

**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)	ORDER GRANTING, IN PART, AND
)	DENYING, IN PART, MOTION FOR
Case No. 39576)	RECONSIDERATION AND
<hr/>)	CLARIFICATION

Cranney Bros. filed this *Motion for Reconsideration and Clarification (Motion for Reconsideration)* of this court’s *Memorandum Decision and Order Granting, in Part, and Denying, In Part, Motion to Stay Subcases*, entered February 13, 1998 (*Memorandum Decision*). An expedited hearing on the *Motion for Reconsideration* was held at the March 17, 1998 Status Conference.

I. MOTION FOR RECONSIDERATION

A motion for reconsideration is made under I.R.C.P. 11(a)(2)(b). “When considering a motion for reconsideration of an interlocutory order pursuant to subsection (B) of this section, the trial court should take into account any new facts presented by the moving party that bear on the correctness of the interlocutory order.” *Couer d’Alene Mining Co. v. First Nat’l Bank*, 118 Idaho 812, 800 P.2d 762 (1994). Cranney Bros. has presented no facts that were not thoroughly considered within the *Memorandum Decision*. The *Motion for Reconsideration* is **DENIED**.

II.

Cranney Bros., pursuant to this court’s original *Memorandum Decision* has identified various subcases in which it specifically seeks an order of stay. All but six of the identified subcases contain amendments to the original claims. Most are accompanied by a supplemental

director's report in the form of a Standard Form 5, an affidavit, or a document entitled "Supplemental Director's Report." Accompanying this order, the court serves on Cranny Bros. copies of the supplemental director's reports which have been filed in those subcases along with any orders setting forth objection and response periods or case schedules.

With this information, Cranny Bros. may file objections or responses where those time periods still apply or otherwise seek to intervene or participate in the subcases before the Special Master. This court will leave it in the discretion of the Special Master to determine whether and on what basis to allow Cranny Bros. to participate in the identified subcases.

For those subcases in which no amendment has been filed to date, it is ordered that if an amendment is filed which increases the burden on the stream system, the court shall serve Cranny Bros. with copies of the motion to amend and any supplemental director's report subsequently filed in those subcases.

Reviewing the identified subcases, this court finds that:

1. 36-00003E

An amended claim has been filed. A *Standard Form 5* (SF5) signed by the Idaho Department of Water Resources (IDWR) was also filed. The SF5 has been deemed to be a supplemental director's report. Notice of the amended claim, the supplemental director's report, and the objection and response deadlines will be reported on the April Docket Sheet.

2. 36-00004

An amended claim has been filed. Notice of the claim amendment and the deadlines for filing a supplemental director's report and objections and responses will be reported on the April Docket Sheet.

3. 36-00006

An amendment and an *Affidavit of David Tuthill Submitting a Supplemental Director's Report* has been filed. Notice of that amendment was reported on the March Docket Sheet. Trial set May 14, 1998.

4. 36-00007

An amendment has been filed as has an *Affidavit of David Tuthill Submitting a Supplemental Director's Report*. Notice of that amendment was reported on the March Docket Sheet. Trial set May 14, 1998.

5. 36-00008

An amendment has been filed with the court as has an *Affidavit of David Tuthill Submitting a Supplemental Director's Report*. Notice of that amendment was reported on the March Docket Sheet. Trial set May 14, 1998.

6. 36-00022

An amended claim has been filed with the court as has a supplemental director's report regarding the amended claim. Notice of the supplemental director's report will appear on the April Docket Sheet. Trial is set for June 1-2, 1998.

7. 36-00023

An amended claim has been filed with the court as has a supplemental director's report regarding the amended claim. Notice of the supplemental director's report will appear on the April Docket Sheet. Trial is set for June 1-2, 1998.

8. 36-00029B

An amendment has been filed with the court as has an SF5 signed by IDWR. The SF5 has been deemed to be a supplemental director's report. Notice of the amended claim, the supplemental director's report and the objection and response deadlines will appear on the April Docket Sheet.

9. 36-00034B

An amendment to the claim has been filed along with an SF5 signed by IDWR. The SF5 has been deemed to be a supplemental director's report. Notice of the amendment, the supplemental director's report and the objection and response deadlines will appear on the April Docket Sheet.

10. 36-00047

An amendment has been filed with the court as has an *Affidavit of David Tuthill Submitting a Supplemental Director's Report*. Notice of that amendment was reported on the March Docket Sheet. Trial is set for May 26, 1998.

11. 36-00066B

No amendment was filed. The Master's Report and Recommendation was issued December 29, 1997 for a lesser quantity and fewer acres than claimed. The Challenge period has expired.

12. 36-00068

An amendment has been filed with the court as has an *Affidavit of David Tuthill Submitting a Supplemental Director's Report*. Notice of that amendment was reported on the March Docket Sheet. Trial is set for May 28, 1998.

