamiah, ID 83536

G. Clodfelter Tribute Trust
Jean Hisaw, Trustee
HC 11 Box 353
Kamiah, ID 83536

Angela McLamb
PO Box 1474
Kamiah, ID 83536

John Moore, Trustee
Michele Moore, Trustee
PO Box 17
Kooskia, ID 83539

Patitz Family Trust
PO Box 284
Kamiah, ID 83536

Alice Joan Stockton
PO Box 457
Kamiah, ID 83536-0457

Director of IDWR
PO Box 83720
Boise, ID 83720-0098

ORDER DISMISSING OBJECTIONS WITH PREJUDICE\ORDER SETTING BRIEFING SCHEDULE\ ORDER ON HEARING ON MOTION TO DISMISS\ORDER ON COURT'S CERTIFICATE OF MAILING.92-00080

Ruth Hedden
PO Box 961
Kamiah, ID 83536

Allegiance Foundation Group
2300 Candelaria Ne Suite 105
Albuquerque, NM 87107

Joann Mider
Rt 1 Box 73C
Kamiah, ID 83536

Mardell J. Edwards
239 Grangeville Salmon Rd
Grangeville, ID 83530

DATED this 24th day of January, 2006.

/s/ John M. Melanson
JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication