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OCT 30 2003
Department of Water Resources

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
OCT 29 2003	
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 SRBA)
)
Case No. 39576) ORDER GRANTING MOTION TO FILE
) LATE NOTICE OF CLAIM UPON
) CONDITIONS
)
) For Water Right Claim: 43-13321
)
_____)

I.
PROCEDURAL BACKGROUND

This matter came before the Court pursuant to a *Motion to File a Late Notice of Claim* filed, through counsel, on June 30, 2003, together with the supporting affidavit of the Claimant, Larry Cooper. The supporting affidavit of Clair Robinson was filed on July 7, 2003. A hearing was held on the *Motion* on October 21, 2003. No party filed an objection or appeared in opposition to the *Motion*.

II.
LEGAL STANDARD FOR LATE CLAIMS

1. A *Motion to File a Late Notice of Claim* is reviewed under the same legal standard as I.R.C.P. 55(c), which provides for setting aside the entry of a default. See **SRBA Administrative Order 1 (AOI)** § 4.d.(2)(d) (late claims reviewed under I.R.C.P. 55(c) criteria). In addition, **AOI** § 4.d.(2)(k) provides that "leave to amend a notice of claim shall be freely given when justice so requires." The I.R.C.P. 55(c) standard applies a "good cause" for untimeliness standard. The "good cause" standard takes into account the following factors:

- 1) Whether the default (failure to timely file) was willful;
- 2) Whether setting aside the judgment (granting the late claim) would prejudice an opponent; and

3) Whether a meritorious position has been presented.

See McFarland v. Curtis, 123 Idaho 931, 936, 854 P.2d 274, 279 (1993).

2. In administrative subbasins where the irrigation and other claims have been substantially completed and decreed, in determining whether or not to grant leave to file a late claim, this Court places weight on the degree of prejudice to other parties, if any, that could potentially result from having to address the late claim. The focus is on whether the late claim will place parties who timely filed their claims and had them decreed, in the position of having to readdress issues that have already been decided or settled, or in the position of defending against new issues that should have been properly raised when the rights on the same source were initially reported and litigated. Summarily stated, the Court wants to avoid those parties from having to engage in new litigation to defend their previously decreed rights against late claims to senior rights.

III.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the pleadings on file and heard the comments from counsel, and from IDWR in open court, and makes the following findings of fact and conclusions of law for purposes of this *Motion*:

1. The purpose for the filing of the subject late claim came about as a term of an agreement to resolve objections reached in related subcases for groundwater rights also held by the Claimants. *See* Special Master's ***Order Vacating Trial Scheduling Order***, subcases 43-00423A, 43-13108, 43-13110, 43-13112, 43-13114 and 43-13116 (June 12, 2003).¹ In those subcases it was alleged that the water, which is the subject of this late claim, was not properly accounted for in the licenses issued for the other rights. As part of the resolution, the Claimants agreed to file a late claim for a beneficial use water right to make up for the water not accounted for under the licenses.

¹ The ***Order*** provides:

On June 12, 2003, counsel for claimants, Larry and Barbara Cooper, and counsel for IDWR telephoned the Special Master to say the 6 subcases have been settled-the Coopers will file a motion to file a late beneficial use claim before the end of June. If approved by the Presiding Judge, the late claim will resolve all remaining issues in the 6 subcases. The Coopers and IDWR will then file *Standard Form 5* for each subcase.

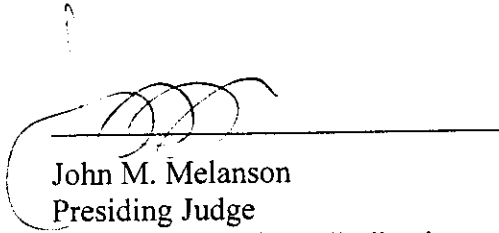
2. This Court essentially views the late claim as akin to an alternative legal theory for the additional water already originally claimed under water rights 43-00423A, 43-13108, 43-13110, 43-13112, 43-13114 and 43-13116, which were timely filed.
3. The water covered by the subject late claim is a beneficial use claim for a groundwater right and is alleged to have been in use prior to 1963, prior to the enactment of the mandatory permit and licensing procedures for appropriating a groundwater right.
4. This Court concludes that the elements of the "good cause" standard have been satisfied. An excuse for the untimeliness has been demonstrated as the late claim was part of an agreement recently reached to resolve pending objections to timely filed claims. The Court finds no additional prejudice to other parties because the late claim is to resolve pending objections already addressing the same water that is the subject of this late claim. A meritorious position has been demonstrated because the late claim is a beneficial use claim alleged to have been appropriated prior to 1963.

