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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	)	MEMORANDUM IN OPPOSITION TO
	)	DAWN BLAKELY'S MOTION FOR LEAVE
	)	TO FILE LATE OBJECTION AND FOR
	)	EXPEDITED HEARING
	)	
	)	SUBCASE NOS.: 23-00009B
	)	

COMES NOW Rex Maughan ("Maughan"), a Claimant to the waters of Kelly Creek located in Jefferson County, Idaho, by and through his undersigned counsel, and opposes Dawn Blakely's motion for leave to file a late objection, presently set before the Special Master Brigitte Bilyeu on December 1, 2004 at 2:30 p.m., for the following reasons:

1. Dawn Blakely ("Blakely") cannot show "good cause" sufficient to allow the filing of a late objection pursuant to Idaho Rules of Civil Procedure 55(c) and 60 (b).

Blakely contends he is entitled to file a late objection to Subcase No. 23-00009B on the grounds of excusable mistake, inadvertence, surprise and neglect under IRCP 55(c) and/or 60(b).

To obtain the relief requested, Blakely's claimed mistake, inadvertence, surprise or neglect must be excusable. *Lu Ranching Co. v. United States*, 138 Idaho 606, 611-612, 67 P.3d 85, 89 & 90 (2003).

In 2004 the Idaho Department of Water Resources Director's Report (the "Report") for Irrigation and Other Water Rights in Basin 23 was filed with the Snake River Basin Adjudication (the "SRBA") District Court. The Report details and lists all existing and applied-for water rights claims in Basin 23. Subsequent thereto, Blakely was properly served with the Notice of Filing of Director's Report For Basin 23 For

Irrigation and Other Water Rights (the "Notice"). The Notice included instructions for reviewing the water rights of others and instructions for taking to court a water right claim that was disagreeable to Blakely. The Notice required that any objections to a water right must be received by August 13, 2004. Blakely failed to timely appear or otherwise file a timely objection to Sub-case No. 23-00009B.

The Court in *Lu Ranching* affirmed the lower court's denial of a motion to file a late objection, holding that (when the moving party received adequate and timely notice and the material that it needed to act, and it was advised in the notice of how to proceed with questions and offered technical assistance if necessary, and the necessary information was made readily available to the moving party) the moving party's failure to timely appear or timely file an objection was not how "a reasonably prudent person under the circumstances" should have acted, and therefore the Court found no excusable neglect or mistake. *Lu Ranching*, 138 Idaho 606, 610-611, 67 P.3d 85, 89 & 90 (2003).

Blakely's motion must be denied because his failure to timely file an objection under the circumstances does not qualify as excusable neglect, surprise, inadvertence or mistake. Blakely cannot deny that he received adequate and timely notice, he was aware of the commencement of the SRBA, and he was aware that action concerning his claimed rights and the rights of others to Kelly Creek would be adjudicated, as he had proceeded to timely settle his claim to Kelly Creek via the SF5 process.

2. Blakely failed to timely appear or timely file an objection or response contrary to the requirements set forth in the "Notice of Filing of Director's Report For Basin 23 For Irrigation and Other Water Rights" (the "Notice"), the Directors Report and Administrative Order § 4(b).

Administrative Order § 4(b) provides an absolute rule for responses: "The objection or response must be received by the court by the deadline specified". *State v. United States, (In re Minidoka National Wildlife Refuge)*, 134 Idaho 106, 109, 996 P.2d 806, 809 (2000), *North Snake Ground Water District v. Gisler*, 136 Idaho 747, 750, 40 P.3d 105, 108 (2002).

The Court in *State v. United States* affirmed the SRBA Court's decision that affirmed the special master's denial of a claimant's motion to file a late objection based on the "plain language of the SRBA rules". *Id.*

The importance and process of the steps for claiming a water right through the SRBA are evident and well established. *North Snake Ground Water District v. Gisler*, 136 Idaho 747, 750, 40 P.3d 105, 108 (2002). The court in that case stated:

"Requiring objections and responses to the director's report to be filed by a date set forth in the report assures the SRBA that all interested parties will be involved with the adjudication of that particular claimed water right from that point forward. This ensures that any party affected by the claim will be able to be heard throughout the process. If no one objects, then the claim can move forward with

facts that have been agreed upon by all interested parties. *Id.* The SF5 process is deeply entrenched in the SRBA adjudication. It is an avenue frequently used to settle claims, which saves the court and parties involved the time and expense of a trial. Provided the IDWR agrees with the stipulations in the SF5, the claim proceeds without a trial. Because all of the interested parties would be identified by the time an SF5 proceeding is initiated, anyone concerned about the claim would be involved. **To allow a new party to enter a sub-case after it has been settled through the SF5 process would unfairly burden the claimant, who would be forced to try a case in which he had just reached a settlement, obviously defeating the purpose of the SF5 process.**” [emphasis supplied] *Id.*

Prior to Blakely filing his motion for leave to file a late objection, Maughan had reached a settlement with the IDWR and BLM through the SF5 process. But for Blakely’s motion to file a late objection, Maughan’s SF5 would have been executed and his claim would be final.

The Court in *Gisler* concluded by stating that:

“Parties involved in the SRBA adjudication must respect the importance of following the established procedures for becoming involved as a party in a disputed water rights claim. By ignoring the steps outlined in Administrative Order 1, a potential party may endanger its ability to challenge a water right”. *Id.*, at 109.

The court affirmed the special master’s decision and the SRBA court’s decision to deny objections by a brand-new party to the subcase after the time to object to a claim had passed. The Court in *Gisler* adopted the statement made by the SRBA district court as follows:

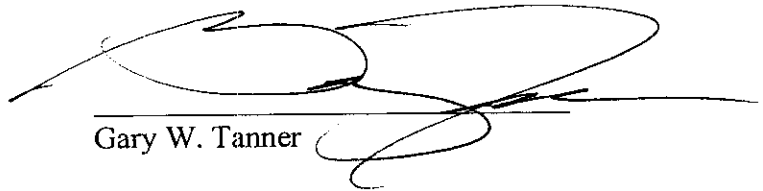
“For reasons that are not apparent to this Court, NSGWD elected not to involve themselves in the proceedings before the Special Master. NSGWD decided to make themselves heard only after discovering that the Special Master recommended quantities greater than those contained in the Directors’ Report. In the contested subcase, it should come as no surprise to NSGWD that this is a possibility. NSGWD had notice of the quantities claimed by the Claimants, notice of the quantities reported in the directors report, and notice that these subcases may be settled via an SF5, and that IDWR may concur with that settlement. Having this knowledge, it should be clear to NSGWD of the need to involve themselves in the trial proceedings before the Special Master. NSGWD would have protected themselves by simply filing with the Court (and serving on the parties) a Response to Objection (AO1 Standard Form 2) that, in essence, would state: “NSGWD agrees with the Director’s Report in this subcase.” Had they done this, an SF5 could not have been entered without the signature of NSGWD. Where the parties to a subcase and IDWR agree upon the factual elements of a water right in a subcase, and this agreement is presented to a special master in the form of an SF5, **it would be impractical to require the special**

master to force the parties and IDWR into a further factual inquiry for the purpose of protecting the interests of a nonparty to the subcase who knew of the proceedings, claims to have a direct interest therein, and yet failed to participate.” [emphasis supplied]

Blakely’s motion to become a party to Sub-case 23-00009B and file a late objection must be denied because granting his motion will defeat the purpose of the SF5 process and will unfairly burden Maughan, and it would be impractical to require the special master to force the parties and IDWR into a further factual inquiry for the purpose of protecting the interests of a nonparty to the subcase who knew of the proceedings, claims to have a direct interest therein, and yet failed to participate.

WHEREFORE, Maughan requests the Court to enter an order denying Dawn Blakely’s motion for leave to file a late objection.

DATED this 24th day of November, 2004.



Gary W. Tanner

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of November, 2004, I served a copy of the foregoing document upon the following persons at the addresses below by mailing said document in the manner indicated below.

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

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United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

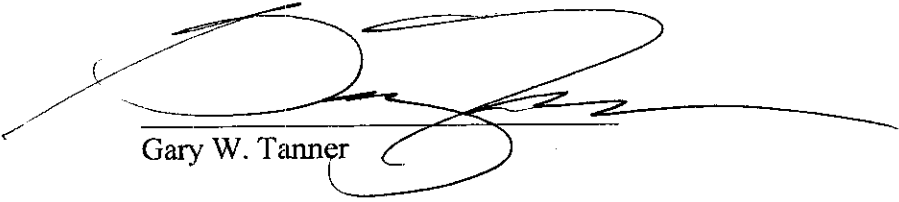
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