13. 36-00069

An amendment has been filed with the court as has an *Affidavit of David Tuthill Submitting a Supplemental Director's Report*. Notice of that amendment was reported on the March Docket Sheet. Trial is set for May 28, 1998.

14. 36-00079

An amendment has been filed with the court as has a supplemental director's report. Notice of the supplemental report will appear on the April Docket Sheet.

15. 36-00085A

Claim amendment has been filed with the court as has an SF5 signed by IDWR. The SF5 has been deemed to be a supplemental director's report. Notice of the amended claim, the supplemental director's report and the objection and response deadlines will appear on the April Docket Sheet.

16. 36-00099

An amended claim has been filed with the court. Notice of that amendment was reported on the March Docket Sheet. Trial is set for May 11, 1998.

17. 36-00100

An amended claim has been filed with the court. Notice of the amendment was reported on the March Docket Sheet. Trial is set for May 11, 1998.

18. 36-00106

An amendment was filed with the court along with an *Affidavit of David Tuthill Submitting Supplemental Director's Report*. Notice of that amendment was reported on the March Docket Sheet. Trial set for May 14, 1998.

19. 36-00108B

An amended claim has been filed with the court and an SF5 was submitted. [No order that the SF5 should be deemed a supplemental director's report.] Notice of that amendment was reported on the March Docket Sheet.

20. 36-00110B, 36-00111B, 36-00112B and 36-00113H

No amended claims were/will be filed. **Order Denying Amendment of Claims** will appear on the April Docket Sheet.

21. 36-00136A and 36-00136B

An amendment has been filed with the court. Notice of that amendment was reported on the March Docket Sheet

22. 36-02038

An amended claim was filed with the court. Notice of that amendment was reported on the March Docket Sheet.

23. 36-08099

An amendment was filed with the court along with an *Affidavit of David Tuthill Submitting Supplemental Director's Report*. Notice of that amendment was reported on the March Docket Sheet. Trial set for May 14, 1998.

24. 36-15463

No amendment filed.

III.

Finally, Cranney Bros. requests clarification of the order adopting procedures governing any future post-director's-report claim amendments. They request that, in addition to Docket Sheet notice of any future motion to amend a claim and "regardless of whether any SRBA party opposes a motion to make a Substantive Claim Amendment, or is successful in such opposition, each SRBA party nevertheless will be afforded notice and an opportunity to file an objection or response to objection to the Amended Director's Report, and thereby become a *full party as of right* in the subcase." *Motion for Reconsideration* at 9.

Cranney Bros. request is **DENIED**.

In the test basins, all parties to the SRBA shall be given notice of a motion to amend a claim which is filed after the Director's Report is filed and where the motion increases the burden on the stream system. The Docket Sheet entry will contain a description of the element to be amended and the change. SRBA parties may determine whether the matter is sufficiently significant for them to object to the proposed amendment, thereby becoming a party to the subcase entitling them to actual service of any supplemental director's report occasioned by granting the amendment. Further, any party to the SRBA may elect not to object to the amendment but by written notification to the court will be placed on a service list to receive a supplemental report if filed. The Special Masters shall have the discretion to determine the form and timing of supplemental director's reports (i.e., formal report in the statutory form, IDWR affidavit, SF5 or whatever is appropriate under the circumstances). Only those SRBA parties who become a party to the subcase by objecting to a motion to amend or request service of the supplemental director's report will receive copies of the report. The Special Master shall determine the form, method and timing of pleading any objections to the supplemental director's report. This allows parties the opportunity of reviewing the motion to amend in order to determine whether or not it elevates to a level requiring their action.

In conclusion, Cranney Bros. *Motion for Reconsideration* of this court's prior **Memorandum Decision** is **DENIED**; its *Motion for Clarification* with respect to the subcases

specifically identified by them is **GRANTED**; and its *Motion for Clarification* of the order with respect to procedures governing any future amendments in the test basins is **DENIED**.

IT IS ORDERED that Cranney Bros. proceed with all due diligence to proceed under the terms of this order.

IT IS FURTHER ORDERED that the clerk of the court FAX a copy of this order to Cranney Bros. and that a copy of the order and all accompanying documents be hand delivered by the clerk of the court no later than Friday, March 20, 1998.

Dated March 20, 1998.

DANIEL C. HURLBUTT, JR.
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that true and correct copies of the **ORDER GRANTING, IN PART, AND DENYING, IN PART, MOTION FOR RECONSIDERATION AND CLARIFICATION** were:

FAXed and hand delivered, with accompanying documentation, on March 20, 1998, to:

Jeffrey C. Fereday
Michael C. Creamer
Givens Pursley & Huntley
227 North 6th Street, Suite 200
Boise, Idaho
FAX: 208-388-1201

Mailed, without accompanying documentation, on March 20, 1998, by first-class mail to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

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

United States Department of Justice
Environment & Natural Resources Div.
550 West Fort Street, MSC 033
Boise, ID 83724

Court Certificate of Mailing for Expedited Hearings

Deputy Clerk