**IV.
ORDER**

For the above-stated reasons, IT IS ORDERED, that the *Motion to File a Late Notice of Claim* for water right 43-13321 is **granted, with the condition** that if following reporting by IDWR an objection is filed to the subject claim and following proceedings the claim is ultimately disallowed, the Claimants will be collaterally estopped from going back and pursuing the claim to the same water through the subcases that were represented as "settled" and stayed pending the determination of the instant *Motion*, pursuant to the Special Master's June 12, 2003, **Order**. The original *Notice of Claim* and a copy of this **Order** will be forwarded to the IDWR for further action. Filing fees were paid to IDWR.

IT IS SO ORDERED

Dated: October 23, 2003



John M. Melanson
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING MOTION TO FILE LATE NOTICE OF CLAIM UPON CONDITIONS was mailed on October 09, 2003, with sufficient first-class postage to the following:

BARBARA JEAN COOPER

LARRY COOPER

Represented by:

ROGER D LING

PO BOX 396

RUPERT, ID 83350

Phone: 208-436-4717

DIRECTOR OF IDWR

PO BOX 83720

BOISE, ID 83720-0098

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number: 43-13321

Date Received: _____

Receipt No.: _____

Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: Larry Cooper and Phone: (208) 678-8015
Barbara Jean Cooper
Address: 227 West, 20 South Knox Drive
Burley, Idaho 83318

2. Date of Priority: March 30, 1960

3. Source: Ground Water Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
12 S	26EBM	11	SE	SE	NW		Cassia

Additional points of diversion if any: NONE

5. Description of diversion works:
Deep well pump, motor and mainlines

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.
Irrigation	3/15	11/15	3.00		

7. Total quantity claimed is:
3.00 (C.F.S.) (and/or) (Acre Feet)

8. Total consumptive use claimed is: n/a

9. Non-irrigation uses: n/a

10. Description of place of use:

TWP	RNG	SEC	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				Total
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
12S	26 EMB	10			38	40	32	40	38	39									227

Total number of acres irrigated: 227

11. In which county(ies) are lands listed above as place of use located:
Cassia
12. Do you own the property listed above as place of use? Yes ☒ No ☐
13. Other water rights used at the same place and for the same purposes as described above.
Water Right Nos. 43-2353 and 43-2545, 43-13108, 43-13110, 43-13112, 43-13114, and 43-13116
14. Remarks:
15. Basis of Claim: Beneficial Use
Water Right No.:
16. Signature(s)
(a) By signing below, I/We acknowledge that I/We have received, read, and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication."
(b) I/We do ☐ do not ☒ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments:

One (1): Notice of Claim with supporting documents

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s) [Signature] Date: June 30, 2003

Barbara Jean Cooper Date: June 30, 2003

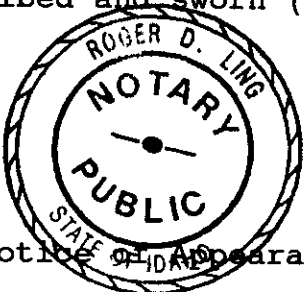
For Organizations: I do solemnly swear or affirm that I am _____ of _____, that I have signed the foregoing document in the space below as _____ of _____ and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____
Title and Organization _____ Date _____

State of Idaho)
County of Minidoka) ss.

Subscribed and sworn (or affirmed) before me this 30th day of June, 2003.

[SEAL]



[Signature]
Notary Public, State of Idaho
Residing at: Rupert, Idaho
My Commission expires: 10/30/06

17. Notice of Appearance:

Notice is hereby given that I, Roger D. Ling, will be acting as attorney at law on behalf of the claimant signing the above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature [Signature]

Date: June 30, 2003

Roger D. Ling
LING, ROBINSON & WALKER

Address P. O. Box 396
Rupert, Idaho 83350-0396