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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 DISMISSING LATE
) OBJECTION(S)
)
) For water rights: 29-7578, 29-7772
)
)
)

I.

PROCEDURE AND FINDINGS

A. A *Standard Form 1 Objection* was filed by Max W. Hall on February 27, 2004 referring to the above-captioned water rights. Both water rights are previously licensed hydropower rights owned by Marsh Valley Development, Inc. Licenses were issued for the rights in 2001. Because of the recent date of the permit applications and proof of beneficial use, the Director of the Idaho Department of Water Resources did not require claims for the rights to be filed in the Snake River Basin Adjudication. See I.C. 42-1420(d). Accordingly, the above-captioned claims were not investigated and reported in the *Director's Report, Part 1 For Irrigation and Other Uses, Reporting Area 9, Basin 29* filed July 11, 2003, nor in any other director's report. As such, there is no recommendation for either right from which to file an objection. Therefore, these rights are not properly before the Court at this time.

B. In addition, the time for filing objections to the recommendations to rights reported in the *Basin 29 Director's Report* expired November 14, 2003. Therefore, leave of Court, through a *Motion to File a Late Objection*, would otherwise be required in order to file a late objection if the water rights were in fact reported in the *Basin 29 Director's Report*.

C. Lastly, the *Instructions for Filing Objections to Water Rights in the Snake River Basin Adjudication* that accompanies the *Standard Form 1 Objection* provides: "To

object to more than one water right, you must use a separate form for each objection and there must be only one objection for each form.” In this case, Mr. Hall also failed to comply with this requirement.

D. An ***Order to Show Cause*** to show why the objections contained in the ***Standard Form Objection*** should not be dismissed for the above-stated reasons and give Mr. Hall the opportunity to clarify the intended purpose of the objections, was filed by this Court on March 2, 2004. The order was served on Mr. Hall in accordance with I.R.C.P. 5(b) and 6(c)(2). The ***Order to Show Cause*** set a hearing date for March 16, 2004.

E. On March 16, 2004, a hearing was held. Mr. Hall participated via telephone. Mr. Hall was unable to effectively address the issue raised by his objecting to a water right not presently before this Court.

II.

APPLICABLE LEGAL STANDARD FOR FILING LATE OBJECTION

In the SRBA, a motion to file a late objection is reviewed under the same “good cause” standard as is applied for setting aside an entry of default pursuant to I.R.C.P.

55(c). The “good cause” standard takes into account the following factors:

- 1) Whether the default was willful;
- 2) Whether setting aside the judgment would prejudice the opponent; and
- 3) Whether a meritorious position has been presented.

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

The “meritorious position” standard requires that a movant:

- 1) Allege facts,
- 2) Which if established,
- 3) Would constitute a defense to the action, and
- 4) The facts supporting the defense must be detailed.

The detailed factual requirement also goes beyond the mere general notice requirement that would ordinarily be sufficient if pled prior to default. *Reeves v. Wisenor*, 102 Idaho 271, 629 P.2d 667 (1981). The policy behind pleading a meritorious

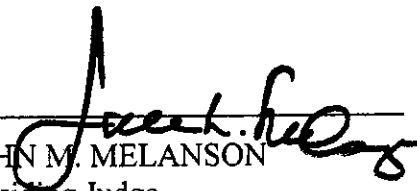
defense is founded on the doctrine that "it would be an idle exercise for a court to set aside a default judgment if there is in fact no justifiable controversy." *McFarland*, 123 Idaho at 934, 854 P.2d at 277.

III.

CONCLUSIONS AND ORDER.

For the above-stated reasons this Court concludes that Mr. Hall has not met the requisite standard pursuant to I.R.C.P. 55(c), including addressing the issue that the above-captioned claims are not properly before the Court, IT IS THEREFORE ORDERED, that the *Standard Form 1 Objection* to 29-7578 and 29-7772 is hereby dismissed.

DATED March 22, 2004.

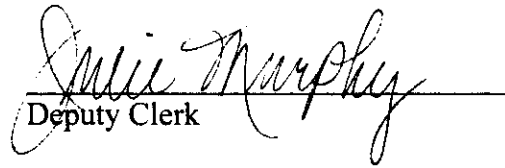

JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the **ORDER DISMISSING LATE
OBJECTION** was mailed on March 22, 2004, with sufficient first-class postage to the following:

MAX W. HALL
5675 E OLD OREGON TR RD
LAVA HOT SPRINGS, ID 83246

DIRECTOR OF IDWR
PO BOX 83720
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Deputy Clerk