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DEPARTMENT OF
WATER RESOURCES

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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	)	SPECIAL MASTER'S
	)	RECOMMENDATION REGARDING
Case No. 39576	)	PREJUDICE ON MOTION TO FILE
	)	LATE CLAIM
	)	
	)	WATER RIGHT NO.: 29-13726
_____	)	

I. PROCEDURAL HISTORY

On January 20, 2006, the SRBA Court received a *Motion to File Late Notice of Claim* from Jedd R. and Nancy Van Kampen. A hearing on the *Motion* was held on April 18, 2006, before presiding Judge John M. Melanson. An *Order of Reference Appointing Special Master Brigitte Bilyeu* was issued May 2, 2006.

In the *Order of Reference*, Judge Melanson ruled that both "good cause" for the untimeliness and a "meritorious position" had been demonstrated by the Van Kampens. However, Judge Melanson asked this Special Master to determine prejudice to other parties and whether the *Motion* applied to overlapping water rights 29-00170, 29-00171, 29-12063 and 29-12064. Hearings were held on June 14, 2006, August 9, 2006, and September 20, 2006.

I. STANDARD OF REVIEW

The SRBA Administrative Orders provide that *Motions to File a Late Notice of Claim* are to be reviewed under the criteria of I.R.C.P. 55(c) and 60(b). *SRBA Administrative Order 1 (AO1)* § 4 (d)(2)(d).

III. FINDINGS

A. Prejudice to Other Parties

Judge Melanson previously determined that the Van Kampens have shown “good cause” and a “meritorious position.” Judge Melanson asked this Special Master to make findings regarding “prejudice to other parties.” The SRBA Court places emphasis on prejudice to other parties in basins where the reported water rights have been litigated and decreed. The SRBA Court recently noted that a late claim on a fully decreed source potentially puts parties with rights on the same source in the position of re-litigating issues that 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 report and litigated. *Order of Reference* (Subcase No. 34-13811) (October 28, 2003)

The water right at issue here is located in Basin 29. Most of the “irrigation and other purposes” water rights in Basin 29 have been litigated and decreed. In addition many parties involved in subcases in close proximity to this one have agreed to the provisions of the *Portneuf River Settlement Agreement*, a comprehensive settlement agreement involving a large number of water rights. It is, therefore, important to determine whether allowing this late claim would prejudice existing water rights.

The Van Kampens agreed at the hearing on September 20, 2006, to be bound to the *Portneuf River Settlement Agreement*. Furthermore, the Van Kampens agreed to monitor the subcases involved in the *Portneuf River Settlement Agreement* and to become involved with any further negotiations.

IDWR has considered the potential impact of this late claim on other water rights. Because the Van Kampens agreed to be bound to the provisions of the *Portneuf River Settlement Agreement*, IDWR believes the likelihood of prejudice to other parties is remote.

B. Overlapping Water Rights

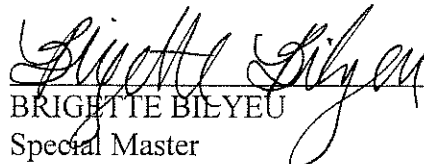
The Van Kampens originally filed the *Motion to File Late Notice of Claim* in 29-170, 29-171, 29-12064, and 29-12063. Those water right numbers apply to overlapping water rights which have already been decreed. The court understands that the Van Kampens do not request any changes to those partially decreed water rights. The Van Kampens *Motion* will be resolved by the resolution of 29-13726.

IV. CONCLUSIONS OF LAW

Based on IDWR's Report, and the Van Kampens agreement with the *Portneuf River Settlement Agreement*, this Special Master concludes that the likelihood of prejudice to other parties is remote. Furthermore, once the *Director's Report* for this water right is filed, other parties will have an opportunity to object.

THEREFORE, IT IS RECOMMENDED that the *Motion to File Late Claim* be **granted** for water right number 29-13726. ¹ IT IS FURTHER RECOMMENDED that the *Motion to File Late Notice of Claim* be **dismissed** as to overlapping water right numbers 29-170, 29-171, 29-12064, and 29-12063.

DATED: September 29, 2006.


BRIGETTE BIEYEU
Special Master
Snake River Basin Adjudication

¹ The *Motion to File Late Claim* anticipates that the Van Kampens will correct the legal description for the place of use as discussed at the Status Conference on September 20, 2006.

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) : 29-13726

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT AND RECOMMENDATION REGARDING PREJUDICE ON MOTION TO FILE LATE CLAIM was mailed on September 29, 2006, with sufficient first-class postage prepaid to the following:

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