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DEPARTMENT OF
WATER RESOURCES

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) Subcase 47-4177E
Case No. 39576) (Walden)
)
) ORDER GRANTING MOTION
) TO FILE LATE OBJECTIONS

Background

On October 11, 2007, Tim and Karen Smalley filed their *Motion to File Late Objections* in subcase 47-4177E.¹ The claimant is Bruce L. Walden. In their *Objection* lodged with the *Motion*, the Smalleys alleged the water right should not exist:

This water right has been forfeited and abandoned. Further, the historic wrongful diversion of this water constitutes waste.

Claimant Mr. Walden filed his *Response in Opposition to Motion to File Late Objections* on October 25, 2007. He noted that the objection deadline for Basin 47 was September 19, 2007, and argued that the Smalleys “failed to establish the requisite good cause excusing their failure to timely file the objection sought.”

The Smalleys filed their *Reply to Response in Opposition to Motion to File Late Objections*, along with an *Affidavit of Daniel A. Nevala*, on October 30, 2007. They “believed that neither party felt the need to file a formal objection . . . [and their] counsel was not personally aware of the September 19, 2007 deadline until after it had passed.”

¹ The Smalleys’ *Motion* referred to subcase 47-4177E as a companion case to subcase 94-19 now before Special Master Brigitte Bilyeu on the Smalleys’ *Petition for Injunctive Relief* filed August 31, 2001. The *Petition* was on hold pending the filing of the *Director’s Report* for Basin 47 on February 2, 2007. During that period, water right 47-4177E was subject to interim administration by agreement of the parties. The *Petition*, as well as Mr. Walden’s *Motion to Dismiss* and the Smalleys’ *Motion to Consolidate* in subcase 94-19, will be heard by Special Master Bilyeu on January 2, 2008.

Hence, their failure to file a timely objection was not willful, it was “simply a mistake and misunderstanding.”

Finally, Mr. Walden lodged an *Affidavit of Andrew J. Waldera in Support of Response in Opposition to Motion to File Late Objections* on October 31, 2007. Mr. Waldera, attorney for Mr. Walden, noted that the parties participated in 13 separate hearings or status conferences in the matter of the *Petition for Injunctive Relief* between September, 2001, and March 28, 2007. During an October 3, 2007 status conference in subcase 94-19, counsel for IDWR and Mr. Waldera informed Special Master Bilyeu that the objection period expired the month before and only Mr. Walden filed objections in the matter.² The Smalleys filed their *Motion to File Late Objections* in subcase 47-4177E a week later.

Hearing

A hearing on the Smalley’s *Motion to File Late Objections* in subcase 47-4177E was held by telephone on November 1, 2007. Andrew J. Waldera appeared for claimant Bruce L. Walden; Daniel A. Nevala appeared for late objectors Tim and Karen Smalley; and Nicholas B. Spencer appeared for IDWR.

Conclusions of Law

Mr. Walden’s claim in subcase 47-4177E has not been partially decreed, hence the I.R.C.P 55(c) “good cause” standard for filing a late objection applies. The Smalleys have shown good cause to file their late objections because their tardiness was not willful, their late objections will not substantially prejudice Mr. Walden and the Smalleys have shown a meritorious position.

The Smalleys filed their *Motion to File Late Objections* less than a month after the deadline passed to file objections in Basin 47. Their counsel admitted their failure to file a timely objection was not willful – it was “simply a mistake and misunderstanding.”

² On September 19, 2007, claimant Mr. Walden filed an *Objection* in subcase 47-4177E objecting to quantity, purpose of use, period of year and place of use. His *Objection* has not been set for hearings or trial.

Mr. Walden cannot reasonably claim prejudice for the very reasons he argued there was prejudice. The contested issues in the *Late Objections* have been joined since 2001, when the Smalleys filed their *Petition for Injunctive Relief* and therefore there are no surprises; no dispositive rulings in the matter have been made; and the underlying dispute cannot be fully resolved without consideration of the Smalleys' *Late Objections*, especially if subcases 94-19 and 47-4177E are consolidated.

Order

THEREFORE, IT IS ORDERED that the Smalleys' *Motion to File Late Objections* in subcase 47-4177E is **granted**.³

DATED December 6, 2007.


TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

³ This *Order* expresses no opinion concerning the Smalleys' claim that Mr. Walden's water right has been forfeited and abandoned since the allegations present mixed questions of law and fact. But their position, if proven, constitutes a meritorious defense.

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING MOTION TO FILE LATE OBJECTIONS was mailed on December 06, 2007, with sufficient first-class postage to the following:

TIM & KAREN SMALLEY
TIM AND KAREN SMALLEY
Represented by:
NEVALA, DANIEL A
ARKOOSH LAW OFFICE CHTD
PO BOX 32
GOODING, ID 83330

BRUCE L WALDEN
Represented by:
SCOTT L CAMPBELL
101 S CAPITOL BLVD 10TH FLOOR
PO BOX 829
BOISE, ID 83701-0829
Phone: 208-345-2000

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