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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

Case No. 39576

Water Right Claim: 71-10886 et al.

**ORDER GRANTING MOTIONS TO FILE
LATE NOTICES OF CLAIMS**

On July 1, 2005, Claimant Idaho Water Resource Board (Board), by and through its attorney, Mr. Steven Strack, filed *Motions to File Late Notice of Claims* for the above-captioned water right claims. The claimant motioned for an expedited hearing on the matter. That expedited hearing was granted in open court on July 19, 2005. The Shoshone-Bannock Tribes, by and through its attorney, Mr. William F. Bacon, filed an *Objection to Filing Late Claims*. Hearing was held on the *Motions to File Late Notice of Claims* on July 19, 2005, in Caldwell, Idaho. Mr. Strack appeared to support the *Motions to File Late Notices of Claims*. Ms. Heidi Gudgell, appearing for the Nez Perce Tribe, and Ms. Vanessa Boyd Willard, appearing for the United States, concurred in Mr. Strack's remarks. Mr. Bacon appeared opposing the *Motions*.

Under *Administrative Order 1*, a motion to file a late notice of claim is determined pursuant to I.R.C.P. 55(c), which provides the standard for setting aside the entry of a default. See *AOI* § 4d(2)(d) (late claims reviewed under I.R.C.P. 55(c) criteria). The Court, therefore, applies a "good cause" standard to motions to file late notices of claims. In determining whether to set aside the entry of a default under I.R.C.P. 55(c), Idaho Courts apply a "good cause" for untimeliness standard. I.R.C.P. 55(c). The "good cause" standard is a more lenient threshold than the Rule 60(b) standard. *McFarland v. Curtis*, 123 Idaho at 935, 854 P.2d at 279. The I.R.C.P. 55(c) 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.
- 3) as with a Rule 60(b) motion, whether a meritorious position has been presented.

In this case, the Shoshone Bannock Tribes argue that, 1) the *Motions* are not timely, and would result in prejudice; 2) the time period for filing claims in the basins has expired according to the

**ORDER GRANTING MOTIONS TO FILE
LATE NOTICE OF CLAIM**

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Court's order dated December 21, 1998, and are almost 7 years late; 3) the late claims are substantially the same as those dismissed with prejudice in 2002, and the Shoshone-Bannock Tribes would not have motioned the Court to dismiss their substantially similar claims.

This Court has considered the objections of the Shoshone-Bannock Tribes and concludes as follows: Any allegations of untimeliness are without merit. These late claims are for newly created water rights, only established on March 24, 2005, when the Governor of Idaho signed House Bill 154 (2005), creating a new code section I.C. 42-1507, which establishes minimum instream flows and directs the Board to file the claims in the SRBA. The claims are part of the Nez Perce Agreement, which is currently before the Court. Since these claims did not exist until 2005, it would have impossible for the claims to have been filed at any prior time. Any allegations of prejudice are without merit as well. Parties will have the opportunity to object to the claims after they are reported by the Idaho Department of Water Resources in a forthcoming *Director's Report*. Additionally, the claimed priority dates are April 1, 2005, the claims are non-consumptive, and they are subordinated as set forth in I.C. § 42-1507. Finally, the claimant has presented a meritorious position. The creation of these instream minimum flow water rights was authorized by the Idaho Legislature and the Governor of Idaho. Idaho Code § 42-1501 recognizes such rights as beneficial uses.

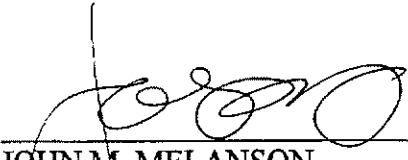
Therefore, the Court finds that good cause exists for the *Motions to File Late Claims* to be granted.

THEREFORE, IT IS ORDERED, that the *Motions to File Late Notices of Claims* for the above water rights are **granted**.

The original Notices of Claim, as well as any required filing fees, and a copy of this *Order* will be forwarded to the Idaho Department of Water Resources for further action.

IT IS SO ORDERED.

Dated July 27, 2005.



JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

EXHIBIT A

Subcase Nos:

71-10886	81-11963	84-12219
71-10887	81-11964	84-12220
71-10888	81-11965	84-12221
71-10889	81-11966	84-12222
71-10890	81-11967	84-12223
71-10891	81-11968	84-12224
71-10892	81-11969	84-12225
71-10893	81-11970	85-15598
71-10894	81-11971	85-15599
71-10895	81-11972	85-15600
71-10896	81-11973	85-15601
72-16664	81-11974	85-15602
72-16665	81-11975	85-15603
72-16666	82-12220	85-15604
72-16667	82-12221	85-15605
72-16668	82-12222	85-15606
72-16669	82-12223	85-15607
72-16670	82-12224	85-15608
72-16671	82-12225	85-15609
72-16672	82-12226	85-15610
72-16673	82-12227	85-15611
81-11934	82-12228	85-15612
81-11935	82-12229	85-15613
81-11936	82-12230	85-15614
81-11937	82-12231	85-15615
81-11938	82-12232	85-15616
81-11939	82-12233	85-15617
81-11940	82-12234	85-15618
81-11941	82-12235	85-15619
81-11942	83-11945	85-15620
81-11943	83-11946	85-15621
81-11944	83-11947	85-15622
81-11945	83-11948	85-15623
81-11946	83-11949	85-15624
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81-11958	83-11961	
81-11959	84-12215	
81-11960	84-12216	
81-11961	84-12217	
81-11962	84-12218	

(Subcase list: SF4IWRB)

7/27/05

CERTIFICATE OF MAILING

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