

2005 DEC 6 AM 10 45
DISTRICT OF THE

been litigated and decreed.¹ It is, therefore, important to determine whether allowing a late claim would cause prejudice to existing water rights. The Idaho Department of Water Resources reported on its research of the claimed source of this late claim. IDWR reported that the likelihood of prejudice to other parties is remote because IDWR has not already recommended the full quantity from the prior decree upon which claim 23-00056C is based. There is still water available from the old decree. Claim 23-10212 is not considered "late" because that is a small domestic and stock right, which is deferrable.

The *Order of Reference* also asks for findings on whether a meritorious position was asserted. Mr. Harvey's water right 23-00056C is based on a prior decree. Mr. Harvey asserts he has used the water right since he purchased the related property in 1983.

III. FINDINGS AND CONCLUSIONS

This Special Master finds that a meritorious position was alleged. In addition, the likelihood of prejudice to other parties is remote. Therefore, the late claim for 23-00056C should be allowed. Claim 23-10212 should be allowed because it is not "late." No parties to the SRBA opposed the *Motion*.

These water rights will be included in the annual *Director's Report* for late claims. When the *Director's Report* for these water rights is filed, the claimant will have an opportunity to object.

Therefore, IT IS RECOMMENDED that the *Motion to File Late Notice of Claim* be **granted** for water right number 23-00056C. The claim for 23-10212 is not late, and may proceed.

DATED December 6, 2005.


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

¹ All state-based "irrigation and other" water rights have been resolved in Basin 23. As of the date of this order, only one (1) federal reserve right has not yet been recommended.

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

2005 DEC 6 AM 10 45

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)
)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

Water Right (s) : 23-00056C and
23-10212

On December 6, 2005, Special Master BRIGETTE BILYEU issued a
RECOMMENDATION ON MOTION TO FILE LATE CLAIM for the above subcase
(s) pursuant to SRBA Administrative Order 1 (AO1), Section 13a.

Pursuant to SRBA Administrative Order 1, Section 13a, any party to the
adjudication including parties to the subcase, may file a Motion to Alter or Amend on
or before the 28th day of the next month.

Failure of any party in the adjudication to pursue or participate in a Motion to
Alter or Amend the SPECIAL MASTER'S RECOMMENDATION shall constitute a
waiver of the right to challenge it before the Presiding Judge.

DATED December 6, 2005.



JANET CONNELL
Deputy Clerk

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED _____

2005 DEC 6 AM 10 45

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	)	CERTIFICATE OF MAILING
	)	
Case No. 39576	)	
_____	)	Water Right (s) : 23-00056C and 23-10212

CERTIFICATE OF MAILING

I certify that a true and correct copy of the RECOMMENDATION ON
MOTION TO FILE LATE CLAIM was mailed on December 6, 2005, with sufficient
first-class postage prepaid to the following:

Director of IDWR
PO Box 83720
Boise, Idaho 83720-0098

Richard Harvey
3725 Swan Valley Hwy
Irwin, Idaho 83428


Deputy Clerk