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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	) Subcase: 43-10510
	)
Case No. 39576	) ORDER GRANTING MOTION TO SET
	) ASIDE FINAL ORDER DISALLOWING
	) WATER RIGHT AND FILE LATE
	) OBJECTION; AND
	)
	) ORDER OF REFERENCE TO SPECIAL
	) MASTER DOLAN

I.

BRIEF PROCEDURAL AND FACTUAL BACKGROUND

1. On September 28, 2001, the Director of the Idaho Department of Water Resources (IDWR) filed a *Director's Report for Irrigation and Other Claims, Reporting Area 7, Basin 43, Part 1 (Director's Report)*, recommending that the above-captioned water right be disallowed. No objections to the *Director's Report* were filed. As a result, on June 21, 2002, this Court entered a ***Final Order Disallowing Water Right Claim***.
2. On July 1, 2002, Claimants Larry and Darlene Kincade, acting *pro se*, filed a ***Standard Form 1 Objection Form*** together with a letter from the former owner of the subject water right providing information on the history and existence of the water right. Apparently, the letter was initially filed with IDWR after the *Director's Report* was issued but prior to the issuance of the ***Final Order Disallowing Water Right Claim***.
3. This Court treated the filings as a timely motion to set aside the ***Final Order Disallowing Water Right Claim*** and to file a late objection and set the matter for hearing. No party filed an objection to, or appeared in opposition of, the motion. The Claimants appeared at the hearing in support of the motion.

4. For purposes of the late objection the Court noted at the hearing that the Claimants did not specifically indicate how the water right should be recommended based on the new evidence obtained and required that the Claimants file an *Amended Standard Form 1 Objection Form*. The Claimants filed the same on October 23, 2002.

**II.
FINDINGS AND ORDER SETTING ASIDE AND ALLOWING LATE
OBJECTION**

1. The Court finds and concludes that the motion to set aside the *Final Order Disallowing Water Right Claim* to be timely in accordance with I.R.C.P. 60(b).
2. The Court finds and concludes that the Claimants have demonstrated "excusable neglect" and "newly discovered evidence" pursuant to I.R.C.P. 60(b)(1) and (2).
3. The Court finds and concludes that the Claimants have shown a "meritorious defense" in support of their claim.
4. The Court finds that no party has appeared in opposition to this motion or has demonstrated any prejudice by the Court granting the same.

THEREFORE, IT IS ORDERED, that the motion to set aside is **GRANTED** and the *Final Order Disallowing Water Right Claim* issued on June 21, 2002, is hereby **SET ASIDE**.

**III.
ORDER OF REFERENCE TO SPECIAL MASTER DOLAN**

IT IS FURTHER ORDERED subcase 43-10510 is referred to Special Master Terrance Dolan for further action consistent with this Order.

Dated 10-28-02



ROGER BURDICK
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING MOTION TO SET ASIDE FINAL ORDER DISALLOWING WATER RIGHT AND FILE LATE OBJECTION & ORDER OF REFERENCE was mailed on October 28, 2002, with sufficient first-class postage to the following:

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