

RECEIVED

SEP 22 2006

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
SEP 21 2006	
By _____	Clerk
_____	Deputy Clerk

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

) ORDER OF REFERENCE APPOINTING
) THEODORE BOOTH SPECIAL MASTER
) FOR FURTHER PROCEEDINGS ON
) MOTION TO FILE LATE CLAIM

) For Water Right Claim(s): 36-16403

This matter came before this Court pursuant to a *Motion to File a Late Claim*, heard September 19, 2006. The claimant appeared through counsel, Michael Tribe. No party filed an objection or appeared in opposition to the *Motion*. Following a review of the file and after hearing the comments made in open court, the Court finds that the claimant has demonstrated an excuse for the untimely filing of the subject late claim(s) and a meritorious position; both of which are elements of the "good cause" standard for filing a late claim as required by **SRBA Administrative Order 1 (AOI)** 4.d.(2)(d) and I.R.C.P. 55(c). However, the question of prejudice to other parties, if any, that may arise by the late claim(s) was not addressed. The Court places emphasis on this element because the originally reported irrigation and other purposes water rights in Basin 36 have substantially all been litigated and decreed. A new late claim on a fully decreed source potentially puts parties with adjudicated water rights on the same source in the position of re-litigating issues that may have already been decided, or in the position of addressing new issues that should have been properly raised at the time the source of the subject claim was initially reported and litigated. In situations such as this the Court's practice is to refer the matter to the special master assigned to the basin in which the late claim is filed to make special findings regarding such issues.

THEREFORE, THE FOLLOWING ARE HEREBY ORDERED;

This matter is referred to Special Master Theodore Booth for further proceedings to determine the degree of prejudice, if any, to other parties on the same claimed source. If the Special Master finds no such prejudice, then to recommend to this Court that the late claim be granted. The Special Master shall also determine whether the *Partial Decree* previously issued for related water right 36-02061 should be amended or set aside to correct the volume limitation set forth in the quantity element.

Special Master Booth shall set proceedings in conformity with *AOI*, section 9, notwithstanding the provisions of I.R.C.P. 53(d)(1), and exercise the power to regulate all proceedings in every hearing and to do all acts and take all measures necessary or proper for the efficient performance of his duties under this *Order*.

IT IS SO ORDERED.

DATED: September 20, 2006



John M. Melanson
Presiding Judge
Snake River Basin Adjudication

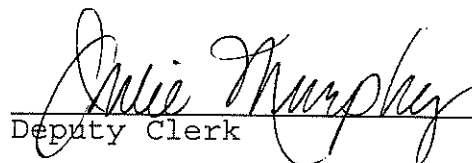
CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER OF REFERENCE APPOINTING THEODORE BOOTH SPECIAL MASTER FOR FURTHER PROCEEDINGS ON MOTION TO FILE LATE CLAIM was mailed on September 21, 2006, with sufficient first-class postage to the following:

JACK M HARMAN
KENT M HARMAN
SHELLEY HARMAN
TAMARA HARMAN

Represented by:
MICHAEL P TRIBE
MICHAEL P. TRIBE
615 H STREET
PO BOX 396
RUPERT, ID 83350-0396
Phone: 208-436-4717

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

A handwritten signature in cursive script, appearing to read "Julie Murphy", is written over a horizontal line. The signature is in dark ink and is positioned to the right of the printed text "Deputy Clerk".