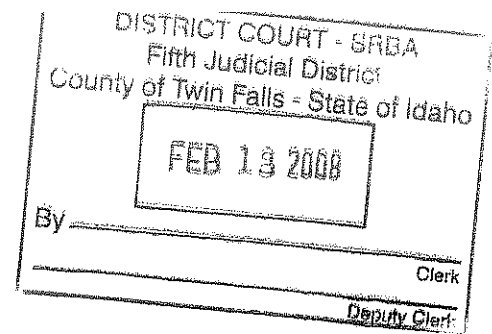




IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	) Subcase 63-07539
	)
Case No. 39576	) ORDER GRANTING MOTION TO FILE
	) LATE OBJECTION
	)
_____	) TRIAL SCHEDULING ORDER

On January 2, 2008, Craig Whitted submitted to the SRBA District Court a *Standard Form 1 Objection* in the above-captioned subcase. The objection was lodged rather than filed for the reason that it was submitted to the Court after the expiration of the deadline for filing objections. Although no written motion to file late objection was filed therewith, the Court treated the matter as such and set a hearing on the motion to file late objection for February 12, 2008.

In the SRBA, a motion to file a late objection is reviewed under the criteria of I.R.C.P. 55(c). *Order on Motion to Set Aside Partial Decrees and File Late Objections; Order of Reference to Special Master Cushman (A.L. Cattle), subcases 65-07267 et al. January 31, 2001.* In the context of reviewing a motion to file late objection, the I.R.C.P. 55(c) standard takes into account: (1) whether the untimeliness was willful; (2) whether allowing the late objection would prejudice the opponent; and (3) whether a meritorious position has been presented. *Id.*, citing *McFarland v. Curtis*, 123 Idaho 931, 936, 854 P.2d 274, 279 (Ct. App. 1993).

Based upon the comments of the participants at the hearing, it is the understanding of this Special Master that the nature of Mr. Whitted's objection is that one of the points of diversion (i.e. the location of groundwater well) for the above-captioned water right is now claimed to be located on Mr. Whitted's property, and that the claimant of the water right, Sara Jane Smith, is not authorized to occupy Mr. Whitted's property

for this purpose. It is Mr. Whitted's stated contention that the subject well does not belong to the claimed 1972 water right.

As to the cause of the untimely filing of Mr. Whitted's objection, the *Director's Report* for this water right listed the subject point of diversion as not being on Mr. Whitted's property. The *Director's Report* was based upon the license issued for the claimed water right, which apparently was issued with an error as to the location of the subject point of diversion. During the process of conducting further investigation regarding an objection filed by the claimant, Sara Jane Smith, IDWR recently came to the realization that the subject point of diversion was described incorrectly in both the license and the *Director's Report*.

Based upon the comments of the participants at the February 12, 2008, hearing on the matter, this Special Master finds that Mr. Whitted has demonstrated good cause for his untimeliness, that there is little likelihood for prejudice to other parties in allowing the late objection, and that Mr. Whitted has shown a meritorious position.¹ Accordingly, the motion to file late objection is **granted**. The Clerk of the Court is instructed to file the previously lodged objection.

At the conclusion of the hearing on the late objection the parties engaged in a trial scheduling conference. The following dates shall govern the conduct of this subcase through trial. All times set forth herein are **Mountain Time**.

May 16, 2008	5:00 PM	Disclosure of Witnesses. Disclosure of all witnesses, except impeachment witnesses, shall be completed by this deadline. All non-disclosed witnesses, except impeachment witnesses, shall be excluded from testifying in the trial unless permitted
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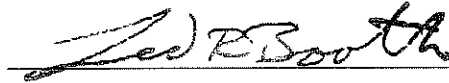
¹ As to the requirement of demonstrating a meritorious position, this Special Master notes that a fairly common objection in the SRBA is the contention that a point of diversion or apparatus for the conveyance of water is located on the property of another without authorization. The United States acting through the Forest Service or the Bureau of Land Management has made numerous objections of this type. This Special Master is unaware of any written decisions by the SRBA presiding Judge or Special Masters discussing or deciding an objection of this nature. Should the facts in this subcase at trial show that Sara Jane Smith does have a valid water right with a point of diversion on Mr. Whitted's property, Mr. Whitted should be allowed to pursue his objection if for no other reason than to be allowed participation in a subcase that will likely be relevant to any determination of the scope and extent of the claimant's use of Mr. Whitted's property. This Special Master notes that the scope of rights-of-way for the conveyance of surface waters are at least partially defined by statute in Idaho Code § 42-1102. However, with respect to a right-of-way for a groundwater well and accompanying pipeline, this Special Master is unaware of any such declaration by the legislature.

by the Special Master in the interests of justice.
I.R.C.P. 16(e)(6)(J).

- June 18, 2008** **5:00 PM** **Discovery Served and Responses Completed.**
Deadline for completion of all discovery, meaning that all discovery is served and response is complete, including the taking of depositions of lay and expert witnesses, all interrogatories, request for production / inspections and admissions. Motions to compel should be filed accordingly so as to accommodate this deadline.
- July 1, 2008** **10:00 AM** **Final Pre-Trial Conference.** Pursuant to I.R.C.P. 16, a final pre-trial conference will be held at the Snake River Basin Adjudication Courthouse, 253 3rd Avenue North, Twin Falls, Idaho. Parties may participate by telephone by dialing 225-383-1099 and when prompted entering the code 675342.
- July 18, 2008** **9:00 AM** **Trial.** The trial will be held at the Idaho Supreme Court Building, 451 West State Street, Boise, Idaho, in the lower-level conference room.

Dated

Feb. 13, 2008



THEODORE R. BOOTH
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING MOTION TO FILE LATE OBJECTION; TRIAL SCHEDULING ORDER was mailed on February 13, 2008, with sufficient first-class postage to the following:

SARA JANE SMITH
SARAH JANE SMITH
Represented by:
JOHN M MARSHALL
601 W BANNOCK ST
PO BOX 2720
BOISE, ID 83701-2720
Phone: 208-388-1200

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

CRAIG WHITTED
7144 WARREN SPUR RD
MELBA, ID 83641-5228
Phone: 208-867-1485