

2004 FEB 10 PM 4: 25
DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

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	)	RECOMMENDATION REGARDING
	)	"PREJUDICE" ON MOTION TO FILE
Case No. 39576	)	LATE CLAIM
	)	
	)	WATER RIGHT NOS.: 34-13811
	)	
	)	

I. PROCEDURAL BACKGROUND

On July 16, 2003, the SRBA Court received a *Motion to File Late Notice of Claim* from the Orveata P. Warner Revocable Family Trust, with Vonda P. Bruhn and Arva Jean Hodge as co-successor trustees. A hearing on the *Motion* was held on October 21, 2003, before Presiding Judge John M. Melanson. An *Order of Reference Appointing Brigitte Bilyeu Special Master for Further Proceedings on Motion to File Late Claim* was issued on October 28, 2003. In the *Order of Reference*, Judge Melanson ruled that both "good cause" for the untimeliness and a "meritorious position" had been demonstrated by the trust. However, Judge Melanson asked this Special Master to take up further proceedings to determine prejudice to other parties, if any.

II. STANDARD OF REVIEW

The SRBA Administrative Orders do not provide a standard to be applied for filing late objections. However, the court's administrative rules set forth that *Motions to File a Late Notice of Claim* are to be reviewed under the criteria of I.R.C.P. 55(c) and 60(b). *SRBA Administrative Order 1 (AO1) § 4 (d)(2)(d)*.

Judge Melanson has previously determined that the Orveata P. Warner Revocable Family Trust has shown both "good cause" and a "meritorious position." Judge Melanson asked for findings regarding "prejudice to other parties" if the late claim is allowed. The SRBA Court places emphasis on the element of prejudice to other parties in basins where the reported

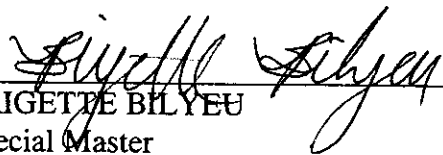
"irrigation and other purposes" water rights have been litigated and decreed. The SRBA Court recently noted, "A late claim on a fully decreed source potentially puts parties with rights on the same source in the position of re-litigating issues that have already been decided, or in the position of addressing new issues that should have been properly raised at the time the source of the subject claim was initially reported and litigated." *Order of Reference* (Subcase No. 34-13811) (October 28, 2003) The water right at issue here is in Basin 34. The "irrigation and other purposes" water rights in Basin 34 have been litigated and decreed for approximately five years. It is, therefore, important to determine whether allowing a late claim would prejudice existing water rights. The Idaho Department of Water Resources conducted a preliminary field investigation of the claimed source of this late claim prior to the final hearing for this Special Master. IDWR reported that the likelihood of prejudice to other parties is remote because the claimed source is on a spring located in a riparian area. IDWR also determined that the spring involved in the late claim is a different spring than that claimed and decreed to this claimant under water right 34-00328A.

III. FINDINGS AND CONCLUSIONS

Based on IDWR's report, this Special Master concludes that prejudice to other parties in the SRBA and in Basin 34 is unlikely given the location of the point of diversion and the fact that the source is a spring in a riparian zone. IDWR stated that this water right will be included in its annual *Director's Report* for late claims. It is expected that this water right will be recommended in 2005. When the *Director's Report* for this water right is filed, the claimant will have an opportunity to object.

Therefore, IT IS RECOMMENDED that the *Motion to File Late Notice of Claim* be granted for water right number 34-13811.

DATED February 10, 2004.


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the RECOMMENDATION REGARDING "PREJUDICE" ON MOTION TO FILE LATE CLAIM was mailed on February 10, 2004, with sufficient first-class postage to the following:

ORVEATA P WARNER REVOCABLE
FAMILY TRUST
673 PACKARD AVE
POCATELLO, ID 83201
Phone: 208-232-8834

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

ARVA JEAN HODGE CO-TRUSTEE
VONDA P BRUHN CO-SUCC TRUSTEE
673 PACKARD AVE
POCATELLO, ID 83201


Deputy Clerk