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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 | ) | SUPPLEMENT TO MEMORANDUM IN           |
|                | ) | OPPOSITION TO DAWN BLAKELY'S MOTION   |
|                | ) | TO LEAVE TO FILE LATE OBJECTION AND   |
|                | ) | FOR EXPEDITED HEARING, IN RESPONSE TO |
|                | ) | DAWN BLAKELY'S MEMORANDUM IN          |
|                | ) | SUPPORT OF FILING LATE OBJECTION      |
|                | ) |                                       |
|                | ) | 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. Blakely has failed to plead a meritorious defense.

The holding in LU Ranching alone is sufficient reason to deny Dawn Blakely's motion to file a late objection. (*See Special Master Dolan's decision on motions to file late objections in SRBA Subcases 47-16433, et al.*) However, there is one other basis that leads to the same result – Blakely has failed to plead a meritorious defense and thereby cannot show "good cause" to file a late objections.

Idaho Rules of Civil Procedure 55(c) and 60(b) both require that the movant plead detailed facts that would constitute a meritorious defense. Blakely has not alleged a meritorious defense as to Maughan's claim. "In addition to satisfying one of the criteria set forth in *I.R.C.P. 60(b)*, the movant must also allege facts, which if established, would constitute a meritorious defense. The legal standard of what must be shown to satisfy the meritorious defense requirement has been discussed several times by the Idaho Appellate

Courts. See *McFarland v. Curtis*, 123 Idaho 931, 854 P.2d 274 (1993); *Hearst Corp. v. Keller*, 100 Idaho 10, 592 P.2d 66 (1979); *Thomas v. Stevens*, 78 Idaho 266 (1956). The meritorious defense 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.

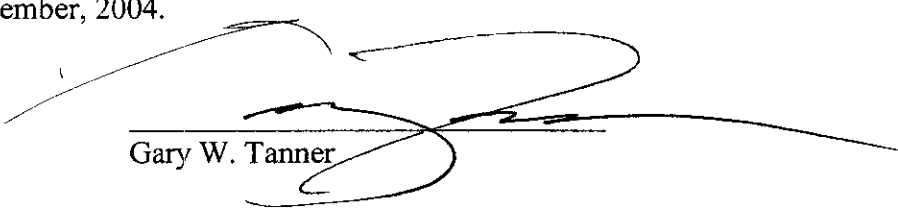
The detailed factual requirement also goes beyond the mere general notice requirement that would ordinarily be sufficient if pled prior to default. *Reeves v. Wisenor*, 102 Idaho 271, 629 P.2d 667 (1981). The policy behind pleading a meritorious defense is founded on the doctrine that it would be an idle exercise for a court to set aside a default judgment if there is no justifiable controversy." *McFarland*, 123 Idaho at 934, 854 P.2d at 277 (quoting *Hearst Corp.*, 100 Idaho at 12, 592 P.2d at 68). ( See Judge *Burdick's decision (order on motion for reconsideration) on challenge in 65-07267 et. al. (A.L. Cattle v. United States, BLM).*

Blakely has not satisfied the requisite pleading requirements. It is not the role of the court to formulate viable legal theories and evaluate those theories based on the facts plead. *Id.* Blakely's affidavit offers little more than a conclusion. The only allegation that Blakely makes in his affidavit is that he has used the waters of Kelly Creek. This is not a meritorious defense to Maughan's claim. Pursuant to Idaho Code Section 42-1411(4), the Directors report constitutes prima facie evidence of the nature and extent of Maughan's the water right. Blakely has the burden of going forward to allege detailed facts, that if established, would rebut the director's report. Blakely has failed to do so.

Further, Maughan's claim is based on a prior decree with a priority date of October 21, 1899. Since the water rights claims are alleged to be competing claims, Blakely or its predecessor in interest was a party or had the opportunity to be a party to the prior action for which the prior decrees were entered. To that extent Blakeley would be barred from relitigating the case under res judicata.

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

DATED this 1<sup>st</sup> day of December, 2004.



Gary W. Tanner

## CERTIFICATE OF SERVICE

I hereby certify that on this 1<sup>st</sup> day of December, 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.

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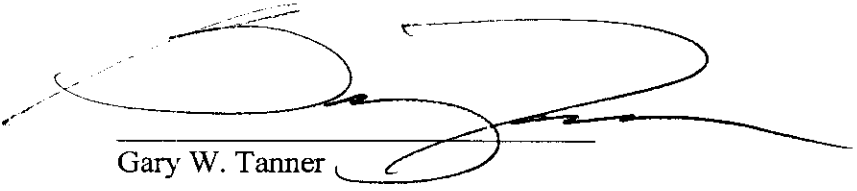
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